JUDAISM

The Talmud

Bava Metzia

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Chapter 1

[1] The early commentaries ask why this chapter, which discusses details of the halakhot of found items, precedes the second chapter, which discusses the fundamental halakhot of found items. Tosafot explain that as tractate Bava Metzia follows tractate Bava Kamma, the halakhot of found items are elucidated in this chapter as a continuation of the topics discussed in the last chapter of Bava Kamma, which discussed the division of items between litigants by means of an oath, which is also the ruling in the mishna here (see Shita Mekubbetzet). The Rosh explains that because there is a suspicion of theft in this case, these matters are juxtaposed with the halakhot of theft, which are described at length in Bava Kamma. MISHNA: If two people came to court holding a garment, and this one, the first litigant, says: I found it, and that one, the second litigant, says: I found it; this one says: All of it is mine, and that one says: All of it is mine; how does the court adjudicate this case? This one takes an oath that he does not have ownership of less than half of it, and that one takes an oath that he does not have ownership of less than half of it, and they divide it.

[2] If this one says: All of it is mine, and that one says: Half of it is mine, since they both agree that half of the cloak belongs to one of them, the conflict between them is only about the other half. Therefore, the one who says: All of it is mine, takes an oath that he does not have ownership of less than three parts, i.e., three-fourths, of it, and the one who says: Half of it is mine, takes an oath that he does not have ownership of less than one-quarter of it. This one takes three parts, and that one takes one-quarter.

[3] If two people were sitting in a riding position on the back of an animal, e.g., a donkey or camel, or one was sitting in a riding position on the animal and one was leading it by its halter, and this one says: All of it is mine, and that one says: All of it is mine, how does the court adjudicate this case? This one takes an oath that he does not have ownership of less than half of it, and that one takes an oath that he does not have ownership of less than half of it, and they divide it.

[4] When they admit to the validity of each other’s claims or when they each have witnesses attesting to their claims, they divide the disputed item without taking an oath, as an oath is administered only in a case where the parties have no other way to prove their claims.

[5] GEMARA: The Gemara asks: Why do I need the tanna to teach two separate claims made by each party? Why does the tanna say both: This one says: I found it, and that one says: I found it; and in addition: This one says: All of it is mine, and that one says: All of it is mine? Let the tanna teach one case. The Gemara answers: The correct understanding of the mishna is that it teaches one claim of each party, as their claims were as follows: This one says: I found it and all of it is mine, and that one says: I found it and all of it is mine.

[6] The Gemara asks: But let the tanna teach a case where each one merely claims: I found it, and I would know that the intention of each litigant is to claim: All of it is mine. The Gemara answers: If

the tanna would teach only that each one claimed: I found it, I would say that what is the meaning of the claim: I found it? It means: I saw it. In other words, he is claiming that he saw the item first, and he believes that even though it did not reach his possession, he acquired it through mere sight. Since it would have been possible to think that this is an effective claim, the tanna teaches that the litigant states definitively: All of it is mine, to teach that one does not acquire a lost item through sight alone.

[7] The Gemara challenges this explanation: But how can you say that what the term: I found it, means is actually: I saw it? But didn't Rabbenai say in interpreting the verse: "And so shall you do with every lost item of your brother's, which he has lost, and you have found it" (Deuteronomy 22:3), that "and you have found it" indicates that it came into his possession? The term find in the Torah refers exclusively to a situation where the item is in the possession of the finder.

[8] The Gemara answers: Indeed, the phrase "and you have found it" in the verse certainly indicates that it came into his possession. But one might say that the tanna employed colloquial language in the mishna. And in colloquial language, once a person sees an item, he says: I found it, even if it did not yet come into his possession, because he believes that he acquired the item through mere sight. Since it would have been possible to understand the claim of: I found it, in this manner, the tanna teaches that the litigant states definitively: All of it is mine, to teach that one does not acquire a lost item through sight alone.

[9] The Gemara asks: But if that was the objective of the tanna, let him teach that each party need only state: All of it is mine, and the litigant would not need to say: I found it. The Gemara answers: If the tanna had taught that it is sufficient for each party to claim only: All of it is mine, I would say that in general, when the tanna teaches that one claims: I found it, he means that the finder acquires the item through mere sight. Therefore, he taught that the litigants claimed: I found it, and he then taught that the litigants claimed: All of it is mine, to teach that only when the litigants each make both of these claims does the court divide the item, as from the superfluous expression in the mishna he teaches us that one does not acquire the item through sight alone.

[10] After explaining the viability of this interpretation, the Gemara asks: But how can you say that the mishna is teaching one claim of each party? But doesn't the mishna teach: This one says, and again: This one says? In other words, the mishna writes: This one says: I found it, and that one says: I found it; and it states additionally: This one says: All of it is mine, and that one says: All of it is mine. From the fact that the tanna introduced each of the claims with the phrase: This one says, it is apparent that they are two separate claims, not one compound claim.

[11] Rav Pappa said, and some say it was said by Rav Shimi bar Ashi, and some say it was an unattributed [kedi] statement: The first clause, where each party says: I found it, is referring to a case of a found item, where two people found one item. And the latter clause, where each party says: All of it is mine, is referring to a case of buying and selling, where each party claims that he is the one who bought the item from its seller.

[12] And it is necessary for the mishna to teach its ruling both with regard to a found item and with regard to a purchase.

[13] As had the tanna taught the case of a found item alone, I would say that it is only in the case of a found item that the Sages imposed an oath upon him, as in that case one can rationalize his actions and say: The other party, the one who in fact found the item, is not losing anything by not keeping all

of it, as it was not his to begin with. I will go seize it from him and divide it with him. But in the case of buying and selling, where that cannot be said, say that the Sages did not impose an oath upon him.

[14] And had the tanna taught the case of buying and selling alone, one might say that it is specifically in this case that the Sages imposed an oath upon him, because he could rationalize his actions, saying to himself: The other party gave money to the seller and I gave money to the seller; now that I need it for myself, I will take it and let the other one go to the trouble to buy another item like the first item. But in the case of a found item, where that cannot be said, say that the Sages did not suspect that he seized an item that did not belong to him, and therefore there is no need to impose an oath upon him. Therefore, both cases are necessary.

[15] The Gemara asks: How can the mishna be referring to a case of buying and selling? But let us see from whom the seller took the money. Obviously, the one who gave him the money is the one who bought it. The Gemara answers: No, it is necessary in a case where he took money from both of them. He accepted the money willingly from the one to whom he wanted to sell the item, and he received the money against his will from the one to whom he did not want to sell the item, and I do not know who is the one from whom he took it willingly, and who is the one from whom he received it against his will. Consequently, the matter is clarified by means of an oath.

[16] § The Gemara suggests: Let us say that the mishna is not in accordance with the opinion of ben Nannas, as, if it were in accordance with the opinion of ben Nannas, doesn’t he say that an oath is not administered to two parties in court when one of them is certainly lying?

[17] As it is stated in a mishna (Shevuot 45a): With regard to a case where a man said to his laborer: Go to the storekeeper and he will give you food in lieu of your salary, and sometime later the laborer claimed that the storekeeper did not give him anything while the storekeeper claimed that he did, the Rabbis say: The storekeeper and the laborer must each take an oath to support their claims, and the employer must pay them both. Ben Nannas says in response: How can you allow these people, i.e., the laborer, and those people, i.e., the storekeeper, to come to take an oath in vain? Since one of them is definitely lying, the Sages would not impose the taking of an oath that by definition must be false. Similarly, in the case of the mishna here, since the found item is divided between the parties in any case, according to the opinion of ben Nannas they should receive their portions without taking an oath.

[18] The Gemara rejects this suggestion: It is even possible for you to say that the mishna is in accordance with the opinion of ben Nannas. There, in the case of the laborer and the storekeeper, an oath is certainly taken in vain, as it is clear that one of them is lying. Here, there is room to say that there is no oath taken in vain. Say that they are both taking an oath truthfully, as they lifted the item together, and therefore each of them owns half of it. In this case, ben Nannas would agree that they both take an oath.

[19] The Gemara suggests further: Let us say that the mishna is not in accordance with the opinion of Sumakhos, as, if it were in accordance with the opinion of Sumakhos, doesn’t he say the following principle: In a case of property of uncertain ownership, the parties divide it without taking an oath.

[20] The Gemara rejects this suggestion: Rather, what opinion does the mishna follow? Does the mishna follow the opinion of the Rabbis, who disagree with Sumakhos? Don’t they say that in a case of property of uncertain ownership the burden of proof rests upon the claimant? In the case of the mishna neither side offers proof.

[21] The Gemara answers: What is this comparison? Granted, if you say that the mishna is in accordance with the opinion of the Rabbis, there is room to distinguish between two cases: There, in the case of property of uncertain ownership, where both parties are not grasping the property, the Rabbis say that the burden of proof rests upon the claimant since the one with possession of the property ostensibly has the right to that property. Here, in the case of the mishna, where both are grasping the property and neither has exclusive possession of the item, they divide it with the proviso that they take an oath.

[22] The Gemara continues to state its proof that the mishna is not in accordance with the opinion of Sumakhos: But if you say that the mishna is in accordance with the opinion of Sumakhos, how do you resolve the following contradiction: Now, if there, in a case where they are not both grasping the property, they nevertheless divide it without taking an oath, here, where they are both grasping the property, is it not all the more so that they should divide it without taking an oath?

[23] The Gemara rejects this suggestion: You may even say that the mishna is in accordance with the opinion of Sumakhos. When Sumakhos states that in a case of property of uncertain ownership, the parties divide it without taking an oath, that is in the case of an uncertain claim and an uncertain claim, i.e., when the circumstances are such that neither party can state definitively that he is entitled to the property. But in a case of a certain claim and a certain claim, where each party states definitively that he is entitled to the property, Sumakhos does not say that they divide the property without taking an oath.

[24] The Gemara asks: And according to the opinion of Rabba bar Rav Huna, who said that Sumakhos says that even in a case of a certain claim and a certain claim the parties divide the property without an oath, what is there to say to establish the mishna in accordance with the opinion of Sumakhos?

[25] The Gemara answers: You may even say that the mishna is in accordance with the opinion of Sumakhos. When Sumakhos says that property of uncertain ownership is divided, he is referring to a case where the litigants have a financial association with the item independent of their claims to it. But where the litigants do not have a financial association with the item beyond their claims, they do not divide it without taking an oath.

[26] The Gemara asks: But is it not an a fortiori inference? If there, in a case where this Master has a financial association with the item, and that Master has a financial association with the item,

[27] and there is room to say that it belongs entirely to one of them, and there is also room to say that it belongs entirely to the other one, and nevertheless Sumakhos says that since it is property of uncertain ownership they divide it without taking an oath, then here, where the litigants have no financial association with the item, as there is room to say that it belongs to both of them, all the more so is it not clear that they should divide it without taking an oath?

[28] The Gemara answers: You may even say that the mishna is in accordance with the opinion of Sumakhos: This oath is instituted by rabbinic law in accordance with the statement of Rabbi Yoḥanan. As Rabbi Yoḥanan says: This oath, administered in the case of two people holding a garment, is an ordinance instituted by the Sages so that everyone will not go and seize the garment of another and say: It is mine.

[29] § The Gemara suggests: Let us say that the mishna is not in accordance with the opinion of Rabbi Yosei. As, if you say that the ruling is in accordance with the opinion of Rabbi Yosei, doesn’t he say

that a case cannot be decided in a manner in which there is no deterrent for one taking a false claim to court (37a)? He says this with regard to a case where two people deposited money with the same person. One deposited one hundred dinars and one deposited two hundred, and the bailee forgot which of them deposited the larger sum. Subsequently, each claimed ownership of the larger sum and was prepared to take an oath to that effect. The Rabbis say that each should receive the smaller sum and the remainder should be held until Elijah the prophet prophetically resolves the uncertainty. Rabbi Yosei says: If so, what did the swindler lose? Rather, the entire deposit will be placed in a safe place until Elijah comes.

30 The Gemara counters: Rather, what is suggested? Is it suggested that the mishna is in accordance with the opinion of the Rabbis, who disagree with Rabbi Yosei? Since the Rabbis say there: The remainder is placed in a safe place until Elijah comes, this case of the mishna concerning the garment is also comparable to the remainder in the case of the deposit, as it is uncertain to whom the entire garment belongs. It should therefore be placed in a safe place until the matter is resolved.

31 The Gemara answers: What is this comparison? Granted, if you say that the mishna is in accordance with the opinion of the Rabbis there, in the case of the depositors, where these one hundred dinars certainly belong to only one of them and the Rabbis say that it is placed in a safe place until Elijah comes, here, in the case of this mishna, where there is room to say that it belongs to both of them, the Rabbis say that they divide it with the proviso that they take an oath.

32 But if you say that the mishna is in accordance with the opinion of Rabbi Yosei, there is a difficulty. Now consider, if there, in a case where it is certain that there are one hundred dinars that belong to one of the litigants and there are one hundred dinars that belong to the other one, nevertheless, Rabbi Yosei says that the entire sum is placed in a safe place until Elijah comes, here, where there is room to say that it all belongs to only one of them, all the more so is it not clear that it should be placed in a safe place until Elijah comes, as one of the claims may be entirely fraudulent?

33 The Gemara rejects this suggestion: You may even say that the mishna is in accordance with the opinion of Rabbi Yosei: There, in the case of the deposit, there is certainly a swindler between the two depositors. By contrast, here, in the case of the mishna, who is to say that there is a swindler? Say that both of them lifted the garment at the same time, and therefore there is no reason to penalize them by placing the garment in a safe place.

34 Alternatively, there is room to distinguish between the cases: There, Rabbi Yosei penalizes the swindler by confiscating his deposit so that he will admit that he lied in order to receive his original deposit of one hundred dinars from the bailee. Here, in the case of the garment, what loss would a swindler incur that would prompt him to admit that he is lying? If the item is placed in a safe place, he loses nothing.

35 The Gemara rejects this alternative explanation: This distinction works out well in the case of a found item where he did not pay anything for it. Consequently, he has no incentive to admit that he lied. But in a case of buying and selling, what is there to say? Both parties paid for the item and prefer to receive the item. Rather, the distinction is clearly as we explained initially. The difference between the cases is that in the mishna, there is no certainty that one of them is lying.

36 The Gemara asks: Both according to the opinion of the Rabbis and according to the opinion of Rabbi Yosei, there, with regard to the case of a storekeeper relying on his ledger, it is unclear why the money is not held until the matter is clarified. This is referring to a case where an employer tells a

storekeeper to give food to his laborer in lieu of his salary, and later the storekeeper claims that he gave it to him but the laborer claims that he did not receive it. Both parties therefore claim payment from the employer. As the mishna (Shevuot 45a) teaches that this one, the storekeeper, takes an oath that he gave the food to the laborer and receives payment from the employer, and that one, the laborer, takes an oath that he was not given the food and takes his salary from the employer.

[37] What is different in that case, that we do not say: Appropriate the money from the employer, and it is placed in a safe place until Elijah comes? Apparently, we should say this because there is certainly a swindler among the litigants, since it is impossible that both the storekeeper and the laborer are telling the truth.

[38] The Sages say in response: There, this is the reason that the money is not set aside: Because the storekeeper can say to the employer: I carried out your agency to give the food to the laborer, and I have dealings only with you. What business do I have with the hired laborer? Even if he takes an oath to me that he did not receive the food, he is not trustworthy to me by virtue of his oath. You are the one who trusted him, as you did not say to me: Give him the food in the presence of witnesses. Therefore, you are obligated to pay me. If you have a grievance, settle it with your employee.

[39] And the hired laborer can also say to the employer: I worked for you. What relationship do I have with the storekeeper? Even if he takes an oath to me that he gave me the change, he is not trustworthy to me by virtue of his oath. Therefore, both parties take an oath and take payment from the employer.

[40] § Rabbi Ḥiyya taught a baraita: If one says to another: I have one hundred dinars [maneh] in your possession that you borrowed from me and did not repay, and the other party says: Nothing of yours is in my possession, and the witnesses testify that he has fifty dinars that he owes the claimant, he gives him fifty dinars and takes an oath about the remainder, i.e., that he did not borrow the fifty remaining dinars from him.

[41] This ruling is derived via an a fortiori inference from the halakha that one who admits to part of a claim that is brought against him is obligated to take an oath that he owes no more than the amount that he admits to have borrowed. The inference is: As the admission of one’s own mouth should not carry greater weight than the testimony of witnesses. Since in this case witnesses testify that he owes an amount equal to part of the claim, he is all the more so obligated to take an oath with regard to the rest of the sum.

[42] The Gemara comments: And the tanna of the mishna also taught a similar halakha: In a case of two people who came to court holding a garment, where this one says: I found it, and the other one says: I found it, each litigant takes an oath and they divide the garment. And here, in the case of a found item, since each litigant is holding part of the garment, it is clear to us that what is in this one’s grasp is his, and what is in that one’s grasp is his. This is tantamount to witnesses testifying that part of the claim of each litigant is legitimate. And the mishna teaches that each of them takes an oath.

[43] The Gemara clarifies: For what reason is it necessary to have the a fortiori inference: As the admission of one’s own mouth should not carry greater weight than the testimony of witnesses? Isn’t the comparison to the case of an admission to part of a claim self-evident? The Gemara answers: It is necessary so that you will not say that it is only in a case of the admission of one’s own mouth that the Merciful One imposes an oath upon him, in accordance with the explanation of Rabba.

[44] As Rabba says: For what reason did the Torah say that one who admits to 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.

[45] And in order not to exhibit insolence, this person 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. He was evading his creditor, and thought: I will continue doing so until I have money, and then I will pay him all of it. This rationalization enables one to falsely deny part of a claim. And therefore, the Merciful One states: Impose an oath on him, in order to ensure that he will admit to him with regard to all of the debt.

[46] But in a case where the testimony of witnesses renders him liable to pay part of the debt, as one cannot say this explanation since this logic applies only when it is the debtor admitting to part of the claim, say that he has no intention to repay the debt at all, and he is completely dishonest and therefore his oath is worthless. Therefore, the baraita teaches us that the defendant's obligation to take an oath is derived by means of an a fortiori inference.

[47] The Gemara explains: And what is the explanation of this a fortiori inference? It should be explained as follows: If admitting to part of a claim by his own mouth, which does not render him liable to pay the money he admitted to owing, nevertheless obligates him to take an oath, with regard to the testimony of witnesses, which does render him liable to pay money, is it not logical that it should obligate him to take an oath with regard to the remaining sum?

[48] The Gemara asks: But does the admission of his own mouth not render him liable to pay money? But isn't the legal status of the admission of a litigant similar to that of one hundred witnesses?

[49] The Gemara answers: What is the money that one is not liable to pay based on his own admission? It is referring to the payment of a fine [kenas]. In all cases where the Torah imposes a fine, if the defendant admits his liability voluntarily he is not required to pay it. Therefore, the a fortiori inference is as follows: If the admission of one's own mouth, which does not render him liable to pay a fine, nevertheless renders him liable to take an oath with regard to the part of the claim to which he did not admit, with regard to the testimony of witnesses, which does render him liable to pay a fine, is it not logical that it should render him liable to take an oath with regard to the remaining sum?

[50] The Gemara attempts to refute the inference: What is notable about the admission of one's mouth? It is notable in that it renders him liable to bring an offering. One who admits that he transgressed a prohibition unwittingly is obligated to bring an offering for atonement. Would you say that the halakhot of admission apply with regard to the testimony of witnesses, which, in a case where they testify that one transgressed a prohibition, does not obligate him to bring an offering if he denies it?

[51] The Gemara answers: This is not difficult. Rabbi Ḥiyya holds in accordance with the opinion of Rabbi Meir, who says that the testimony of witnesses renders him liable to bring an offering, based on an a fortiori inference.

[52] As we learned in a mishna (Karetot 11b): If two witnesses say to a person: You ate forbidden fat, and he says: I did not eat it, Rabbi Meir deems him liable to bring an offering and the Rabbis deem him exempt from bringing an offering.

[53] Rabbi Meir said to the Rabbis: If two witnesses can cause a person to receive the death penalty, which is a severe penalty, can they not also cause one to receive the light penalty of having to bring an offering? The Rabbis said to him: What if he would want to say: I sinned intentionally? Wouldn't he be exempt? Since one does not bring an offering for an intentional sin, the testimony of witnesses has no bearing in this matter, as they cannot prove that his transgression was unwitting. Therefore, even if he claims that he did not sin at all, the testimony does not obligate him to bring an offering.

[54] The Gemara suggests another refutation: Rather, what is notable about the admission of one's mouth? It is notable in that it renders a robber liable to bring a guilt-offering. One who admits that he robbed another is required to bring a guilt-offering for atonement, whereas if witnesses testify that he robbed another he is not obligated to bring a guilt-offering. The Gemara answers: A guilt-offering is the same as any other offering, about which there is a dispute between Rabbi Meir and the Rabbis as to whether the testimony of witnesses renders one liable to bring an offering.

[55] The Gemara suggests another refutation: Rather, what is notable about the admission of one's mouth? It is notable in that it renders one who unlawfully possessed the money of another liable to pay an additional one-fifth of the value of that money when he returns it of his own accord (see Leviticus 5:20–26). By contrast, if witnesses testify that he unlawfully possessed the money of another, he is not obligated to add one-fifth to his payment. The Gemara answers: This is not difficult; Rabbi Ḥiyya holds in accordance with the opinion of Rabbi Meir. Just as Rabbi Meir holds that the testimony of witnesses renders one liable to bring an offering due to an a fortiori inference, he also holds that the testimony of witnesses renders one liable to add one-fifth, via an a fortiori inference.

[56] The Gemara suggests another refutation: Rather, what is notable about the admission of one's mouth? It is notable in that it is not subject to contradiction or to refutation as applies to the testimony of conspiring witnesses, as the testimony of witnesses cannot negate the admission of a litigant. Would you say the same halakhot with regard to witnesses, who are subject to contradiction and to refutation as conspiring witnesses? Evidently, the testimony of witnesses is weaker, in some aspects, than the admission of a litigant.

[57] Rather, Rabbi Ḥiyya's a fortiori inference is apparently derived from the halakha of the testimony of one witness. If the testimony of one witness, which does not render the defendant liable to pay money, obligates him to take an oath to contradict the testimony, is it not logical that the testimony of two witnesses, which render one liable to pay money, also obligates him to take an oath?

[58] The Gemara rejects this inference: What is notable about the testimony of one witness? It is notable in that the defendant takes an oath with regard to the matter concerning which he testifies, not with regard to other claims raised by the claimant.

[59] Would you say the same with regard to two witnesses, in which case the defendant takes an oath with regard to the claim that he denies, and not with regard to the debt about which they testify?

[60] Rather, Rav Pappa said: Rabbi Ḥiyya's a fortiori inference is derived from the extension of an oath that the testimony of one witness obligates him to take. Once a defendant is obligated to take an oath,

the plaintiff can demand that he take an oath with regard to other claims that he has against him as well.

[61] The Gemara rejects this: What is notable about the extension of an oath that is obligated by the testimony of one witness? It is notable in that one oath leads to another oath. The obligation to take the second oath is not caused directly by the witness. Would you say the same in the case of witnesses, whose testimony renders the defendant liable to pay money? Incurring liability to pay one part of the claim does not extend further and incur liability to pay the rest.

[62] The Gemara responds: The admission of one's mouth can prove that an element other than an oath can cause the defendant to be obligated to take an oath with regard to the rest of the claim. Although the a fortiori inference from admission alone was already rejected, due to the claim of: What is notable about the admission of one's mouth, it is notable in that it is not subject to contradiction; the testimony of one witness can prove that even testimony that is subject to contradiction renders one liable to take an oath.

[63] The a fortiori inference from the testimony of one witness was also rejected, as what is notable about the extension of an oath resulting from the testimony of one witness? It is notable in that the defendant takes an oath with regard to the matter concerning that which he testifies. Would you say the same with regard to two witnesses, in which case the defendant takes an oath with regard to the claim that he denies? Admission to part of a claim by one's mouth can prove this difference irrelevant, as a defendant can be required to take an oath even with regard to a claim that he denies.

[64] And the derivation has reverted to its starting point. At this point, the halakha is derived from a combination of the two sources: The aspect of this case, admission, is not like the aspect of that case, the extension of an oath resulting from the testimony of one witness, and the aspect of that case is not like the aspect of this case. Their common denominator is that these cases come before the court with a claim and its denial, and the defendant is obligated to take an oath. I will also include in the obligation to take an oath the case of Rabbi Ḥiyya, where there is testimony of two witnesses about part of the debt, which comes before the court with a claim and its denial. And therefore the defendant is obligated to take an oath. This is the inference to which Rabbi Ḥiyya was referring.

[65] The Gemara rejects this: What is notable about their common denominator, i.e., the common denominator shared by admission to part of a claim by the defendant and the extension of an oath resulting from the testimony of one witness? It is notable in that the defendant does not assume the presumptive status of one who falsely denies his debts. He has not been proven to be lying, so he is trusted to take an oath. Would you say the same with regard to the case of two witnesses who contradict the defendant's denial of the plaintiff's claim, where the defendant assumes the presumptive status of one who falsely denies his debts? In this case, he is no longer deemed trustworthy and his oath may not be credible.

[66] The Gemara asks: But in a case where his denial is contradicted by two witnesses, does he assume the presumptive status of one who falsely denies his debts? But doesn't Rav Idi bar Avin say that Rav Ḥisda says: One who denies a claim that he received a loan and is contradicted by witnesses is fit to bear witness in a different case. He does not assume the status of a confirmed liar, as perhaps he intended to return the money afterward and denied the claim only in order to buy time until he acquired the necessary funds to repay the loan. By contrast, if one denies receiving a deposit and witnesses testify that he is lying, he is disqualified from bearing witness in other cases, as in that case

he has no reason to buy time and is clearly a robber. Therefore, Rabbi Ḥiyya’s a fortiori inference stands.

[67] Rather, refute the inference like this: What is notable about their common denominator, i.e., the common denominator shared by admission to part of a claim by the defendant and the extension of an oath resulting from the testimony of one witness? It is notable in that these cases are not subject to the halakhot of conspiring witnesses. Even if witnesses testify that the single witness lied, he is not required to pay the defendant the sum that he sought to require him to pay, which is the punishment exacted upon conspiring witnesses. Would you say the same halakhot with regard to two witnesses, who are subject to the halakhot of conspiring witnesses?

[68] The Gemara rejects this: This is not difficult, as Rabbi Ḥiyya does not refute this inference based on the punishment accompanying the halakhot of conspiring witnesses. In other words, Rabbi Ḥiyya does not accept this refutation, as while this halakha does not apply at all to the admission of a defendant, it does apply to the testimony of a single witness in that if two witnesses testify that the single witness is a conspiring witness, his testimony is rendered void.

[69] The Gemara asks: But with regard to that which was stated (3a): And the tanna of the mishna also taught a similar halakha to that of Rabbi Ḥiyya, there is a difficulty. Is the case of the mishna comparable to the halakha of Rabbi Ḥiyya? There, in the case of witnesses to a loan, the creditor has witnesses to support his claim that there was a loan while the debtor does not have witnesses to support his claim that he does not owe the creditor anything. As, if the debtor had witnesses to support his claim that he does not owe the creditor anything, Rabbi Ḥiyya would not require him to take an oath. By contrast, here, in the case of the mishna, just as it is clear to us that this claimant has a right to the garment, as he is holding it, so too, is it clear to us that that other claimant has a right to the garment, as he is also holding it. Yet nevertheless, in the mishna each party is required to take an oath.

[70] Rather, when the phrase was stated: And the tanna of the mishna also taught a similar halakha, it was stated with regard to another statement of Rabbi Ḥiyya. As Rabbi Ḥiyya says: If one says to another: I have one hundred dinars in your possession, and the other says in response: You have only fifty dinars in my possession, and here you are, handing him the money, he is obligated to take an oath that he does not owe the remainder.

[71] What is the reason? One who says: Here you are, while immediately giving the money, is also considered like one who admits to part of the claim. It cannot be reasoned that by immediately handing over the amount to which he admits, the defendant thereby reduces the claim by the fifty dinars that he denies owing, and he is consequently exempt from taking an oath like any defendant who denies the claim entirely.

[72] Concerning this ruling of Rabbi Ḥiyya, the Gemara comments: And the tanna of the mishna taught a similar halakha, citing the mishna beginning: If two people came to court holding a garment.

[73] The Gemara explains the comparison: And here, in the mishna, since each one grasps half the garment, it is clear to us that what one grasps is in his possession, just as if the other one had said to him: Here you are, I am giving it to you. And the mishna teaches that he takes an oath. Evidently, in a case where one denies part of a claim that is brought against him, and with regard to the rest of the claim he says to the claimant: Here you are, he is obligated to take an oath.

[74] And Rav Sheshet says: One who says about part of the claim: Here you are, and denies the rest of the claim, is exempt from taking an oath about the rest. What is the reason? Since he said to him: Here you are, those dinars that he admitted to owing are considered as if the creditor has them in his possession already, and with regard to the other fifty dinars, the defendant did not admit to owing them. Therefore, there is no admission to part of the claim.

[75] The Gemara asks: But according to the opinion of Rav Sheshet, the mishna is difficult, as it seems to be a comparable case and yet an oath is required. The Gemara answers: Rav Sheshet could have said to you: The oath mentioned in the mishna is a rabbinic ordinance, which pertains specifically to that case. In general, a debtor who immediately hands over the money that he admits to owing is exempt from taking an oath.

[76] And how would the other amora, Rabbi Ḥiyya, respond to this assertion? Indeed, he would agree that it is a rabbinic ordinance. However, granted, if you say that by Torah law one who says: Here you are, is obligated to take an oath, that explains why the Sages instituted the oath mentioned in the mishna, as it is similar to an oath administered by Torah law. But if you say that by Torah law one who says: Here you are, is exempt from taking an oath, would the Sages institute an oath that has no corresponding oath in Torah law? Clearly, there is a basis for the oath instituted by the Sages in Torah law, and that basis is the case where the defendant says: Here you are.

[77] The Gemara raises an objection to the opinion of Rabbi Ḥiyya from a baraita:

[78] If it is written in a promissory note that one borrowed an unspecified amount of sela’im, or that one borrowed an unspecified amount of dinars, and the creditor says: I lent you five sela, and the debtor says: You lent me only three, in this case Rabbi Shimon ben Elazar says: Since the debtor admitted to part of the claim, he takes an oath. Rabbi Akiva says: Since the wording of the note indicates only that he owes two dinars, the minimum plural amount, by admitting that he owes three he is merely the equivalent of one returning a lost item, and he is exempt from taking an oath.

[79] In any event, the baraita teaches that Rabbi Shimon ben Elazar says: Since the debtor admitted to part of the claim, he takes an oath. This indicates that the reason that he is obligated to take an oath is specifically because he said that he owes three dinars, but had he admitted to owing only two, he would have been exempt from taking an oath. And concerning the minimal obligation recorded in this promissory note, to which he admits, which is two dinars, it is as though he said: Here you are. An obligation recorded in a promissory note is tantamount to an obligation concerning which the defendant says: Here you are. And therefore, conclude from it that one who says: Here you are, is exempt from taking an oath with regard to the part of the claim he denies.

[80] The Gemara rejects this: No, actually I will say to you that even if he admitted that he owes two dinars he is obligated to take an oath, and the reason that the baraita teaches the dispute specifically with regard to the case of three dinars is not to exclude a case where he admits that he owes only two, but rather it is to exclude the opinion of Rabbi Akiva, who says that he is the equivalent of one returning a lost item, and he is therefore exempt. Therefore, Rabbi Shimon ben Elazar teaches us that he is considered like one who admits to part of the claim, and he is obligated to take an oath.

[81] The Gemara asks: If so, the baraita should have been phrased differently. If the defendant is obligated to take an oath even in a case where he admits that he owes two dinars, rather than stating that Rabbi Shimon ben Elazar says: Since the debtor admitted to part of the claim, he takes an oath,

the baraita should have stated: Even this one, who admits to owing three dinars, takes an oath, in addition to one who admits to owing two dinars.

[82] Rather, that explanation should be rejected. Actually, if he admits that he owes two dinars, he is exempt from taking an oath, but nevertheless, one who says: Here you are, is obligated to take an oath. And the reason for this distinction is that here, the case is different, as the note supports him, i.e., it indicates that he owes two dinars. Therefore, he is exempt from taking an oath with regard to the rest.

[83] Alternatively, if he admits to owing two dinars he is exempt for a different reason: Because a promissory note creates a lien on the debtor's land, and there is a principle that one does not take an oath with regard to a debtor's denial of a debt that is secured with a lien on land. Oaths are administered only when one denies owing money or movable property.

[84] There are those who raise an objection to Rav Sheshet's opinion from the latter clause of this baraita, which teaches that Rabbi Akiva says: He is merely the equivalent of one returning a lost item and is exempt from taking an oath. The Gemara infers: The reason he is exempt is that he said that he owes three dinars. But had he admitted to owing only two, he would have been obligated to take an oath. And concerning the minimal obligation recorded in this promissory note, to which he admits, which is two dinars, it is as though he said: Here you are. Learn from it that one who says: Here you are, is obligated to take an oath.

[85] The Gemara rejects this: No, actually I will say to you that if he admits that he owes two dinars he is also exempt from taking an oath, and the reason that the baraita teaches the dispute specifically with regard to the case of three dinars is to exclude the opinion of Rabbi Shimon ben Elazar, who says that he is considered one who admits to part of the claim and he is obligated to take an oath. Rabbi Akiva, therefore, teaches us that in his opinion, the defendant is the equivalent of one returning a lost item, and he is exempt from taking an oath.

[86] The Gemara comments: So too, it is reasonable to explain the baraita as just explained, as, if it enters your mind that one who admits that he owes two dinars is obligated to take an oath, how does Rabbi Akiva deem him exempt in a case where he admits that he owes three dinars? Perhaps this debtor is employing artifice, thinking: If I say that I owe two, I will be required to take an oath. Therefore, I will say that I owe three so that I will be considered equivalent to one returning a lost item and will be exempt from taking an oath. Rather, learn from it that even if he admits that he owes only two dinars, he is also exempt from taking an oath.

[87] The Gemara asks: But this explanation poses a difficulty to the opinion of Rabbi Ḥiyya, that a defendant is obligated to take an oath in a case where he says: Here you are. In other words, Rabbi Ḥiyya's opinion is negated by the case of one who admits that he owes only two dinars, where he is exempt from taking an oath. The Gemara answers: The case there is different, as the note supports him. Therefore, he is not required to take an oath. Alternatively, he is exempt because a promissory note creates a lien on the debtor's land, and there is a principle that one does not take an oath with regard to a debtor's denial of a debt that is secured with a lien on land.

[88] Mar Zutra, son of Rav Naḥman, raises an objection to the opinion of Rav Sheshet from a mishna (Shevuot 38b): If one claimed that another owed him vessels and land, and the defendant admitted to owing him vessels but denied that he owes him land, or conversely, if he admitted to owing him land but denied that he owes him vessels, he is exempt from taking an oath with regard to what he denies.

If he admitted that he owes him part of the land, he is exempt. If he admitted to owing some of the vessels, he is obligated to take an oath with regard to the remainder.

[89] The Gemara infers: The reason he is exempt in the first cases is because the claim is for vessels and land, as a claim with regard to land is not subject to an oath. But if the claim is for vessels and vessels, i.e., two sets of vessels, in a manner similar to the case of a claim for vessels and land, he is obligated to take an oath. What are the circumstances of such a case? Is it not a case where he said to him: Here you are? And learn from the mishna that one who says: Here you are, is obligated to take an oath.

[90] The Gemara answers: No, actually I will say to you that if the claim is for vessels and vessels he is also exempt. And the fact that the mishna teaches the case of vessels and land teaches us this different halakha: If he admitted that he owes some of the vessels, and is therefore obligated to take an oath, he is also obligated to take an oath with regard to the land that he denied owing his creditor, although in and of itself one does not take an oath with regard to land.

[91] The Gemara asks: What is this teaching us? Is this teaching the halakha of binding? According to this halakha, one who is obligated to take an oath in response to a claim can be required to take an oath with regard to an additional claim of land. This cannot be, as we already learned this halakha in a mishna in tractate Kiddushin (26a): When there is a claim brought against a person for movable property and land, and he is obligated to take an oath with regard to the property that does not serve as a guarantee, i.e., the movable property, it binds the property that serves as a guarantee, i.e., the land, so that he is forced to take an oath with regard to it too. Why is this halakha repeated in tractate Shevuot?

[92] The Gemara answers: The mishna here, in Shevuot, is the main reference to this halakha, as it discusses the halakhot of oaths, whereas the mishna there, in tractate Kiddushin, cites it incidentally, in the context of a broader survey of the difference between these two types of property.

[93] The Gemara asks: But according to Rav Sheshet, with regard to the one who says that in a case where the debtor says: Here you are, he is exempt from taking an oath, why was it necessary for the verse to exclude a claim of land ownership from the defendant’s obligation to take an oath when he admits part of the claim? The exclusion of land is derived from the verse: “For any matter of trespass, for an ox, for a donkey, for a sheep, for a garment, for any lost item about which one shall say: This is it, the claims of both of them shall come before the judges” (Exodus 22:8). But all cases involving one who admits to part of the claim involving land are cases where the defendant effectively says: Here you are, as land always remains in its location. Therefore, the derivation from the verse appears to be unnecessary.

[94] The Gemara answers that Rav Sheshet could have said to you: The verse was necessary in a case where the defendant dug pits, ditches, and caves in the land that he is returning to the plaintiff. Since the land has been damaged and is no longer in its prior state, the defendant is not effectively saying: Here you are.

[95] Alternatively, there is the case where one claimed that another owed him vessels and land, and the defendant admitted to the claim involving the vessels and denied the claim involving the land. The verse teaches that although the defendant denied part of the claim and did not effectively say: Here you are, he is not obligated to take an oath with regard to the land.

96 Come and hear a proof for Rabbi Ḥiyya’s opinion, as Rami bar Ḥama teaches a baraita: All four types of bailees mentioned in the Torah require denial of part of the claim and admission of part of the claim in order to incur liability to take an oath when someone claims to have given them an item as a deposit. This applies to an unpaid bailee, who receives no payment in exchange for safeguarding the item, and a borrower, who does not pay the owner in exchange for the right to use the item, as well as a paid bailee, who receives payment in exchange for safeguarding the item, and a renter, who rents an item in order to use it and pays the owner in exchange for that right.

97 The Gemara elaborates: What are the circumstances in which the bailees both deny part of the claim and admit to part of the claim? Is it not referring to a case where the bailee said to the one who deposited the item: With regard to the items that I admit to having received from you: Here you are, and as to the rest, I never received them and I am therefore not obligated to return them? This supports Rabbi Ḥiyya’s opinion that one who says: Here you are, is obligated to take an oath.

98 The Gemara rejects this: No, Rami bar Ḥama is referring to a different case, for example, a case where the depositor said to the unpaid bailee: I gave you three cows and they all died due to your negligence. You are therefore liable to pay for them. And the bailee said to him: With regard to one cow, this matter never happened. In other words, I received only two cows, not three. And one of the cows died due to an unavoidable accident, and I am exempt from paying for it. And the other one died due to my negligence, for which I need to pay you. In that case, although he admits to part of the claim, it is not a case of: Here you are, as he is not returning the cow itself.

99 § Come and hear a challenge to the first halakha of Rabbi Ḥiyya, as the father of Rabbi Aptoriki taught in a baraita: If one says to another: I have one hundred dinars in your possession, and the other says: Nothing of yours is in my possession, and the witnesses testify that he has fifty dinars in his possession that he owes the plaintiff, one might have thought that he should take an oath about the remainder.

100 To counter this, the verse states with regard to bailees: “For any matter of trespass, for an ox, for a donkey, for a sheep, for a garment, for any lost item about which one shall say: This is it, the claims of both of them shall come before the judges” (Exodus 22:8). This indicates that you obligate the defendant to take an oath based on the admission to part of a claim by his mouth, but you do not obligate him to take an oath based on the testimony of witnesses.

101 The Gemara rejects this challenge: Are you raising an objection to the opinion of Rabbi Ḥiyya from a baraita? Rabbi Ḥiyya himself is a tanna, and as such, he has the authority to dispute the determination in a baraita.

102 The Gemara asks: But doesn’t that tanna cite a verse? The Gemara answers: According to Rabbi Ḥiyya, that verse teaches that one who admits to part of the claim is obligated to take an oath.

103 And Rabbi Aptoriki’s father could have said to you that both halakhot are derived from the expression “This is it.” Since “this” is written and “it” is also written, it is interpreted that one word is stated to teach that one who admits to part of the claim is obligated to take an oath, and one word is stated to teach that in a case that involves the testimony of witnesses, one is exempt from taking an oath.

104 The Gemara asks: And how does the other Sage, Rabbi Ḥiyya, interpret the double qualification in the verse? The Gemara answers: In his opinion, one word is stated to teach that one who admits to

part of the claim is obligated to take an oath, and one word is stated to teach that one is obligated to take an oath only if he admits that he owes an item that is of the same type as the subject of the claim. If the plaintiff claims one type of item and the defendant admits to owing a different type of item, he is not obligated to take an oath.

[105] And the other Sage, Rabbi Aptoriki's father, does not accept the principle that one is required to take an oath only if he admits that he owes an item that is of the same type as the subject of the claim, but he holds like Rabban Gamliel in this matter. As we learned in a mishna (Shevuot 38b): If one claimed that another owes him wheat, and the defendant admitted to owing him barley, which is less expensive than wheat, he is exempt from taking an oath despite his admission to part of the claim, as his admission does not correspond to the claim. And Rabban Gamliel deems him liable to take an oath.

[106] § The Gemara relates: There was a certain shepherd to whom people would give their animals for safekeeping every day in the presence of witnesses. One day, they gave him their animals without witnesses. At the end of the day he said to the owners of the animals: This matter never occurred; I never received the animals. Witnesses came and testified against him that he ate two of them. Rabbi Zeira said: If Rabbi Ḥiyya's first halakha is so, the shepherd must take an oath with regard to the remainder, or else he must pay the value of the animals to their owners.

[107] Abaye said to him: If Rabbi Ḥiyya's first halakha is so, the shepherd takes an oath? Isn't he a robber? The witnesses established through their testimony that he took and ate some of the animals, and consequently his oath lacks credibility. Rabbi Zeira said to him: I did not mean that the shepherd takes an oath; I was saying that the party opposing him takes an oath and collects payment.

[108] The Gemara comments: Now, too, if it is so that the halakha is not in accordance with the opinion of Rabbi Ḥiyya, and testimony supporting part of the claim does not obligate the defendant to take an oath with regard to the rest, the court should still obligate the shepherd to take an oath due to the ordinance of Rav Naḥman, and since his oath is not deemed credible the plaintiff should take an oath and collect payment.

[109] As we learned in a mishna (Shevuot 38b): If one says to another: I have one hundred dinars in your possession, and that person replies: Nothing of yours is in my possession, he is exempt from taking an oath. And Rav Naḥman says: Nevertheless, the judges administer an oath of inducement to him. Rav Naḥman instituted an ordinance that even if the defendant completely denies the claim, he is obligated to take an oath that the claim is false. Consequently, the shepherd is obligated to take that oath.

[110] The Gemara responds: This halakha of Rav Naḥman is a rabbinic ordinance and not an oath required by Torah law,

[111] Likewise, the halakha that if the defendant is suspect with regard to taking a false oath the plaintiff takes the oath and collects the money is also a rabbinic ordinance, and we do not institute one rabbinic ordinance upon another rabbinic ordinance. Therefore no oath is administered.

[112] The reason cited for the lack of credibility of the oath of the shepherd is that he is guilty of robbery. The Gemara asks: But why not let Rabbi Zeira derive that he is disqualified from testifying or taking an oath because he is a shepherd; and Rav Yehuda says that an ordinary shepherd is

disqualified from testifying? A shepherd is presumed to be a robber since shepherds allow the animals under their care to graze in the fields of other people.

113 The Gemara rejects this: This is not difficult. That case, where he is presumed a robber, is a case where he herds his own animals, and this case, where he is not presumed a robber, is a case where he herds animals that belong to others. As if you do not say so, if even one who herds the animals of others is presumably a robber, how do we give our animals to a shepherd? Isn't it written: "Do not put a stumbling block before the blind" (Leviticus 19:14)? It is prohibited to cause others to commit a transgression. Rather, there is a presumption that a person sins only for his own benefit, and one would not commit robbery for the benefit of animals that are not his.

114 § The mishna teaches: This one takes an oath that he does not have ownership of less than half of it, and that one takes an oath that he does not have ownership of less than half of it, and they divide it. The Gemara asks: Does he take an oath with regard to the part that he has in his grasp, taking an oath that it is his, or does he take an oath with regard to the part that he does not have, i.e., that he does not have a claim to less than half of it? The latter wording of the oath is problematic, as he may mean that he does not have a claim to the garment at all. Rav Huna said: He must take an oath in which he says: I hereby take an oath that I have a claim to it, and I hereby take an oath that I do not have a claim to less than half of it.

115 The Gemara asks: But let him say: I hereby take an oath that all of it is mine, as that is his claim. Why does he take an oath that merely half of it belongs to him? The Gemara answers: And would we give him all of it if he took such an oath? Since he will not be awarded the entire garment, it would be inappropriate for the court to administer to him an oath that he owns all of it.

116 The Gemara asks: But let him say: I hereby take an oath that half of it is mine. Why is the complicated formulation suggested by Rav Huna necessary? The Gemara answers: If he takes an oath to that effect he compromises his initial statement, i.e., his claim that the entire garment is his.

117 The Gemara challenges: Now too, when he takes an oath according to Rav Huna's formulation, he compromises his initial statement, as he takes an oath only with regard to his claim to half the garment. The Gemara answers: This is not so, as he makes the following statement to the court: All of it is mine; but according to your statement, I hereby take an oath that I have a claim to it and I do not have a claim to less than half of it.

118 § The Gemara questions the requirement that the litigants take an oath at all: But since this one is standing with half the item in his grasp and that one is standing with half the item in his grasp, and each party ultimately receives what is in his grasp, why is this oath necessary? Rabbi Yoḥanan says: This oath is an ordinance instituted by the Sages so that everyone will not go and seize the garment of another and say: It is mine.

119 The Gemara asks: But let us say that since he is suspect with regard to financial dishonesty, i.e., stealing another's property and lying in court that it belongs to him, he is also suspect with regard to taking an oath, and his oath cannot be accepted.

120 The Gemara answers: In principle, we do not say that since one is suspect with regard to financial dishonesty he is suspect with regard to taking an oath. This is because even one who steals property is presumed to consider taking a false oath more severe. As if you do not say so, then with regard to that which the Merciful One states, that one who admits to part of the claim must take an oath, let us

also say that his oath cannot be accepted, as since he is suspect with regard to financial dishonesty he is suspect with regard to taking an oath.

121 The Gemara rejects this proof: There, the debtor is presumably evading the creditor temporarily, in accordance with the explanation of Rabba that the debtor really intends to repay the entire debt, and the reason that he admits to owing only part of it is because he wants to buy time until he can afford to repay the entire debt.

122 The Gemara adds: Know that this distinction is correct, as Rav Idi bar Avin says that Rav Ḥisda says: One who denies a claim that he received a loan and is contradicted by witnesses is fit to bear witness in a different case. By contrast, if one denies receiving a deposit and witnesses testify that he is lying, he is disqualified from bearing witness in other cases. The reason for this distinction is that since money is borrowed to be spent, the assumption is that the debtor did so, and his denial is merely an attempt to buy time until he can repay the debt. A deposited item, by contrast, may not be used by the bailee, so if he denies having received the deposit he presumably stole it. Therefore, he is disqualified from bearing witness. This demonstrates the distinction between lying in court about a debt and lying about property.

123 The Gemara asks: But if one who denies having received a deposit is considered a robber, this is contradicted by that baraita that Rami bar Ḥama teaches: All four types of bailees mentioned in the Torah require denial of part of the claim and admission of part of the claim in order to be liable to take an oath: These four are an unpaid bailee, and a borrower; a paid bailee, and a renter. Since a bailee has no need to buy time, let us say that the court cannot administer an oath to the bailee, as since he is suspect with regard to financial dishonesty he is suspect with regard to taking an oath as well.

124 The Gemara answers: There too, in the case of a bailee, it is conceivable that the bailee is not a robber; rather, the deposit was stolen and the bailee is evading the depositor temporarily, thinking: If I have enough time I will find the thief and seize the deposit and return it. Alternatively, if the deposit was lost, the bailee is thinking: I will find the deposit in the marsh and I will bring it back to him. Therefore, he is not considered a robber but merely one seeking to buy time.

125 The Gemara asks: If so, then why is one who denies receiving a deposit disqualified from bearing witness? Let us say in that case too, that he is evading the depositor, thinking: I will buy time until I search and find the item.

126 The Gemara answers: In an ordinary case, one who denies receiving a deposit is not disqualified from testifying. When we say that one who denies receiving a deposit is disqualified from bearing witness, it is with regard to a case where witnesses came and testified against him that at that time, when he denied the owner’s claim in court, the deposit was in his house and he knew that it was there. Alternatively, it is with regard to a case where he was holding the item in his hand. In those circumstances, it is obvious that he was not buying time, but rather he intended to keep the item.

127 The Gemara asks: But if one who is suspected of financial dishonesty cannot be administered an oath, that which Rav Huna says with regard to the halakhot of bailees is difficult, as Rav Huna says that if a bailee did not return the deposit, claiming that it was lost or stolen, and says that he is prepared to pay for it, the judges nevertheless administer an oath to him that the item is not in his possession. Let us say that since he is suspected of financial dishonesty, he is suspect with regard to taking an oath as well.

[128] The Gemara answers: There too, the bailee is not suspected of outright robbery, as even if he took the deposited item for himself, he could rationalize his behavior, saying to himself: Since I gave him money for the item, I did nothing wrong. Therefore, his oath is deemed credible and an oath can be administered to him.

[129] Rav Aḥa of Difti said to Ravina: But by paying for the deposit instead of returning it, doesn't the bailee violate the prohibition of: "You shall not covet your neighbor's wife, nor his slave, nor his maidservant, nor his ox, nor his donkey, nor anything that is your neighbor's" (Exodus 20:14)? One transgresses this prohibition by taking an item from another by force or deceit, even if one pays for it.

[130] The Gemara answers: The prohibition "You shall not covet" is understood by most people as referring to taking an item without paying money. Since the bailee may have been unaware that he was acting criminally, his testimony and his oath are deemed credible.

[131] The Gemara asks: But if one who is suspected of theft cannot be administered an oath, that which Rav Naḥman says, that when a person denies a debt entirely the judges administer an oath of inducement to him, is difficult. Let us say that since he is suspect with regard to financial dishonesty, he is suspect with regard to taking an oath.

[132] And furthermore, that which Rabbi Ḥiyya teaches in a baraita with regard to the case of the storekeeper and the laborer (see 3a), that both parties take an oath and take payment from the employer, is also difficult. Let us say there, too, that since he is suspect with regard to financial dishonesty, he is suspect with regard to taking an oath.

[133] And furthermore, with regard to that which Rav Sheshet says: The judges administer three oaths to an unpaid bailee who claims that the deposit with which he was entrusted was stolen: I hereby take an oath that I was not negligent in safeguarding it; I hereby take an oath that I did not misappropriate the deposit; and I hereby take an oath that it is no longer in my possession, there is the same difficulty. Since the court raises these suspicions against the bailee, let us say that since he is suspected of financial dishonesty, he is suspected with regard to taking an oath. How can the court administer these oaths?

[134] Rather, the conclusion from all of the above is that we do not say that since one is suspected of financial dishonesty, he is suspected with regard to taking an oath.

[135] Abaye said: There is no proof from the three halakhot cited above that an oath is administered to one who is suspect with regard to financial dishonesty, as it can be explained that the reason the oath is administered in these cases is that we suspect that perhaps the defendant has an old loan that he lent to the plaintiff, and he has been unable to get his money back. He is therefore withholding or claiming ownership of the item or money of the plaintiff as repayment of the loan and not as an act of outright robbery. Therefore, an oath is administered to him.

[136] The Gemara asks: If so, why does he take an oath in these cases? Let him take the item or money without taking an oath, as perhaps he is withholding it as repayment for an old loan, in which case the oath will not determine the truth in the dispute at hand.

[137] Rather, Abaye's suggestion should be understood as follows: We suspect that perhaps he is uncertain as to whether he has an old loan that he lent to the plaintiff. The defendant is unsure whether the plaintiff owes him money and is withholding the item just in case.

[138] The Gemara asks: But why don’t we say in this case that if the defendant is capable of seizing another person’s property due to an uncertain debt, he may also take an oath falsely due to that same uncertainty? How is the oath administered to him?

[139] Rav Sheshet, son of Rav Idi, said: People refrain from taking an oath about which they are uncertain but do not refrain from seizing property about which they are uncertain. What is the reason for this? People reason that property can be returned, but an oath cannot be retracted. If it is proven that his seizure of the property was unjustified, the defendant can return it. By contrast, once he takes a false oath, there is no remedy for the situation. Therefore, one is more cautious when taking an oath than when seizing property.

[140] § Rabbi Zeira raises a dilemma: If two people together had a garment in their grasp and one of them seized it in its entirety from the grasp of the other in our presence, i.e., before the court, what is the halakha?

[141] The Gemara asks: What are the circumstances? If the one from whom it was seized remained silent, his silence indicates that he admits to the one who seized it from him that he is the owner. And if he shouted in protest at the seizure, what more should he have done? The fact that the other person is stronger than him is irrelevant as far as determining legal ownership of the garment is concerned.

[142] The Gemara explains: No, it is necessary to raise this dilemma in a case where he was silent initially, when the other litigant seized the garment, and he later shouted. What is the halakha? Is there an assumption that since he was initially silent, he admitted to the one who seized it from him that in seizing it the litigant became the owner, and it was only later that he regretted doing so and shouted? Or perhaps, since he is shouting now about the injustice that was done to him, the matter is revealed that the fact that he was silent initially was because he thought: The Rabbis of the court saw him grab it from me, so there is no need to cry out.

[143] Rav Naḥman says: Come and hear a solution to the dilemma from what was taught in a baraita: In what case is this statement said that both of them take an oath and each receives half of the garment? It is said in a case where both of them are still holding the garment. But if the garment was in the possession of only one of them, the burden of proof rests upon the claimant, i.e., the one not holding the garment. In the absence of proof, the item remains in the possession of the one holding the garment. The Gemara asks: What are the circumstances of this case? If we say that it is to be understood as it is taught, it is obvious that one who claims an item that is in another’s possession must bring proof to support his claim. Rather, it must be referring to a case where one of them seized it in our presence, which is the case to which Rabbi Zeira referred.

[144] The Gemara rejects this proof: No, it is possible that here we are dealing with a case where they came before us, the court, while both were holding the garment, and we said to them: Go divide the garment, and they left the court and afterward came back while one of them was holding it. This one, who was holding the garment, said: The other one admitted to me that I was justified in my claim. And that one, who was not holding the garment, said: I rented half of the garment to him for money and did not relinquish my right to it. In this case the latter person’s claim is not accepted, as we say to him: Until now you suspected him of being a robber, claiming that he took from you an item that you found, and now you rented it to him without witnesses? Therefore, the burden of proof rests upon the one who is not holding the garment.

[145] And if you wish, say instead that it is possible to understand the case in the baraita as it is taught, i.e., they came before us while only one of them was holding the garment itself, but the other was hanging on to the edge of the garment. And the baraita teaches that even according to Sumakhos, who says that in a case of property of uncertain ownership the parties divide it without an oath, in this case Sumakhos concedes that hanging on to the edge is worth nothing. It does not render the ownership of the garment uncertain, and therefore the burden of proof rests upon the claimant, i.e., one who is hanging on to the edge.

[146] Rabbi Zeira's dilemma was not resolved, but the Gemara states a related halakha: If you say that if one seizes the garment in our presence the court removes it from his possession, then if either of the parties consecrated the entire garment to the Temple treasury, the consecration is not valid, as it is not his. But if you say that if one seizes the garment in our presence the court does not remove it from his possession, then if one of them consecrated the entire garment to the Temple treasury without seizing it, what is the halakha?

[147] The two sides of this dilemma are as follows: Since the Master said a principle with regard to the halakhot of transactions that a declaration to the Most High is equivalent to a transfer to an ordinary person, i.e., verbal consecration of an item is equivalent to a formal act of acquisition in a non-sacred transaction, is the one who consecrated the garment therefore considered like one who seized it, and consequently the consecration takes effect?

[148] Or perhaps the consecration does not take effect, as now, in any event, he did not actually seize the garment and it is not his? And it is written: "And when a man shall sanctify his house to be sacred unto God" (Leviticus 27:14), from which the Sages derive: Just as his house is in his possession, so too, anything that one wishes to consecrate must be in his possession, to the exclusion of this garment, which is not in his possession, as he did not actually seize it, and therefore the consecration does not take effect.

[149] The Gemara attempts to answer the question: Come and hear proof from an incident that transpired, as there was a certain

[150] bathhouse over which two people were arguing, and of which neither of them were in possession. This one said: It is mine, and that one said: It is mine. One of them arose and consecrated the bathhouse. Rav Ḥananya and Rav Oshaya and all the Rabbis kept away from the bathhouse and refrained from bathing there lest they transgress the prohibition against misusing consecrated property, as they were uncertain whether this act of consecration took effect. And Rav Oshaya said to Rabba: When you go to study before Rav Ḥisda in the town of Kafrei, ask him what we should do in this case.

[151] When on his way to Kafrei, Rabba came to the city of Sura and related the incident to the Sages there. Rav Hamnuna said to him: The resolution to your dilemma is found in the following mishna (Teharot 4:12): If there is uncertainty with regard to firstborns, whether a human firstborn or an animal firstborn, whether with regard to kosher animals or non-kosher animals, i.e., the firstborn of a donkey, the burden of proof rests upon the claimant. The priest may not take the animal from its owner, or the redemption payment from the child's father. And it is taught in that regard in a baraita: One is nevertheless prohibited from shearing and from working such animals, as their status as firstborns is uncertain.

[152] Rav Hamnuna continued: And here, where the mishna effectively says that if a priest forcefully seized an animal whose status as firstborn is uncertain the court does not remove it from his possession, as it teaches that the burden of proof rests upon the claimant, the baraita states that even when the priest did not seize it, one is prohibited from shearing and working it. Evidently, the fact that the priest would remain in possession of the animal were he to seize it suffices to accord consecrated status to the animal even in a case where the priest did not seize it. The same is true in the case of the bathhouse, that even though the one who consecrated it had not taken possession of it, his consecration takes effect.

[153] Rabba said to him: This is no proof, as the cases are not comparable. You say a ruling concerning the sanctity of a firstborn. Actually, I will say to you with regard to an animal whose status as firstborn is uncertain, if a priest seized it, the court removes it from his possession, as there is no validity to ownership acquired by force. Accordingly, when the mishna states that the burden of proof rests upon the claimant, it means that the priest must bring proof that the animal is a firstborn. And nevertheless, one is prohibited from shearing and from working such an animal, as sanctity that emerges by itself is different. The sanctity of a firstborn does not result from an act of consecration; rather, the firstborn is consecrated by itself at birth. Therefore, the uncertainty with regard to its sanctity is intrinsic, and one is prohibited from using the animal as long as the uncertainty exists.

[154] Rav Ḥananya said to Rabba: A halakha is taught in a baraita that supports your opinion that if a priest seizes an animal whose status as firstborn is uncertain, the court removes it from his possession: The animals whose status as firstborn is uncertain enter the pen to be tithed. They are brought in together with the rest of the young animals from whom the animal tithe is separated. This is so despite the fact that the halakhot of animal tithe do not apply to a firstborn animal.

[155] And if it enters your mind to say that in the case of an animal whose status as firstborn is uncertain that is seized by a priest, the court does not remove it from his possession, why do these animals enter the pen? Isn’t this a case of the owner exempting his property from the animal tithe with the property of a priest? If the animal belongs to the priests, it cannot be used as a tithe since one is obligated to separate the animal tithe from one’s own animals.

[156] Abaye said to him: If your support for Rabba’s opinion is due to that baraita, it does not support the Master. Here, we are dealing with a case where the owner has only nine animals and it, the animal whose status as firstborn is uncertain. Since whichever way you look at it, the owner of the animals is exempt: If that animal is not a firstborn, it belongs to the owner and is subject to the obligation to be tithed as part of a group of ten animals, and the owner tithes properly. And if the animal is a firstborn, it belongs to the priests and the animals are not subject to the obligation to be tithed, since the nine animals belonging to an owner are not subject to tithing.

[157] Abaye then said: That which I said is not correct, as, contrary to what I said, an animal whose status as firstborn is uncertain is not subject to tithing, as we learned in a mishna (Bekhorot 58b): If before one completed tithing his animals, one of those already counted jumped back into the pen among the animals that were not yet counted, all those in the pen are exempt from the obligation to be tithed, because each of them could be the animal that was already counted.

[158] And if it enters your mind that an animal whose status as firstborn is uncertain requires tithing, let him tithe the remaining animals, as whichever way you look at it, his tithing would be effective. Because if this group of ten emerging now renders the owner obligated in the animal tithe, he is

tithing properly. And if it does not render the owner obligated in the animal tithe, as one of the ten is the animal that was previously counted, nevertheless, each of the other nine is exempt from animal tithe due to the principle of a tally fit to reach ten.

159 This principle is as Rava says: A tally fit to reach ten exempts oneself from the obligation to tithe. If one began counting animals for the purpose of tithing and when he began the tally the group was fit to be tithed, but ultimately he was unable to separate the tithe, for example, because one of the animals died and there were only nine left, those that were counted while the tally was fit to reach ten are exempt from the requirement of animal tithe, and the owner is not required to include them in the tithe the following year. Similarly, in a case where one of the ten animals was already counted, the other nine are nevertheless exempted by this count, as while he was counting them, the tally was fit to reach ten.

160 Rather, what have you to say to explain why one is not required to tithe his flock in a case where a counted animal jumped back into the pen? The Merciful One states: “And all the tithe of the herd or the flock, anyone that passes under the rod, the tenth shall be sacred to the Lord” (Leviticus 27:32), from which it is derived that a certain tenth animal must be tithed, but not an uncertain tenth, i.e., an animal that is not certainly the tenth. Here too, the entire flock is exempt from tithe because the Merciful One states that a certain tenth animal must be designated as tithe and not an uncertain tenth, i.e., an animal that is not certainly subject to tithe. Therefore, there is proof from the baraita that if a priest seizes an animal whose status as firstborn is uncertain, the court removes it from his possession.

161 Rav Aḥa of Difti said to Ravina: What are these animals of uncertain status that that are subject to tithe according to the mishna? If we say that the reference is to animals whose status as firstborns is uncertain, the Merciful One states: “The tenth shall be sacred to the Lord,” indicating that the tithe animal becomes sacred only when it is designated as tithe, from which it is inferred: But not an animal that is already sacred for a different reason. Therefore, since an animal whose status as firstborn is uncertain is already considered sacred due to the uncertainty, the sanctity of animal tithe would not apply to it.

162 Rather, the mishna must be referring to a case of an uncertain redemption of a firstborn donkey, i.e., a lamb used as redemption for a donkey whose status as firstborn is uncertain. And this is in accordance with the statement of Rav Naḥman, as Rav Naḥman says that Rabba bar Avuh says: An Israelite who has ten donkeys whose status as firstborn is uncertain in his home separates ten lambs to redeem them, and tithes the lambs, separating one as a tithe, and they all belong to him, as a priest cannot prove that he is entitled to any of the ten.

163 The Gemara asks: What halakhic conclusion was reached about this matter of the bathhouse? Come and hear a conclusion, as Rabbi Ḥiyya bar Avin said: There was a similar incident that was brought before the school of Rav Ḥisda, and Rav Ḥisda brought the case before the school of Rav Huna, and Rav Huna resolved the issue based on that which Rav Naḥman says: With regard to any property that one cannot recover from the possession of another party by legal process, if he consecrated it while it was in the possession of the other party the consecration is not valid.

164 The Gemara questions Rav Naḥman’s statement: By inference, is it so that if one can recover the property from the other party by legal process, and he consecrated it, the consecration is valid, although he has not yet recovered it? But doesn’t Rabbi Yoḥanan say: In a case where one robbed

another of an item and the owner did not despair of retrieving it, neither the owner nor the robber can consecrate it; this one, the robber, because it is not his, and that one, the owner, because it is not in his possession? The indication is that one cannot consecrate even his own item if it is not in his possession.

[165] The Gemara answers: Did you think that in the case of the bathhouse we are dealing with a movable bath? No, we are dealing with a bath that is excavated in the ground, in which case once its owner can recover it by legal process there is no need to take possession of it, as it already exists in his possession.

[166] § Rav Taḥalisa from the West, i.e., Eretz Yisrael, taught this baraita before Rabbi Abbahu: If two people are grasping a garment, this one takes up to where his hand reaches, and that one takes up to where his hand reaches, and they divide the remainder, the part of the garment that is in the grasp of neither, equally. Rabbi Abbahu indicated by means of a hand gesture that Rav Taḥalisa should add: And this is with the proviso that they take an oath.

[167] The Gemara asks: But then how can you find a case where the halakha in the mishna applies? As the mishna teaches that they divide the garment between them, and does not teach that this one takes up to where his hand reaches and that one does likewise. Rav Pappa said: The mishna is discussing a case where neither of them is grasping the garment itself, but rather they are holding onto the fringes [bekarkashta] of the garment. Therefore, each is required to take an oath and they divide the garment between them.

[168] Rav Mesharshiyya said: Learn a halakha with regard to the symbolic transfer of a cloth as a formal act of acquisition from Rav Pappa's statement: The entire cloth need not change hands. Rather, once the recipient of the cloth has grasped three by three fingerbreadths of the cloth, which is the minimum size of a cloth that can be considered a utensil, the transaction takes effect, as we consider such an action to be an implementation of the verse upon which acquisition by means of a cloth is based: "Now this was the custom in former times in Israel…to confirm all things: A man drew off his shoe, and gave it to his neighbor; and this was the attestation in Israel" (Ruth 4:7).

[169] This is because such an amount of the cloth is significant enough to be considered as though it were severed from the rest of the cloth, and therefore when the recipient grasps it, it effects the acquisition, even though the rest of the cloth is still in the hand of the other party.

[170] The Gemara asks: But in what way is this case different from the ruling of Rav Ḥisda? As Rav Ḥisda said: In a case where a husband placed a bill of divorce in his wife's hand, and a string attached to the bill of divorce remained in his hand, if the husband can still pull the bill of divorce out of her hand and bring it to him, she is not divorced; and if he is not able to do so, e.g., if the string is too flimsy, then she is divorced. This indicates that as long as part of the bill of divorce remains in his hand, it is not considered as though he gave it to her.

[171] The Gemara answers: There, in the case of a bill of divorce, we require that it accomplish a complete severance between the husband and wife, and as long as the husband continues to have some hold on the bill of divorce there is no complete severance. By contrast, here, in the case of a transaction by means of a cloth, we require an act of giving, and there is a valid act of giving even if only part of the cloth was given.

[172] Rava says: Even if the garment was fashioned with gold thread, they divide it. The Gemara asks: Isn’t this obvious? Why would a gold garment have a different halakha? The Gemara answers: No, it is necessary to state this halakha in a case where the gold is in the middle of the garment, neither in one’s hand nor in the other’s.

[173] The Gemara challenges: This too is obvious; the halakha is that they divide the remainder. The Gemara answers: No, it is necessary to state this halakha in a case where the gold is closer to one of them, though it is not in his grasp. Lest you say that the one to whom the gold is closer can say to the other: Divide it in this manner, along the middle line of the garment between us, leaving most of the gold in my possession, Rava therefore teaches us that they divide the gold equally. The reason is that the other litigant can say to him in response: What did you see that led you to divide it in that manner, e.g., lengthwise? Divide it in this manner, e.g., widthwise, so that the gold will be divided equally between us.

[174] § The Sages taught in a baraita (Tosefta 1:8): In a case where two people, a creditor and a debtor, are grasping a promissory note, and the creditor says: The promissory note is mine, as the debt has not yet been repaid, and I merely dropped it and I subsequently found it, and the debtor says: The promissory note was once yours, i.e., you lent me the money, but I already repaid you, and you therefore gave me the note, in that case the promissory note must be ratified through its signatories for the creditor to collect the debt. In other words, the court must first ascertain the validity of the promissory note by verifying that the signatures of the witnesses are authentic. This is the statement of Rabbi Yehuda HaNasi.

[175] Rabban Shimon ben Gamliel says: The creditor and the debtor divide the debt attested to in the promissory note, i.e., the debtor is liable to pay half the amount, due to uncertainty as to who is telling the truth.

[176] If a promissory note fell into the possession of a judge and the two parties do not agree as to which of them it belongs, either to the creditor, and the debt has yet to have been repaid, or to the debtor, and the debt was repaid, it may never be removed from the judge’s possession to collect the debt until proof is provided. Rabbi Yosei says: The promissory note retains its presumptive status of validity and the litigants proceed in accordance with its contents.

[177] The Gemara discusses the baraita. The Master said that the promissory note must be ratified through its signatories. And does this indicate that once it is ratified, the creditor collects the entire debt? But doesn’t Rabbi Yehuda HaNasi hold in accordance with the halakha taught in the mishna with regard to two people holding a garment, that they divide the garment? Here too, each party should be entitled half the promissory note, and the debtor should therefore be obligated to pay only half the debt.

[178] Rava says that Rav Naḥman says: In a case where the promissory note was ratified by the court, everyone agrees that the litigants divide it, and the debtor repays only half of the debt. They disagree with regard to a case where it was not ratified.

[179] Rabbi Yehuda HaNasi holds that even when a debtor admits that he wrote a promissory note, the creditor must ratify it in court in order for the creditor to collect the debt. And therefore, if he ratifies the promissory note in court he divides it with the debtor, and if he does not ratify it he does not divide it with the debtor. If he is unable to ratify the signatures of the witnesses, he receives nothing even if the debtor admits that he borrowed the money.

[180] What is the reason for Rabbi Yehuda HaNasi’s opinion? He holds that an unratified promissory note is merely a shard. Who renders this document a valid promissory note? The debtor does. The validity of the note is solely dependent on the corroboration of the debtor, and doesn’t the debtor say that the debt mentioned in the promissory note was repaid? Therefore, the note is worthless unless it is ratified by the witnesses in court.

[181] And Rabbi Shimon ben Gamliel holds that if a debtor admits that he wrote a promissory note, the creditor is not required to ratify it in court in order for the creditor to collect the debt. And therefore, even if the creditor does not ratify it, the promissory note is valid, and they divide it.

[182] It is taught in the baraita that if a promissory note fell into the possession of a judge it may never be removed from his possession until proof is provided.

[183] The Gemara asks: What is different about the case where the promissory note fell into the possession of a judge, such that the creditor cannot retrieve it to collect the debt? Rava said this is what the baraita is saying: But in the case of another individual, who is neither the debtor nor the creditor, who found a promissory note that had already fallen into the possession of a judge, it may never be removed from his possession until proof is provided. And what are the circumstances? What does it mean that the promissory note had fallen into the possession of a judge? It is a case where the court wrote in the promissory note a ratification certifying that it examined and ratified the note and it can be used to collect the debt.

[184] And the reason the baraita refers specifically to these circumstances is that it is not necessary to state that in a case where there is no ratification written in the promissory note that the creditor cannot use it to collect the debt; as it can be said that the debtor wrote the document because he intended to borrow the money, but he ultimately did not borrow it. Rather, the baraita states that even in a case where there is a ratification written in the promissory note, as it is now a ratified promissory note, the finder should not return it to the creditor, as we suspect that there was repayment, i.e., that the debtor may have repaid the debt, and he lost the promissory note.

[185] The Gemara discusses the continuation of the baraita: And Rabbi Yosei says: The promissory note retains its presumptive status. The Gemara explains: And we do not suspect that there was repayment; had the debt been repaid the debtor would have immediately destroyed the promissory note. The Gemara asks: But does Rabbi Yosei not suspect that there was repayment?

[186] But isn’t it taught in a baraita: If one found a marriage contract in the marketplace, in a case when the husband admits that he has not yet paid the amount written in the contract to his wife, the finder must return the document to the wife. In a case when the husband does not admit this, but instead claims that he has already paid the amount written in the contract, the one who found it should not return it to this one, the husband, or to that one, the wife.

[187] Rabbi Yosei says that there is a distinction between different situations: If the wife is still under the auspices of her husband, i.e., she is still married to him, the one who found the marriage contract must return it to the wife because presumably the husband did not pay her the amount specified in the marriage contract during their marriage. If the wife was widowed or divorced, he should not return it to this party, the husband or his heirs, or to that party, the wife, as perhaps she already received payment and the contract was later lost by her husband or his heirs. In this case, Rabbi Yosei suspects that there was payment.

188 The Gemara answers: Reverse the order of the tanna’im in the baraita and teach it as follows: If the promissory note fell into the possession of a judge, it may never be removed; this is the statement of Rabbi Yosei. And the Rabbis say: It retains its presumptive status.

189 The Gemara asks: If so, the contradiction between the statement of the Rabbis in this baraita and the statement of the Rabbis with regard to the case of the marriage contract is difficult. Whereas according to the emended version of the baraita the Rabbis do not take into account the possibility that the debt was repaid, in the case of the marriage contract the Rabbis take this possibility into account.

190 The Gemara resolves the problem: The baraita that discusses the marriage contract is entirely in accordance with the opinion of Rabbi Yosei; it contains no dispute. And the baraita is incomplete, and this is what it is teaching: In a case where the husband does not admit that he did not pay the marriage contract, the one who found it should not return it to this party or to that party. In what case is this statement said? It is said in a case where the woman was widowed or divorced. But if she is still under the auspices of her husband, the finder must return it to the wife. As Rabbi Yosei says: If she is still under the auspices of her husband, the finder must return it to the wife. If she was widowed or divorced, he should not return it to this party or to that party.

191 Rav Pappa said: Actually, do not reverse the opinions in the baraita, but instead resolve the contradiction differently: Rabbi Yosei was telling the Rabbis what the halakha should be in the case of a marriage contract according to their statement, i.e., according to their opinion that one who finds a promissory note needs to take into account that the debt may have been repaid already.

192 His statement should be understood as follows: In my opinion, even if she was widowed or divorced we do not suspect that there was payment. But according to your opinion, concede to me, in any event, that while she is still under the auspices of her husband the finder should return the document to the wife, as the marriage contract is not yet subject to payment. Since the husband is not yet liable to pay, it is unlikely that he paid.

193 And the Rabbis said to him in response: Even if they are still married, say that he gave her bundles of money, and in exchange she gave him back the marriage contract. If the finder then returns the marriage contract to the wife, that would enable her to collect the sum twice.

194 Ravina said: Actually, reverse the order of the tanna’im in the first baraita, which discusses one who finds a promissory note, and resolve the contradiction between the different statements of the Rabbis as follows: The reason for the opinion of the Rabbis here, that a marriage contract cannot be returned to the wife, is that we suspect that the husband wrote two marriage contracts; after the first marriage contract was lost, the husband had to write a second one in its stead. Returning to the wife the marriage contract that was found would enable her to collect twice. And Rabbi Yosei holds that it should be returned to the wife because he does not suspect that the husband wrote two marriage contracts; in his opinion, it is a rare occurrence.

195 § Rabbi Elazar says: With regard to the dispute between Rabban Shimon ben Gamliel and Rabbi Yehuda HaNasi in the case of a creditor and a debtor both grasping a promissory note, Rabban Shimon ben Gamliel holds that they divide the promissory note evenly, specifically in a case where both are grasping the standard part of the promissory note, i.e., the part that contains the standard formulation of the note, or both are grasping the essential part of the promissory note, where the names of the creditor and debtor are written, as well as the amount owed and the date. But if one of

them is grasping the standard part and the other one is grasping the essential part, they divide the promissory note between them based on the section that each of them is holding; this one takes the standard part and that one takes the essential part. And Rabbi Yoḥanan says: Actually, they divide everything equally.

196 The Gemara asks with regard to Rabbi Yoḥanan's statement: And does he hold that this is the halakha even in a case where one is grasping the standard part and one the essential part? But isn't it taught in the baraita that was cited above with regard to a garment: This one takes up to where his hand reaches and that one takes up to where his hand reaches? Here as well, if one is grasping the standard part and the other is grasping the essential part, they should take the parts they are holding. The Gemara answers: No, this halakha that Rabbi Yoḥanan stated is necessary for a case where the essential part is located in the middle. He was not discussing the case where one was grasping the standard part and the other one was grasping the essential part. In that case, he would agree that each takes the part he was grasping.

197 The Gemara asks: If so, what is the purpose of stating that they divide it equally? That is obvious. The Gemara answers: No, it is necessary in a case where the essential part of the document is closer to one of them. Lest you say that the one to whom the essential part is closer can say to the other one: Divide it in this manner, leaving the essential part on my side, Rabbi Yoḥanan teaches us that the other one can say to him in response: What did you see that led you to divide it in that manner? Divide it in this manner, so that we will both share the essential part.

198 Rav Aḥa of Difti said to Ravina: According to the opinion of Rabbi Elazar, who says this one takes the standard part and that one takes the essential part, why do either of them need it? Does he need half of the document to cover the opening of his flask? Having half a promissory note is of no legal consequence.

199 Ravina said to him: The division in question is not division of the document itself, with each taking half of the paper. It is a division of its monetary value, as the value of each section of the promissory note is compared to the value of the other.

200 The one grasping the essential part of the promissory note, which contains the date, can say this: Consider a promissory note that has the date written on it; how much is it worth? And consider a promissory note that does not have the date written on it; how much is it worth? The significance of writing the date is that if a creditor is in possession of a promissory note that has the date written on it, he can collect his debt even from liened property that has been sold by the debtor to another individual after taking the loan. But if a creditor is in possession of the other kind of promissory note, i.e., one that does not have the date written on it, he cannot collect his debt from liened property. Therefore, the other party, who is grasping the standard part of the document, gives him the difference between the two values.

201 And this is also true in general, with regard to cases where we said that the two litigants divide the disputed item: The reference is to the monetary value, and not division of the actual item. As, if you do not say so, but rather you hold that the item itself is divided, in the case of two people who come to court holding a garment, do they also divide the garment itself into two? But by doing so they would ruin it. The Gemara rejects this proof: This is not difficult, as it is possible to explain that they actually cut the garment in two.

[202] This is because each party receives an item that has monetary value, as it is fit to be made into a garment for small children.

[203] The Gemara asks: But as for that which Rava said, that if the garment was fashioned with gold thread they divide it, does that also mean that they divide the garment itself? By doing so they would ruin it. The Gemara answers: That is not difficult, as after the garment is divided it is fit to be made into a garment for the children of kings or wealthy people. Therefore, it is not ruined.

[204] The Gemara asks: But with regard to that which we learned in the mishna (2a): If two people were sitting on an animal and each of them claims to own the entire animal, they each take an oath and divide the animal, does that also mean that they divide the animal itself? By doing so they would ruin it. Granted, if it is a kosher animal it is fit to be slaughtered and divided between them for the meat. But if it is a non-kosher animal, slaughtering it and dividing the carcass would ruin it and render it worthless. Rather, clearly they divide its monetary value. Here too, in the other cases where the ruling is to divide the item, it means that the litigants divide its monetary value and not the item itself.

[205] § Based on an inference from the mishna on 2a, Rami bar Ḥama says: That is to say: In a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person, i.e., the latter, acquires ownership of the item.

[206] Rami bar Ḥama explains his inference: As, if it enters your mind that if one lifts a found item for another the other does not acquire the item, this garment has not been acquired by either of the two litigants, as each prevents the other's acquisition. If that were the case, this part of the garment, held by one of them, would be considered as though it is still lying on the ground, and that part of the garment, held by the other one, would be considered as though it is still lying on the ground, and neither this one nor that one acquires it; if a third party takes it, it is his. Rather, isn't it correct to conclude from it that in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires the item?

[207] Rava said: This is not a proof, as actually I could say to you that in a case of one who performs an act of acquisition by lifting a found item solely on behalf of another, the other person does not acquire the item. And here in the mishna, this is the reason the two litigants acquire the garment: Since each of the litigants acquires part of the garment for himself, he also acquires the other part for the other one.

[208] Rava adds: Know that one who acquires an item for himself can acquire part of it for another, as, if someone says to his agent: Go out and steal an item for me, and the agent stole that item, the one who sent him is exempt from liability, due to the principle that there is no agency for sin; but partners who stole an item together are both liable even if only one of them actually lifted the item. What is the reason that they are both liable? Is it not because we say that since the one who lifted the item acquires part of it for himself, he also acquires the other part for the other one, his partner? The Gemara concludes: Learn from it that this principle is correct.

[209] Rava said in continuation of his statement: Now that you said that we say: Since [miggo] one acquires part of an item for himself he can also acquire the other part for another, another halakha can be derived: In a case of a deaf-mute and a mentally competent person who lifted a found item simultaneously, since the deaf-mute acquires his part of the item, the mentally competent person also acquires his portion.

[210] The Gemara asks: Granted, the deaf-mute acquires his portion of the found item, as a mentally competent person lifted it for him; since the mentally competent person acquired his own part, he also acquired the other part for the deaf-mute. But how does the mentally competent person acquire his part? He needs the deaf-mute to acquire it for him, and a deaf-mute cannot acquire an item for another.

[211] Rather, say Rava's statement differently: The deaf-mute acquires his part, but the mentally competent person does not acquire his part. And what is the principle of miggo from which Rava derives this halakha? It is not the principle that one who acquires a found item for himself can acquire part of it for another as well, but rather: Since [miggo] in general two deaf-mutes who pick up an item simultaneously acquire it, in this case too, the deaf-mute acquires it, even though the mentally competent person does not acquire it.

[212] The Gemara asks: What is this derivation? Even if you say that in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires it, as Rami bar Ḥama says, this statement applies only where he lifts it with the intention of having the other person acquire the item. But in this case, the mentally competent person lifted the item with the intention of acquiring it for himself; he had no intention of acquiring it for the deaf-mute. If he does not acquire the item for himself, does he acquire it for others?

[213] Rather, say that since the mentally competent person does not acquire any part of the found item, the deaf-mute does not acquire it either.

[214] And if you would say: In what way is this case different from the general case of an item that was found by two deaf-mutes, in which they both acquire it? The answer is that there, in that case, the Sages instituted an ordinance for them that they both acquire the item so that they will not come to quarrel with others who want to take the item from them due to the fact that a deaf-mute lacks the halakhic ability to acquire the item. Here, in the case of the deaf-mute and the mentally competent person, the deaf-mute says to himself: If even the mentally competent person does not acquire the item, can I acquire it? Therefore, in that case, he will not quarrel if others take the item from him.

[215] Rav Aḥa, son of Rav Adda, said to Rav Ashi: From where in the mishna is Rami bar Ḥama's inference drawn? If we say that he infers it from the first clause of the mishna, i.e., the case of two people holding a garment, isn't the case there one in which this one says: All of it is mine, and I lifted the entire garment; and that one says: All of it is mine, and I lifted the entire garment? How can the halakha where one acquires an item for another be inferred from that case?

[216] Rather, he infers it from that which is taught later in the mishna: This one says all of it is mine and that one says all of it is mine. Why do I need this case as well? The first case, where each one says: I found it, is sufficient. Rather, learn from the superfluous case in the mishna that even if they lifted it simultaneously, they divide it and a third party has no right to take it, as in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires the item.

[217] The Gemara asks: But that clause in the mishna is not superfluous; didn't we already establish (2a) that the first clause is referring to a dispute over a found item, and the latter clause is referring to a case of buying and selling, where each party claims that he is the one who bought the item from its seller?

[218] Rather, Rami bar Ḥama infers his ruling from the latter clause of the mishna, i.e., the case where this one says all of it is mine and that one says half of it is mine. Why do I need this case as well? What does it add to the previous cases? Rather, learn from this superfluous case in the mishna that in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires the item.

[219] The Gemara asks: And from where is it inferred that this clause is referring to the case of a found item? Perhaps it is referring to a case of buying and selling.

[220] And if you would say: If it were referring to a case of buying and selling, what would be the purpose of stating it, as it adds no novel ruling? One could answer that it was necessary to teach this additional case, as otherwise it might enter your mind to say that the one who says: Half of it is mine, should be considered the equivalent of one returning a lost item; he could have claimed that the garment was entirely his, and instead he conceded half of it to the other party and consequently he should be exempt from taking an oath. To counter this, the mishna teaches us that he is not exempt, as perhaps this person is employing artifice. Perhaps he is thinking: If I say that all of it is mine I will need to take an oath. I will state this claim, that half of it is mine, as I will thereby be considered the equivalent of one returning a lost item, and I will be exempt from taking an oath. Therefore, this clause is not superfluous; it teaches that this litigant is not considered the equivalent of one returning a lost item.

[221] Rather, Rami bar Ḥama infers his ruling from this clause: If two people were sitting on an animal, and each of them claims that it is his, each of them takes an oath and they divide the value of the animal. Why do I need this case as well? It teaches no novel halakha. Rather, learn from this superfluous clause in the mishna that in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires the item.

[222] The Gemara asks: But perhaps this mishna teaches us that one who sits on an animal also acquires it, even though he has not caused the animal to move.

[223] Rather, Rami bar Ḥama inferred his ruling from the last clause in the mishna: When they each admit to the validity of the other’s claim or when they have witnesses attesting to their claims, they divide it without taking an oath. To what case is the mishna referring? If it is referring to a case of buying and selling, does it need to be said? Rather, is it not referring to a found item? Accordingly, the reason they divide the item is that they knowingly lifted it together, and they intended to acquire it for both of them. And learn from it that in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires the item.

[224] The Gemara comments: And Rava said to you that this clause is based on a different principle: When one acquires an item, since he acquires it for himself he can also acquire part of it for another person.

[225] § The mishna teaches: If two people were sitting on an animal, or one was sitting on the animal and the other one was leading it, and each claims ownership of the animal, they must each take an oath and they divide it. Rav Yosef said: Rav Yehuda said to me:

[226] I heard two halakhot from Master Shmuel, one halakha with regard to one who sits in a riding position on an animal, and the other halakha with regard to one who leads an animal. With regard to

one case I heard that he thereby acquires the animal, and with regard to the other one I heard that he does not acquire the animal. But I do not know which halakha applies to which of them.

227 The Gemara asks: What are the circumstances? If we say that this is referring to one who sits in a riding position alone and to one who leads alone, is there anyone who says that one who leads an animal alone does not acquire it? Pulling an item, or leading an animal, is a classic mode of acquisition (see Kiddushin 25b). Rather, if there is a case where it could be said that one does not acquire the animal, it is obviously in the case of one who sits in a riding position that it could be said. Therefore, why was Rav Yehuda uncertain?

228 The Gemara answers: Rather, his dilemma was with regard to a case where one sits in a riding position on the animal while another leads it. What is the halakha? Which of them acquires the animal? Does the one sitting in a riding position on the animal take precedence, as the animal is in his grasp, since his legs are grasping the sides of the animal, or perhaps the one leading the animal takes precedence, as it walks because of him?

229 Rav Yosef said: Rav Yehuda said to me: Although I do not remember what Shmuel said, let us see if we can analyze this ourselves, as we learned in a mishna concerning the prohibition against leading animals of diverse kinds (Kilayim 8:3): If two animals of diverse kinds, e.g., a horse and a donkey, are harnessed to the same wagon, the one leading the animals incurs the forty lashes for transgressing the Torah prohibition: “You shall not plow with an ox and a donkey together” (Deuteronomy 22:10), and the one sitting in the wagon [bakaron] also incurs the forty lashes. Rabbi Meir deems the one sitting in the wagon exempt, as he did not perform any action.

230 And from the fact that in his version of the mishna Shmuel reversed the opinions and taught: And the Rabbis deem the one sitting in the wagon exempt, it can be inferred that he agrees with this opinion that the one sitting in the wagon is considered to have not performed any action, as the halakha is in accordance with the opinion of the Rabbis in their disputes with Rabbi Meir. Conclude from it that one who sits on an animal alone does not acquire it, as sitting on an animal is not considered a significant action, and all the more so one who sits on an animal while another leads the animal does not acquire the animal.

231 Abaye said to Rav Yosef: Didn’t you say to us many times with regard to this halakha: Let us see if we can analyze this ourselves, followed by the proof from the aforementioned mishna? And you did not say to us that this statement was in the name of Rav Yehuda. Rav Yosef had an illness that caused him memory loss. Consequently, some of his later statements of halakha were inaccurate, and Abaye suspected that he attributed this statement to Rav Yehuda erroneously.

232 Rav Yosef said to him: Indeed [ivra], I remember that Rav Yehuda stated this proof, and I also remember that I said to him in response: How can the Master resolve the case of one who sits on an animal via proof from the case of one who sits in the wagon? One who sits in the wagon does not hold the reins, whereas one who sits on the animal holds the reins. And Rav Yehuda said to me in response: Rav and Shmuel both say that holding the reins of an ownerless animal does not effect acquisition of it. Consequently, there is no difference between sitting on an animal and sitting in a wagon drawn by an animal.

233 There are those who say that the exchange between Abaye and Rav Yosef was as follows: Abaye said to Rav Yosef: How can the Master resolve the case of one who sits on an animal via proof from the case of one who sits in the wagon? One who sits in the wagon does not hold the reins, whereas

one who sits on the animal holds the reins. Rav Yosef said to him: Idi taught in a baraita like this: Holding the reins of an ownerless animal does not effect acquisition of it.

234 It was also stated that Rabbi Ḥelbo says that Rav Huna says: With regard to holding the reins of an animal in order to acquire it, if he is attempting to acquire it from another person, he acquires the animal. But with regard to acquisition of a found animal, or with regard to acquisition of an animal that was the property of a convert who died without heirs, leaving his property ownerless, it does not effect acquisition.

235 The Gemara explains: What is the meaning of the term reins [moseira]? Rava said: Idi explained to me that they are used like a person who transmits [moser] an item to another, i.e., they are used to transfer the ownership of the animal. Granted, in a case where one takes the reins from another, this effects acquisition of the animal, as the other person hands them to him. But in a case of a found animal or of one that was the property of a convert, who is handing him the reins, enabling him to acquire the ownerless animal? Since there was no transaction, one cannot acquire the animal by merely holding the reins.

236 The Gemara raises an objection from the mishna: If two people were sitting in a riding position on an animal, or if one was sitting on it in a riding position and the other was leading it, they divide it after taking an oath. In accordance with whose opinion is this mishna? If we say that it is in accordance with the opinion of Rabbi Meir, now, in his opinion, even one who sits in a wagon acquires the animal that is pulling the wagon. Is it necessary to state that one who sits in a riding position on an animal acquires it? Rather, is it not the opinion of the Rabbis? And learn from it that one who sits in a riding position on an animal acquires it.

237 The Gemara answers: With what are we dealing here? We are dealing with a case where the one sitting on the animal also leads, i.e., drives it by squeezing or kicking it with his legs. The Gemara asks: If so, this is the same as leading the animal by pulling the reins, as the essential factor in both is that one causes the animal to move, so why does the mishna need to mention it? The Gemara answers: The tanna teaches two types of leading, both pulling the animal by the reins and driving it while sitting on it. Lest you say that one who is sitting in a riding position on the animal takes precedence, as he is both leading the animal and also holding it by the reins, the tanna teaches us that the claim of the one sitting in a riding position on the animal is not stronger than the claim of the one leading it by the reins.

238 Come and hear a different proof from a baraita: With regard to two people who were pulling a camel or driving a donkey together, or one who was pulling it and one who was driving it,

239 they have both acquired the animal in that manner. Rabbi Yehuda says: Actually, one acquires an animal only through pulling in the case of a camel or driving in the case of a donkey, as that is the manner in which they are normally directed.

240 In any event, it is taught in the baraita: Or one who was pulling and one who was driving, which indicates that pulling and driving are indeed effective modes of acquisition, but sitting in a riding position on an animal is not.

241 The Gemara rejects this inference: The same is true with regard to even sitting in a riding position on an animal; it is an effective mode of acquisition. And the reason that the baraita teaches specifically the modes of pulling and driving is only to exclude the opinion of Rabbi Yehuda, who

says that one acquires an animal only through pulling in the case of a camel or driving in the case of a donkey. Therefore, the first tanna teaches us that even in the opposite manner, i.e., pulling a donkey or driving a camel, one acquires the animal.

[242] The Gemara asks: If that is so, then let the first tanna combine the cases and teach them as follows: With regard to two people who were pulling or driving either a camel or a donkey, they each acquire the respective animal. The fact that this wording is not used indicates that the first tanna does not entirely disagree with Rabbi Yehuda.

[243] The Gemara modifies its response: There is one manner of acquisition by which the first tanna concedes to Rabbi Yehuda that one does not acquire the animal if one employs it, and it is unclear what manner that is. Some say that by pulling a donkey one does not acquire it, as donkeys tend to not move at all when being pulled, and some say that by driving a camel one does not acquire it, as that is not the common way to move it.

[244] And according to an alternative version of this discussion, there are those who raise an objection to the opinion that one can acquire an animal by sitting on it in a riding position from the latter clause of the statement of the first tanna in the baraita: They acquire the animal in that manner. The phrase in that manner is stated to exclude what? Is it not to exclude one who sits in a riding position on the animal? The Gemara answers: No, it is stated to exclude the opposite cases: One who drives a camel or pulls a donkey does not acquire the animal.

[245] The Gemara asks: If so, that is identical to the opinion of Rabbi Yehuda. The Gemara answers: There is a practical difference between them with regard to one manner of acquisition in which one does not acquire the animal. Some say that according to the first tanna, by pulling a donkey one does not acquire it, and some say that by driving a camel one does not acquire it.

[246] Come and hear proof from a baraita that one can acquire an animal by sitting on it in a riding position: If one person is sitting in a riding position on a donkey and one other person is holding the reins, this one, the one sitting on the donkey, acquires the donkey, and that one, who is holding the reins, acquires the reins. Learn from it that one who sits in a riding position on an animal acquires it.

[247] The Gemara rejects this: Here too, the reference is to one who is not only sitting on the donkey but who is also driving it with his feet by squeezing or kicking it. The Gemara asks: If so, the one who is sitting should acquire part of the reins too. The fact that he does not acquire the reins indicates that his acquisition of the donkey is imperfect, which would not be the case if he were driving it. The Gemara answers: Emend the text and say: This one acquires the donkey and half of the reins, and that one acquires half of the reins.

[248] The Gemara asks: Granted, the one sitting on the donkey acquires half of the reins because a mentally competent person, the one holding the reins, has lifted it for him, but in what manner does the one holding the reins acquire half the reins? The other end of the reins is attached to the donkey, and because he does not acquire the donkey he cannot acquire the reins.

[249] The Gemara answers: Emend the text and say: This one, the one sitting on the donkey, acquires the donkey and almost the entire reins, and that one, who is holding the reins, acquires only the part of the reins that is actually held in his hand.

[250] The Gemara asks: What is the basis for this understanding? Even if you say that in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person, i.e.,

the latter, acquires ownership of the item, that statement applies only in a case where one lifts an item with the intention that another person will acquire it. In the case here, this person who is holding the reins is lifting them with the intention of acquiring them for himself. Since he himself does not acquire them, how can he acquire them for others?

[251] Rav Ashi said: Emend the baraita and say: This one, who is sitting on the donkey and driving it, acquires the donkey and its halter, which is attached to its head; and that one, who is holding the reins, acquires only the part that is held in his hand. And with regard to the rest, the part of the reins that is neither attached to the donkey's head nor held in the person's hand, neither this one nor that one has acquired it.

[252] Rabbi Abbahu said: Actually, do not emend the baraita; leave it as it is taught. The one holding the reins acquires them because he can detach them from the donkey and bring them toward himself. Since he is able to pull the reins into his possession, they are considered his even though he does not lift them.

[253] The Gemara comments: And this statement of Rabbi Abbahu is an error. As, if you do not say so, but instead accept Rabbi Abbahu's opinion, that would result in an incorrect halakhic ruling in the case of a garment, half of which was lying on the ground and half of which was lying on a pillar, and one came and lifted the half of it that was on the ground off the ground, and another person came and lifted the other half of it off the pillar. In that case, should one also rule that the first one acquires the garment and the latter one does not acquire it, since the first one was able to detach it from the pillar and bring the entire garment toward him? That is certainly not the halakha. Rather, clearly this statement of Rabbi Abbahu is an error. In any event, the question of whether one can acquire an animal by sitting on it in a riding position remains unresolved.

[254] The Gemara suggests: Come and hear an additional proof from a baraita: Rabbi Eliezer says: If one sits on an animal in the field or leads an animal in the city, he acquires it. This proves that one can acquire an animal by sitting on it. The Gemara rejects this proof: Here too, the reference is to one who leads, i.e., drives, the animal with his feet. The Gemara asks: If so, that is the same as leading the animal. Why would the baraita mention the same case twice? The Gemara answers: The baraita is discussing two types of leading.

[255] The Gemara asks: If that is so, what is the reason that one who sits on an animal in the city does not acquire it? Rav Kahana said: It is because people do not normally ride in the city, as it is crowded.

[256] Rav Ashi said to Rav Kahana: If that is so, that by means of an unusual action one cannot effect an acquisition, then if one lifted a purse that he found on Shabbat, has he also not acquired it, since people do not normally lift a purse on Shabbat due to the prohibition of set-aside [muktze]? That is clearly not the halakha. Rather, how should one rule in that case? What he did, he did, and he acquires the purse. Here too, if one sat on an animal in the city, what he did, he did, and he acquires the animal.

[257] Rather, the baraita is not referring to the case of a found animal, which one can acquire even by sitting on it in the city. In fact, we are dealing with a case of buying and selling an animal, where the seller said to the buyer: Acquire the animal the way that people normally acquire an animal. Therefore, the buyer cannot acquire it in the city by sitting on it.

[258] And if he rides it in the public domain, he acquires it, as people commonly ride animals in the city's public domain. And if he is an important person, who always rides his animal rather than leading it, he acquires it even in an alleyway. And if the buyer is a woman, she acquires the animal, as women do not normally lead animals. And if the buyer is a detestable person, who rides even where other people do not, he too acquires the animal.

[259] § Rabbi Elazar raises a dilemma: With regard to one who says to another, to whom he wishes to sell vessels: Pull this animal in order to acquire the vessels that are upon it, what is the halakha? Can the buyer acquire the vessels by pulling the animal?

[260] Before discussing the dilemma, the Gemara clarifies the issue. If the vendor merely says: In order that you will acquire the vessels, how can the buyer acquire them? Did he say to him in the imperative: Acquire the vessels? Without the seller's explicitly instructing the buyer to acquire the vessels, the buyer cannot acquire them. Rather, Rabbi Elazar's dilemma is with regard to a case where the seller says to the buyer: Pull this animal and thereby acquire the vessels that are upon it. What is the halakha? Is pulling the animal effective in order to acquire the vessels upon it, or not?

[261] Rava said: It is clearly not effective, as even if he said to him: Acquire the animal and acquire the vessels, does the buyer acquire the vessels? Although one can acquire an item by having it placed in his courtyard, and one's animal is the equivalent of his courtyard, it is considered a mobile courtyard, and a mobile courtyard does not effect acquisition of items that are placed in it.

[262] And if you would say that the animal can function as a courtyard when it is standing still, not walking, while being pulled, isn't there a principle which states that anything that does not effect acquisition when moving also does not effect acquisition when it is standing or sitting?

[263] The Gemara concludes: And the halakha is that the buyer can acquire vessels by having them placed on the animal's back only when the animal is bound. In that circumstance, when the buyer acquires the animal it assumes the legal status of his courtyard, and he also acquires the items that are placed upon the animal.

[264] Rav Pappa and Rav Huna, son of Rav Yehoshua, said to Rava: If that is so, in a case where one was sailing on a boat and fish jumped and fell into the boat, is the boat also considered a mobile courtyard, and therefore he does not acquire the fish? Rava said to them: A boat is not considered a mobile courtyard, as the boat itself sits idle, and it is the water that moves it.

[265] Ravina said to Rav Ashi: If that is so, that one does not acquire items that are placed in his mobile courtyard, then if a woman was walking in the public domain and her husband threw a bill of divorce into her lap, i.e., onto her person, or into her basket that she was carrying on her head, here too, is she not divorced because the basket was moving? Rav Ashi said to him: Her basket is not considered a mobile courtyard, as it sits idle, and it is she who walks beneath it.

[266] MISHNA: If one was riding on an animal and saw a found item, and said to another person who was walking beside him: Give it to me, if the pedestrian took it and said: I have acquired it for myself, he has acquired it by means of lifting it, even though he did not see it first. But if, after giving it to the one riding the animal, he said: I acquired it for myself at the outset, he has said nothing and the rider keeps the item.

[267] GEMARA: We learned in a mishna there (Pe'a 4:9): With regard to one who gleaned the produce in the corner of the field, which is given to the poor [pe'a], and said: This produce is for so-and-so, a

poor person, Rabbi Eliezer says: He thereby acquired it on the poor person’s behalf. And the Rabbis say: He did not acquire it for the poor person; rather, he should give it to the first poor person that he encounters.

[268] Ulla said that Rabbi Yehoshua ben Levi said: This dispute is in a case where the pe’a was gleaned by a rich person, who is not entitled to take the pe’a for himself, on behalf of a poor person.

[269] As Rabbi Eliezer holds that since [miggo], if he so desires, he can renounce ownership of his property and he would then be poor, and the pe’a would then be suitable for him, now too, it is considered potentially suitable for him even though he is wealthy. And since [miggo] he can acquire it for himself, he can acquire it on behalf of another poor person as well. And the Rabbis hold that we say miggo once, but we do not say miggo twice. Therefore, a wealthy person cannot acquire pe’a for a poor person.

[270] But in a case where the pe’a was gleaned by a poor person on behalf of another poor person, everyone agrees that he acquires it on behalf of the other person, as since [miggo] he can acquire it for himself, he can acquire it on behalf of another person as well.

[271] Rav Naḥman said to Ulla: But shouldn’t the Master say that the dispute is even in a case where the pe’a was gleaned by a poor person on behalf of another poor person? This can be proven from the mishna, as everyone is considered like poor people with regard to a found item, i.e., everyone has the right to acquire a found item just as a poor person is entitled to glean pe’a, and we learned in the mishna: If one was riding on an animal and saw a found item, and said to another person: Give it to me, if the pedestrian took it and said: I have acquired it for myself, he has acquired it.

[272] Granted, if you say the dispute pertains to a case where the pe’a was gleaned by a poor person on behalf of a poor person,

[273] whose opinion is expressed in the mishna? It is the opinion of the Rabbis, who hold that one cannot acquire an item for another in this manner. But if you say that the dispute is specifically in a case of a rich person and a poor person but in a case where the pe’a was gleaned by a poor person on behalf of a poor person everyone agrees that he acquired it on the latter’s behalf, in accordance with whose opinion is this mishna? It is neither in accordance with the opinion of the Rabbis nor in accordance with the opinion of Rabbi Eliezer.

[274] Ulla said to Rav Naḥman: The mishna is referring to a case where the one lifting the item said: I intended to acquire the item for myself at the outset; I never had intention to acquire it on behalf of the rider.

[275] The Gemara adds: So too, it is reasonable to explain the mishna in this manner, as it teaches in the last clause: But if, after giving it to the one riding the animal he said: I acquired it for myself at the outset, he has said nothing and the rider keeps the item. Why do I need the phrase: At the outset, to be mentioned in the last clause? It is obvious that even if he did not explicitly say: At the outset, he meant that he acquired it at the outset, before he gave it to the rider. Rather, isn’t this phrase mentioned to teach us this: The first clause of the mishna is also referring a case where he said: I intended to acquire it for myself at the outset?

[276] And the other Sage, Rav Naḥman, is of the opinion that the mishna taught this phrase in the last clause of the mishna in order to shed light on the first clause. The last clause is referring to a case where he said that he acquired the item at the outset in order to indicate that in the first clause, the

one who lifts the item acquires it even in a case where he did not say that he acquired it for himself at the outset. In Rav Naḥman's opinion, the rider does not acquire the item until it is given to him.

277 § The Gemara discusses the opinion of Rav Naḥman and Rav Ḥisda, who both say: In a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person, i.e., the latter, does not acquire ownership of the item.

278 What is the reason for this? The reason is that it is a case of one who seizes assets for a creditor in a situation that will result in a disadvantage for others, as the debtor owes money to other creditors as well; and one who seizes assets for a creditor in a situation that will result in a disadvantage for others does not acquire the assets for him. Although a creditor can himself seize the assets as payment for the debt, no one else can take action that will benefit one person at the expense of others. Similarly, since everyone has equal rights to an ownerless item that is found, one person cannot deprive all others of that right on behalf of another person.

279 Rava raised an objection to the opinion of Rav Naḥman from a baraita: The found item of a laborer, i.e., something that he found, belongs to him and not to the employer for whom he is working at that time.

280 In what case is this statement, that the item belongs to the laborer, said? It is said when the employer told the laborer to perform a specific task, e.g., he said to him: Weed for me today, or: Till for me today. Since the employer specified the task that he hired the laborer to perform, the laborer has rights to the item that the laborer found. But if the employer said to the laborer: Work for me today, without specifying the nature of the work, the found item is the employer's, as finding ownerless items is included within the general category of work. This indicates that a laborer can acquire an item for someone else, which contradicts Rav Naḥman's principle.

281 Rav Naḥman said to him: A laborer is different, as his hand is like the hand of the employer. He is considered his agent while he is working for him.

282 Rava responded: But doesn't Rav say that a laborer may reconsider and quit his job, even at midday? Evidently, the relationship between the employer and the laborer is structured to the benefit of the laborer.

283 Rav Naḥman said to him: As long as he does not retract his commitment, his hand is like the employer's hand. When he does retract his commitment, he is able to do so. But this is not because matters are structured to the benefit of the laborer, but for a different reason, as it is written: "For to Me the children of Israel are slaves; they are My slaves whom I brought forth out of the land of Egypt" (Leviticus 25:55), which indicates: They are My slaves, and not slaves of slaves, i.e., of other Jews. Consequently, a Jew can never be enslaved to another Jew with a contract from which he cannot release himself whenever he wishes. Nevertheless, as long as the laborer does not quit the job, he is considered his employer's agent.

284 Contrary to the opinion of Rav Naḥman and Rav Ḥisda, Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: In a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires ownership of the item. And if you say that our mishna seems to suggest otherwise, it is referring to a case where the rider says to the pedestrian: Give it to me, but does not say: Acquire it for me. If he says give it to me, the rider acquires the item only when it

reaches his possession. If he says acquire it for me, the rider acquires the item as soon as the pedestrian lifts it.

285 MISHNA: If one saw a found item and fell upon it, intending to thereby acquire it, but did not employ one of the formal modes of acquisition, and then another came and seized it, the one who seized it acquired it because he employed one of the formal modes of acquisition.

286 GEMARA: Reish Lakish says in the name of Abba Kohen Bardela: The area of four square cubits surrounding a person has the legal status of his courtyard, and it effects acquisition of every ownerless item located there for him, everywhere. What is the reason for this? The Sages instituted this ordinance so that people would not come to quarrel over an item. Abaye said that Rabbi Ḥiyya bar Yosef raises an objection to this from a mishna in tractate Pe’a. Rava said that Rabbi Ya’akov bar Idi raises an objection to this from a mishna in Nezikin.

287 The Gemara elaborates: Abaye said that Rabbi Ḥiyya bar Yosef raises an objection to this from a mishna in tractate Pe’a (4:3), which states: If a poor person took some of the pe’a in the field and threw it on the rest of the pe’a in order to acquire it, he has nothing of it. The same is true if he fell upon the pe’a, or if he spread his garment over it; others may remove him or his garment from the pe’a in order to take it for themselves, as he did not acquire it. And the same is true in the case of a forgotten sheaf left for the poor; a poor person cannot acquire it in any of these manners.

288 Rabbi Ḥiyya bar Yosef continues: And if you say that a person’s area of four square cubits effects acquisition of property for him everywhere, let his area of four square cubits effect acquisition of the pe’a or the forgotten sheaf for him.

289 The Gemara responds: With what are we dealing here? We are dealing with a case where he did not say: I will acquire the pe’a through this action. He performed the action without revealing his intention; therefore, his acquisition is ineffective.

290 The Gemara asks: But if the Sages instituted an ordinance that the area of four cubits surrounding a person acquires property for him, then even in a case where he did not say: I will acquire the produce, what of it? Shouldn’t he have acquired it even without expressing his intent to do so?

291 The Gemara answers: This case is different. Since he fell upon it he thereby revealed his intention: That it is satisfactory for him to acquire the produce by falling on it and it is not satisfactory for him to acquire the produce through the ordinance concerning his four square cubits. Since he decided to forgo the mode of acquisition that the Sages instituted, and falling on the produce is not a valid mode of acquisition, he did not acquire the produce.

292 Rav Pappa said a different answer: When the Sages instituted an ordinance that one’s four square cubits effect acquisition of property for him, that was in the world, i.e., on public land. But the Sages did not institute this mode of acquisition for him in a field belonging to an owner. And even though the Merciful One accorded a poor person certain rights in a landowner’s field during the distribution of pe’a, this mode of acquisition is not included in those rights; when the Merciful One accorded him rights it was specifically to walk in the field and to collect pe’a, but the Merciful One did not accord him the right that the field be considered his courtyard with regard to acquiring pe’a. Therefore, the mishna in tractate Pe’a does not contradict the statement of Reish Lakish.

293 As mentioned previously, Rava said that Rabbi Ya’akov bar Idi raises an objection to this from a mishna in Nezikin. The Gemara elaborates: The mishna here states that if one saw a found item and

fell upon it, and another came and seized it, the one who seized it acquired it. And if you say that a person’s four square cubits effect acquisition of property for him everywhere, let his four square cubits effect acquisition of the found item for him.

[294] The Gemara answers: Here we are dealing with a case where he did not say: I will acquire it. The Gemara asks: But if the Sages instituted an ordinance that one’s four square cubits effect acquisition of property for him, then even in a case when he did not say: I will acquire the item, what of it? The item should still be his. The Gemara answers: Since he fell upon it, he revealed his intention that it is satisfactory for him to acquire the item by falling on it, and it is not satisfactory for him to acquire the item through the ordinance concerning his four square cubits. Since he decided to forgo the mode of acquisition instituted by the Sages, he does not acquire the found item.

[295] Rav Sheshet said a different answer: When the Sages instituted that one’s four square cubits effect acquisition of property for him, that was in a place like an alleyway, where the multitudes do not crowd, so the four square cubits surrounding a person can temporarily be considered his property and enable him to acquire an item; but the Sages did not institute this mode of acquisition in the public domain, where the multitudes crowd.

[296] The Gemara asks: But doesn’t the wording of Reish Lakish’s statement indicate that there is no such limitation, as he says that the area of four square cubits surrounding a person effects acquisition of property for him everywhere? The indication is that this is true even in the public domain.

[297] The Gemara answers: The word everywhere is not to be taken literally; it was stated to include even the sides of the public domain, areas that are adjacent to the public domain but not actually part of it. Since the multitudes do not crowd there, one who is standing there acquires an item that is in his four square cubits.

[298] § And Reish Lakish says another halakha in the name of Abba Kohen Bardela: A minor girl does not have the ability to acquire property by means of her courtyard, and she does not have the ability to acquire property by means of her four square cubits. And Rabbi Yoḥanan says in the name of Rabbi Yannai that she has the ability to acquire property by means of her courtyard, and she has the ability to acquire property by means of her four square cubits.

[299] The Gemara asks: With regard to what do they disagree? The Gemara explains: One Sage, Rabbi Yannai, holds that placing an item in a courtyard is included as a valid means of acquisition due to the fact that it acts as her hand. Just as a minor girl has the ability to acquire property with her hand, she also has the ability to acquire property by means of her courtyard. And one Sage, Abba Kohen Bardela, holds that placing an item in a courtyard is included as a valid means of acquisition due to the option of acquiring property via agency; and just as a minor girl has no power of agency, as a minor cannot appoint an agent, she does not have the ability to acquire property by means of her courtyard either.

[300] The Gemara asks: Is there anyone who says that a courtyard is included as a valid means of acquisition due to the option of acquiring property via agency? But isn’t it taught in a baraita: 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)” From the term “in his possession [beyado],” 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? 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.

301 The Gemara explains: And if it enters your mind that a courtyard is included as a valid means of acquisition due to agency, if so, we have found a case where there is agency for a transgression, i.e., theft. But we maintain that there is no agency for transgression. If one sends an agent to violate a transgression on his behalf, the agent is liable for the transgression and is not considered to be acting on behalf of the one who sent him.

302 Ravina said: That baraita poses no problem, as where do we say that there is no agency for transgression? It is where the agent himself is subject to liability for transgression. Consequently, the agent is liable, not the one who sent him. But in the case of a courtyard, which is not subject to liability, its sender, i.e., its owner, is liable.

303 The Gemara asks: If that is so, then in a case of one who says to a woman or a slave: Go out and steal for me, is the one who sent them indeed liable, since they are not subject to liability? Married women and slaves have no property of their own from which one could collect payment.

304 The Gemara answers: You can say in response: A woman and a slave are not comparable to a courtyard, as they are subject to liability if they steal; and only now, in any event, they do not have the means to pay. This is as we learned in a mishna (Bava Kamma 87a) concerning a married woman or Canaanite slave who injured another person: If the woman becomes divorced or the slave becomes emancipated, and they then have their own money, they are liable to pay for the damage they inflicted. Evidently, although it is not possible to collect payment from them, they are liable for their actions.

305 Rav Samma stated a different resolution to the difficulty based on the baraita: Where do we say that there is no agency for transgression? It is specifically in a case where if the agent wants to execute his assignment he can do so, and if he wants to refrain from executing it he can also opt to not do it. But in the case of a courtyard, where one places items without its consent, its sender, i.e., its owner, is liable.

306 The Gemara asks: What is the practical difference between the answers of Ravina and Rav Samma? The practical difference between them is in the case of a priest who said to an Israelite: Go out and betroth a divorced woman for me. It is prohibited for a priest to betroth a divorcée, while it is permitted for an Israelite to do so. Alternatively, the difference is in the case of a man who said to a woman: Round the corners of the head of a minor boy for me. Rounding the corners of a man’s head, and a man having the corners of his head rounded, are prohibited in the verse: “You shall not round the corners of your head” (Leviticus 19:27), but they are prohibited only for men and not for women.

307 The Gemara explains: According to the formulation in which it was said that anywhere that if the agent wants to execute his assignment he can do so and if he wants to refrain from executing it he can opt to not do it the one who sent him is not liable for the transgression but rather the agent is liable, in these cases too, since if the agent wants to execute his assignment he can do so, and if he wants to refrain from executing it he can opt to not do it, the one who sent them is not liable. But according to the formulation in which it was said that wherever an agent is not subject to liability the one who sent him is liable, in these cases too, since the agents are not subject to liability, the one who sent them is liable.

[308] The Gemara asks about the explanation of the opinion of Abba Kohen Bardela: But is there anyone who says that placing an item in a courtyard is not included as a valid means of acquisition due to the fact that it acts as her hand? But isn't it taught in a baraita: From the verse: "And he writes her a scroll of severance, and he gives it in her hand" (Deuteronomy 24:1), I have derived only that a woman is divorced if her husband places the bill of divorce in her hand. From where is it derived that even if he places it on her roof, in her courtyard, or in her enclosure, she is divorced? The verse states: "And he gives," indicating that she is divorced in any case. Apparently one's courtyard is considered an extension of his hand with regard to acquiring property, in this case, the bill of divorce.

[309] The Gemara answers: With regard to a bill of divorce everyone agrees that placing an item in a courtyard is included as a valid means of acquisition due to the fact that it acts as her hand. When they disagree, it is with regard to acquiring a found item that was discovered in her courtyard. One Sage, Rabbi Yannai, holds that

[310] we derive the halakha with regard to acquiring a found item from the halakha with regard to a bill of divorce, and one Sage, Abba Kohen Bardela, holds that we do not derive the halakha with regard to a found item from the halakha with regard to a bill of divorce.

[311] And if you wish, say instead that with regard to a minor girl, everyone agrees that we derive the halakha with regard to a found item from the halakha with regard to a bill of divorce, and she acquires an ownerless item that is found in her courtyard. And here they disagree with regard to whether a minor boy acquires an item that is placed in his courtyard.

[312] One Sage, Rabbi Yannai, holds that we derive the halakha with regard to a minor boy from the halakha with regard to a minor girl, as there should be no difference between them with regard to the halakhot of acquisition. And one Sage, Abba Kohen Bardela, holds that we do not derive the halakha with regard to a minor boy from the halakha with regard to a minor girl; only a minor girl acquires items by means of her courtyard, as the Torah includes this mode of acquisition with regard to acquiring a bill of divorce.

[313] And if you wish, say instead that there is no dispute here at all. Rather, one Sage, Abba Kohen Bardela, said one statement, that a minor girl is divorced by her husband placing a bill of divorce in her courtyard, and one Sage, Rabbi Yannai, said another statement, that a minor boy or girl does not acquire an item that is found in his or her courtyard; and they do not disagree.

[314] MISHNA: If one saw people running after a found ownerless animal, e.g., after a deer crippled by a broken leg, or after young pigeons that have not yet learned to fly, which can be caught easily, and he said: My field has effected acquisition of this animal for me, it has effected acquisition of it for him. If the deer were running in its usual manner, or the young pigeons were flying, and he said: My field has effected acquisition of this animal for me, he has said nothing, as one's courtyard cannot effect acquisition of an item that does not remain there on its own.

[315] GEMARA: Rav Yehuda says that Shmuel says: And this acquisition mentioned in the mishna is effective specifically in a case where the owner is standing next to his field at the time of the acquisition, so that it has the halakhic status of a secured courtyard.

[316] The Gemara raises a difficulty: But shouldn't his field effect acquisition of the animal for him even without him standing next to it? As Rabbi Yosei, son of Rabbi Ḥanina, says: A person's courtyard effects acquisition of property for him even without his knowledge.

317 The Gemara answers: This statement applies only to a secured courtyard, where items remain in the courtyard without supervision. But with regard to an unsecured courtyard, if the owner is standing next to his field, yes, it effects acquisition of ownerless items on his behalf, but if he is not, it does not effect acquisition of items on his behalf.

318 The Gemara asks: And from where do you say that in the case of an unsecured courtyard, if the owner is standing next to his field, yes, it effects acquisition of ownerless items on his behalf, but if he is not, it does not effect acquisition of items on his behalf?

319 As it is taught in a baraita: There is a case where a landowner was standing in the town and saying: I know that my laborers forgot a sheaf that I have in the field, which I had intended for the laborers to bring in, but since I remember it, it shall not be considered a forgotten sheaf, which must be left for the poor. Then, the landowner himself forgot about the sheaf. In this case, one might have thought that it is not considered a forgotten sheaf. To counter this, the verse states: "When you reap your harvest in your field, and have forgotten a sheaf in the field, you shall not go back to fetch it; it shall be for the stranger, for the fatherless, and for the widow" (Deuteronomy 24:19). It is derived from here that the phrase: "And have forgotten" applies "in the field," but not in the town.

320 The Gemara clarifies: This baraita itself is difficult. First you said that one might have thought that it is not considered a forgotten sheaf, so apparently the tanna seeks to prove that it is considered a forgotten sheaf. And then the baraita adduces the derivation that the phrase "and have forgotten" applies only "in the field," but not in the town, which apparently means that a sheaf forgotten by the owner while he is in the town is not considered a forgotten sheaf.

321 Rather, isn't this what the tanna is saying: In a case where the owner is in the field, if the sheaf was forgotten at the outset, it is considered a forgotten sheaf; but if it was remembered at first and was ultimately forgotten, it does not assume the status of a forgotten sheaf? What is the reason for this distinction? The reason is that since he is standing in the field, beside the sheaf, his field is tantamount to his courtyard, and his courtyard effects acquisition of the sheaf for him once he remembers it.

322 But in a case where the owner is in the town, even if the sheaf was remembered and ultimately forgotten, it is considered a forgotten sheaf and must be left for the poor. What is the reason for this? It is because the owner is not beside it, which is necessary for his courtyard to effect acquisition of the sheaf for him. Evidently, an item that is in a person's courtyard is acquired by him only if he is standing next to the courtyard.

323 The Gemara rejects this proof: From where can it be proven that this is the reason? Perhaps the baraita should be understood in a different manner: It is a Torah edict that if the owner is in the field, it is considered a forgotten sheaf, but if the owner is in the town, it is not considered a forgotten sheaf and does not need to be left for the poor. Accordingly, the distinction would not be derived from the halakhot of acquisition.

324 The Gemara responds that the verse states: "You shall not go back to take it" (Deuteronomy 24:19), which is interpreted to include sheaves forgotten while the owner is in the town. Evidently, there is no fundamental difference between a town and the field with regard to the halakhot of forgotten sheaves; rather, the distinction is due to the fact that one cannot acquire a sheaf by means of his courtyard if he is not standing next to the courtyard.

[325] The Gemara challenges: This phrase is necessary to impose a prohibition upon one who takes his sheaf after he forgot it, instead of leaving it for the poor. It is therefore not superfluous and cannot be interpreted as including an additional case.

[326] The Gemara answers: If so, if the verse serves only that purpose, let the verse say: You shall not take it. What is added by the phrase: “You shall not go back to take it”? It is written to include sheaves forgotten while the owner is in the town.

[327] The Gemara challenges: But the phrase “you shall not go back” is still necessary for that which we learned in a mishna (Pe’a 7:4): While a landowner collects the sheaves from his field, any sheaf that remains before him, as he has not reached it yet, does not assume the status of a forgotten sheaf, even if he has forgotten about its existence. Any sheaf that is already behind him has the status of a forgotten sheaf, as the prohibition of: You shall not go back, applies.

[328] This is the principle: Any sheaf to which the prohibition of: You shall not go back, applies, as one would need to retrace his steps in order to retrieve the sheaf, assumes the status of a forgotten sheaf; and any sheaf to which the prohibition of: You shall not go back, does not apply, i.e., a sheaf that one has yet to reach, does not assume the status of a forgotten sheaf. The phrase “You shall not go back” is apparently necessary to teach this halakha, and it cannot be interpreted as including a case where the owner is in the town.

[329] Rav Ashi said that the inclusion of this case is derived from another phrase in the verse. The verse states: “It shall be” (Deuteronomy 24:19), which is interpreted to include sheaves forgotten while the owner is in the town. Therefore, the Gemara’s initial interpretation of the baraita is accepted, leading to the conclusion that the distinction between a case where the owner is in the field and a case where he is in the town is due to the halakha that one’s courtyard can effect acquisition of property for him only if he is next to the courtyard, as Rav Yehuda said in the name of Shmuel.

[330] And Ulla also says that the acquisition mentioned in the mishna is effective specifically in a case where the owner is standing next to his field. And Rabba bar bar Ḥana also says that the acquisition is effective specifically in a case where he is standing next to his field.

[331] Rabbi Abba raised an objection to Ulla from that which is taught in a mishna (Ma’aser Sheni 5:9): There was an incident involving Rabban Gamliel and other Elders, who were traveling on a ship. Since he remembered that he had not tithed the produce of his fields, Rabban Gamliel said to the others: One-tenth of my produce, which I will measure out in the future and separate from my produce, is given to Yehoshua ben Ḥananya, who is a Levite and is entitled to receive the first tithe,

[332] and the place of the tithe is rented to him. Rabbi Yehoshua paid him a token sum to rent the field, which presumably became the equivalent of his courtyard, and thereby acquired the tithe. And another one-tenth that I will measure out in the future and separate from my produce as the poor man’s tithe is given to Akiva ben Yosef so that he will acquire it for the poor, and its place is rented to him.

[333] Rabbi Abba continued: But were Rabbi Yehoshua and Rabbi Akiva standing next to Rabban Gamliel’s field then? All of them were on the ship. Apparently, one’s courtyard effects acquisition for him even when he is not standing next to it.

[334] Ulla said to him: This one of the Sages seems like one who has not studied halakha. Ulla dismissed the question entirely, as he deemed it unworthy of consideration.

335 When Rabbi Abba came to Sura, he related the discussion to the local scholars, saying to them: This is what Ulla said, and this is how I challenged him. One of the Sages said to him: Rabban Gamliel transferred ownership of the movable property, the tithes, to them by means of renting them the land. The transaction concerning the tithes was effected not by causing the location of the produce to become the equivalent of a courtyard belonging to Rabbi Yehoshua and Rabbi Akiva, but rather by employing the principle that movable property can be acquired together with the acquisition of land. The Gemara comments: Rabbi Zeira accepted this response to Rabbi Abba's objection, but Rabbi Abba did not accept it.

336 Rava said: Rabbi Abba did well by not accepting this response, because if Rabban Gamliel had intended to transfer his ownership of the tithes to Rabbi Yehoshua and Rabbi Akiva, did they not have a cloth with which to acquire the tithes from him by means of a symbolic exchange? They could have acquired the tithes through symbolic exchange without renting the land. Rather, clearly the tithes were not considered the property of Rabban Gamliel, as he owned only the benefit of discretion, i.e., the benefit accrued from the option of giving the tithes to whichever Levite or poor person that he chose, and such benefit is not considered property that can be acquired by means of a symbolic exchange. Here, too, the transaction was clearly effected by means of a courtyard, as benefit of discretion is not property that can be acquired by means of acquiring land. Therefore, Rabbi Abba's explanation must be correct, and one's courtyard effects acquisition for him even when he is not standing next to it.

337 The Gemara rejects Rava's reasoning: But that is not so. With regard to gifts to which members of the priesthood are entitled, and similarly with regard to tithes that are given to Levites and to the poor, the concept of giving is written in the Torah: "And have given it to the Levite, to the stranger, to the fatherless, and to the widow" (Deuteronomy 26:12). These gifts must be given and not sold or bartered. Therefore, since exchange is a form of buying and selling, it is an inappropriate mode of acquisition with regard to tithes. By contrast, transferring ownership of movable property by means of transferring ownership of land is a powerful form of giving. Consequently, Rabban Gamliel could not give them the tithes by means of a symbolic exchange using a cloth, but instead had to give it to them along with land. Therefore, since the transaction was not effected by means of a courtyard, it poses no difficulty to Ulla's opinion.

338 Rav Pappa said: Even if Rabbi Yehoshua and Rabbi Akiva acquired the tithes by means of a courtyard, this poses no difficulty to Ulla's opinion. Since the tithes were not ownerless items, but rather another mind, i.e., Rabban Gamliel, transferred their ownership to Rabbi Yehoshua and Rabbi Akiva, it is different, and the recipients did not need to stand next to the courtyard.

339 And from where do you state this distinction? As we learned in the mishna: If one saw people running after a found ownerless animal, and said: My field has effected acquisition of this animal for me, it has effected acquisition of it for him. And Rabbi Yirmeya says that Rabbi Yoḥanan says that this halakha is true only in a case where he would be able to run after them and catch them. And Rabbi Yirmeya raises a dilemma: Does one acquire animals that are given to him as a gift in such a scenario? Rabbi Abba bar Kahana accepted the premise of the dilemma of Rabbi Yirmeya, and ruled that in the case of a gift one acquires the animals even if he would not be able to run after them and catch them. What is the reason for this distinction? Is it not because when another mind transfers

their ownership, the halakha is different, in that the courtyard effects acquisition of the items with fewer limitations? This supports Rav Pappa’s explanation.

340 Rav Shimi said to Rav Pappa: But what about the case of a bill of divorce, where another mind, the husband, transfers its ownership to the wife, and nevertheless Ulla says with regard to one who threw a bill of divorce into his wife’s house or courtyard: But it is a valid divorce only if she is standing next to her house or next to her courtyard? Rav Pappa responded: A bill of divorce is different, as it is possible to give it to one’s wife even against her will.

341 Rav Sheshet, son of Rav Idi, objects to this response: But is it not an a fortiori inference? If in the case of a bill of divorce, which is valid even if it is given to the wife against her will, nevertheless if she is standing next to her house or next to her courtyard she does acquire the bill of divorce, and if not she does not acquire it, then in the case of a gift, which one can receive only willingly, is it not all the more so correct that the recipient must be next to his courtyard for the transaction to take effect?

342 Rather, Rav Ashi said that the distinction between the cases of a gift and a bill of divorce should be explained as follows:

343 One’s courtyard is included as a valid means of acquisition due to the fact that it acts as his hand; but it is no less effective than agency. Therefore, with regard to a bill of divorce, which is considered detrimental to the wife, one cannot transfer it to her by placing it in her courtyard in her absence, as one cannot act against the interests of a person unless it is in his presence. By contrast, with regard to a gift, which is beneficial for the recipient, one can give it to him by placing it in his courtyard in the recipient’s absence, as one can act in a person’s interest in his absence.

344 § The Gemara returns to discuss the matter itself. The mishna teaches: If one saw people running after a found ownerless animal, and said: My field has effected acquisition of this animal for me, it has effected acquisition of it for him. Rabbi Yirmeya says that Rabbi Yoḥanan says: And this halakha is true only in a case where he would be able to run after them and catch them. Rabbi Yirmeya raises a dilemma: Does one acquire animals that are given to him as a gift in such a scenario? Rabbi Abba bar Kahana accepted the premise of the dilemma of Rabbi Yirmeya, and ruled that in the case of a gift one acquires the animals even if he would not be able to run after them and catch them.

345 Rava raises a dilemma: If one threw a purse through this entrance of a house and it went through the house and exited through another entrance, what is the halakha? Does the owner of the house acquire the purse during the course of its flight? The dilemma is: Is an item in the airspace [avir] of a courtyard that will not eventually come to rest in the courtyard itself regarded as though it has come to rest, or is it not regarded as though it has come to rest?

346 Rav Pappa said to Rava, and some say that it was Rav Adda bar Mattana who said this to Rava, and some say that it was Ravina who said this to Rava: Isn’t this the same as the halakha in the mishna? As it is stated: If one saw people running after a found ownerless animal, and said: My field has effected acquisition of this animal for me, it has effected acquisition of it for him. And Rabbi Yirmeya says that Rabbi Yoḥanan says: And this halakha is true only in a case where he would be able to run after them and catch them. Rabbi Yirmeya raises a dilemma: Does one acquire animals that are given to him as a gift in such a scenario? Rabbi Abba bar Kahana accepted the premise of the dilemma of Rabbi Yirmeya, and ruled that in the case of a gift one acquires the animals even if he would not be able to run after them and catch them.

[347] Rava said to him: Are you saying that a purse flying through the air is comparable to an item that is rolling, i.e., moving on the ground? A rolling item is different, as it is regarded as though it has come to rest. At any given instant throughout its movement, the item rests on the ground. Therefore, the dilemma cannot be resolved from the mishna.

[348] MISHNA: With regard to the found item of one's minor son or daughter, i.e., an ownerless item that they found; the found item of his Canaanite slave or maidservant; and the found item of his wife, they are his. By contrast, with regard to the found item of one's adult son or daughter; the found item of his Hebrew slave or maidservant; and the found item of his ex-wife, whom he divorced, even if he has not yet given her payment of the marriage contract that he owes her, they are theirs.

[349] GEMARA: Shmuel says: For what reason did the Sages say that the found item of one's minor son or daughter belongs to his father? It is because the minor does not intend to acquire it for himself, as when he finds it, he runs with it to his father and does not retain it in his possession.

[350] The Gemara asks: Is this to say that Shmuel holds that a minor does not have the capability of acquiring property for himself by Torah law? But isn't it taught in a baraita: With regard to one who hires a salaried laborer to harvest his field, the son of the laborer may glean fallen stalks from behind the laborer like all poor people who have a right to the stalks left in the field. But if one hires a laborer as a sharecropper, whether the laborer receives one-half, one-third, or one-quarter of the produce, his son may not glean stalks after him, as the laborer himself is considered a partial owner of the field and is consequently not considered poor. Rabbi Yosei says: In both this case and that case the laborer's son and wife may glean after him. And Shmuel says that the halakha is in accordance with the opinion of Rabbi Yosei.

[351] Granted, if you say that a minor has the capability of acquiring property for himself, Shmuel's opinion is understood, as when the son gleans stalks, he gleans them for himself and acquires them, and his father subsequently acquires them from him as a gift. Since the minor has no property of his own, his status is that of a poor person and it is permitted for him to glean stalks. But if you say that a minor does not have the capability of acquiring property for himself, then when he gleans the stalks, he gleans them for his father. Since his father is considered wealthy and is not entitled to the gleanings because he owns a portion of the produce, why may his wife and son glean stalks after him?

[352] The Gemara answers: In Shmuel's explanation, Shmuel is stating the reason of the tanna of our mishna, but he himself does not hold accordingly. Rather, Shmuel holds in accordance with the opinion of Rabbi Yosei that a minor can acquire property for himself.

[353] The Gemara asks: And does Rabbi Yosei hold that a minor has the capability of acquiring property by Torah law? But didn't we learn in a mishna (Gittin 59b): With regard to the found items of a deaf-mute, an imbecile, or a minor, i.e., lost items that they found, although they are not considered to be halakhically competent and are unable to acquire found items by Torah law, taking such items from them is considered robbery, by rabbinic law, for the sake of the ways of peace. Rabbi Yosei says: This is full-fledged robbery.

[354] And Rav Ḥisda says that Rabbi Yosei means that it is full-fledged robbery by rabbinic law. And the practical difference between the opinion of the first tanna and Rabbi Yosei's opinion is that according to Rabbi Yosei, if the robber refuses to return the stolen item, it is appropriated by the

judges and returned to its owner. In any event, it is evident from here that Rabbi Yosei also holds that a minor cannot acquire property for himself by Torah law.

355 Rather, Abaye rejected the above explanation of Rabbi Yosei's opinion in the baraita with regard to gleaning, and said: The reason that according to Rabbi Yosei a sharecropper's son may glean after him despite the fact that he does not acquire property by Torah law is that in such a case the Sages rendered the field like one through which the last gleaners have walked. Once the poor people have finished gleaning stalks from a field, even wealthy people are permitted to collect whatever remains. In this case, since the sharecropper's son is walking behind him, the poor people themselves dismiss the notion of gleaning in this field from their minds; they assume that the son of this sharecropper is gleaning for him and that they will therefore not find any gleanings in this field. Since the poor people themselves have finished taking stalks from the field, the sharecropper's son can glean for his father.

356 Rav Adda bar Mattana said to Abaye: But how is it permitted for one to allow his son to follow him in the field, thereby causing all the poor people to leave? Is a person permitted to have a lion crouch in his field so that the poor people will see it and flee?

357 Rather, Rava stated an alternative explanation:

358 The Sages instituted an ordinance rendering a son of the sharecropper, who does not have the right to acquire property, like one who has the right to acquire property; i.e., they granted him a special right to acquire the gleanings. What is the reason for this ordinance? This arrangement is satisfactory for the poor people themselves, so that when they are hired under similar terms themselves, their sons will be able to glean the stalks after them.

359 The Gemara comments: And Shmuel, in his above explanation of the mishna, disagrees with the opinion of Rabbi Ḥiyya bar Abba. As Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: The word adult in the mishna is not referring to an actual adult, and the word minor is not referring to an actual minor. Rather, with regard to an adult son who is dependent on the food of his father's table for support, this is considered a minor in the context of the mishna. It is appropriate for one who is reliant on his father's support to give items that he finds to his father. And with regard to a minor son who is not dependent on the food of his father's table for support, this is considered an adult in this context, and any lost item that he finds is his.

360 § The mishna teaches: The found item of his Hebrew slave or maidservant, it is theirs. The Gemara asks: Why does it not belong to the master? Let the slave be considered merely a laborer; and it is taught in a baraita: The found item of a laborer, i.e., a lost item that he found, belongs to him and not to his employer. In what case is this statement, that the item belongs to the laborer, said? It is said when the employer told the laborer to perform a specific task, e.g., he said to him: Weed for me today, or: Till for me today. Since the employer specified the task that he hired the laborer to perform, and that task did not include finding lost items, the laborer has rights to the item that he himself found.

361 The baraita continues: But if the employer said to the laborer: Work for me today, without specifying the nature of the work, the found item is the employer's, as finding ownerless items is included within the general category of work. Since a Hebrew slave is duty-bound to perform all types of labor for his master, why doesn't his master acquire all items that he finds?

[362] Rabbi Ḥiyya bar Abba said that Rabbi Yoḥanan said: Here we are dealing with a slave who pierces pearls [margaliyyot], which is such a profitable activity that his master would not want to transfer him to another line of work even for a moment. Therefore his status is like that of a laborer who is hired to perform a specific task.

[363] Rava said: We are dealing with a case where the slave lifts a found item along with performing his work. Since there is no need for him to interrupt his work in order to take the item, his taking the item costs his master nothing, so it belongs to the slave.

[364] Rav Pappa said: An item found by a laborer belongs to his employer only in a case where he hired him specifically to collect found items. The Gemara asks: But what are the circumstances in which one would hire a person to find ownerless items? The Gemara answers: It is in a case where a lake flooded its shore with fish, and after the water receded, the fish remained on the shore. One would hire laborers to gather those fish.

[365] § The mishna teaches that an item found by a Hebrew maidservant belongs to her. The Gemara asks: What are the circumstances of this maidservant? If the reference is to a maidservant who has grown two pubic hairs, which is a sign of adulthood, why is she with her master? A Hebrew maidservant who reaches adulthood is emancipated.

[366] And if she is a maidservant who has not yet grown two pubic hairs and is still considered a minor, then if her father is still alive, the found item is her father's, and if her father is not still alive, she should have gone free with the death of her father.

[367] As Reish Lakish says: A Hebrew maidservant acquires herself from the authority of her master through the death of her father, and this halakha is derived from an a fortiori inference: Signs indicating puberty release her from her master's authority but do not release her from her father's authority, as although she shows signs indicating puberty she remains under her father's authority with regard to certain matters. Therefore, is it not logical that her father's death, which releases her entirely from the father's authority, would release her from the authority of her master? Clearly, there is no situation where a Hebrew maidservant can acquire an item that she finds. The Gemara answers: But wasn't the opinion of Reish Lakish conclusively refuted? It is not accepted as halakha.

[368] The Gemara suggests: Let us say that there is a conclusive refutation of his opinion from this mishna as well. If a Hebrew maidservant is emancipated once her father dies, there is no possible situation in which a Hebrew maidservant who finds an ownerless item acquires it for herself.

[369] The Gemara rejects this suggestion: This mishna is not a refutation of Reish Lakish's opinion, as perhaps it is actually referring to a case where the father is alive. And what is the meaning of the phrase: They are theirs? It does not mean that the item belongs to the maidservant; rather it is stated in order to exclude the possibility that it belongs to her master. The maidservant acquires the found item, and through her, her father acquires it.

[370] § The mishna teaches that the found item of his ex-wife, whom he divorced, belongs to her, even if he has not yet given her payment of the marriage contract that he owes her. The Gemara asks: If he divorced her, it is obvious that the item is hers. Why does the mishna specify this?

[371] The Gemara answers: Here we are dealing with a case where there is uncertainty whether she is divorced or whether she is not divorced. As Rabbi Zeira says that Shmuel says: Everywhere that the Sages said that there is uncertainty whether a woman is divorced or whether she is not divorced, her

husband remains obligated to provide for her sustenance. Furthermore, the Sages instituted an ordinance that an item found by a wife belongs to her husband, and that this right is reciprocal to his obligation to provide for her sustenance. Therefore, one might reason that here too, since the husband is still obligated to provide for his wife he retains the right to items that she finds.

372 But this is not the halakha, as what is the reason that the Sages said that an item found by a wife belongs to her husband? It is so that she should not be subject to her husband's enmity due to the fact that he is supporting her and yet she keeps any item that she finds. Here, however, let her be subject to much enmity. He should resolve the uncertainty and finalize the divorce as soon as possible, and perhaps this enmity will facilitate reaching that goal.

373 MISHNA: With regard to one who found promissory notes, if they include a property guarantee for the loan he may not return them to the creditor, as, if he were to return them, the court would then use them to collect repayment of the debts from land that belonged to the debtor at the time of the loan, even if that land was subsequently sold to others. If they do not include a property guarantee, he returns them to the creditor, as in this case the court will not use them to collect repayment of the debt from purchasers of the debtor's land. This is the statement of Rabbi Meir.

374 And the Rabbis say: In both this case and that case he should not return the promissory notes to the creditor, as, if he were to return them, the court would in any event use them to collect repayment of the loan from purchasers of the debtor's land.

375 GEMARA: With what case are we dealing? If we say it is a case when the liable party, i.e., the debtor, admits that he wrote the promissory notes and that the debts have not yet been repaid, then when the promissory notes include a property guarantee, why should the finder not return them to the creditor? Doesn't the debtor admit to the debts? And if it is in a case when the debtor does not admit to the debts, claiming that he dropped the promissory notes after he repaid his debts, then even when the promissory notes do not include a property guarantee, why should the finder return them to the creditor? Granted, the creditor cannot collect these debts from liened property that has been sold, but he can collect from unsold property. The returning of the promissory note would be disadvantageous to the borrower, who claims that he repaid the loan.

376 The Gemara answers: Actually, the mishna is referring to a case when the liable party admits to the debts, and here, this is the reason that the finder may not return the promissory notes: It is that we are concerned that perhaps the debtor wrote in the promissory note that he would borrow the money in Nisan but he did not actually borrow the money until Tishrei, and between Nisan and Tishrei he sold land. These lands are not liened to the debt, as the liability to repay the loan took effect only when he actually borrowed the money. And the creditor will come to repossess the land that was sold between Nisan and Tishrei from the purchasers, unlawfully.

377 The Gemara asks: If so, if the court must be concerned that the date on a promissory note predates the actual loan, we should likewise be concerned that all promissory notes that come before us to the court are perhaps predated.

378 The Gemara answers: The credibility of all promissory notes in general has not been compromised, as they remain in the creditor's possession, which is the correct location in the case of an outstanding loan. The credibility of these promissory notes has been compromised by the fact that they were lost.

379 The Gemara asks: But with regard to that which we learned in a mishna (Bava Batra 167b): One may write a promissory note for a borrower even if the lender is not with him because it is the borrower who assumes liability based on the note, the question arises: How can one write this promissory note ab initio? Let us be concerned that perhaps the borrower wants to write the note as he intends to borrow money in Nisan, but will ultimately not borrow the money until Tishrei, and the lender might then come to repossess the land that the borrower sells between Nisan and Tishrei from the purchasers, unlawfully.

380 Rav Asi said:

381 This mishna is referring not to one who finds an ordinary promissory note but to one who finds deeds of transfer. This refers to a promissory note that establishes a lien on the debtor's property from the date the note is written, regardless of when he borrows the money. Because the debtor obligated himself from that date, the creditor has the legal right to repossess his land from any subsequent purchasers.

382 The Gemara asks: If that is so, the following difficulty arises: How will one account for the ruling of the mishna here, which teaches that if the promissory notes include a property guarantee, the finder should not return them to the creditor; and we established that the reference is to a case when the debtor admits that he still owes the debt and that the promissory note should not be returned due to suspicion that perhaps the debtor wrote it with the intention to borrow the money in Nisan but did not actually borrow it until Tishrei, and therefore, if the promissory note is returned to the creditor he will come to repossess the land from the purchasers unlawfully. If Rav Asi's explanation is correct, why shouldn't the finder return the document?

383 The Gemara elaborates: Let us see what the possibilities are. If the reference is to a deed of transfer, didn't the debtor obligate himself that his property can be collected for payment of the loan from the date that the deed of transfer was written? Conversely, if the reference is to a promissory note that is not a deed of transfer, there is no room for concern, as you said that in such a case, when the lender is not present together with the borrower, we do not write such a document.

384 The Gemara answers: Rav Asi could have said to you: Although we do not write promissory notes that are not deeds of transfer when the lender is not present together with the borrower, with regard to the case in the mishna it can be explained that since the promissory note was dropped, its credibility was compromised, and consequently we are concerned that perhaps it happened to have been written in the absence of the lender, deviating from the standard procedure.

385 Abaye stated an alternative explanation of the mishna that allows one to write a promissory note for a borrower in the absence of the lender: The document's witnesses, with their signatures, acquire the lender's lien on the borrower's land on the lender's behalf, despite the fact that the loan did not occur yet. And this applies even with regard to promissory notes that are not deeds of transfer.

386 Abaye offered this explanation because Rav Asi's explanation was difficult for him; since you said with regard to promissory notes that are not deeds of transfer that we do not write them when the lender is not present together with the borrower, there is no reason for concern that perhaps in the case of a found promissory note it happened to be written in the lender's absence.

387 The Gemara asks: But how can Abaye's opinion be reconciled with that which we learned in a mishna (18a): If one found bills of divorce, or bills of manumission of slaves, or wills [deyaitiki], or

deeds of gift, or receipts, he may not return them to the people who are presumed to have lost them. The reason is that perhaps they were only written and not delivered, because the one who wrote them subsequently reconsidered about them and decided not to deliver them. The Gemara asks: If he reconsidered and decided not to deliver them, what of it? Didn't you say that a document's witnesses, with their signatures, acquire it on behalf of the recipient? If so, why shouldn't it be returned to him?

[388] The Gemara answers: This statement, that a creditor acquires the lien on the debtor's land immediately when the witnesses sign the document, applies only in a case where the document came into the creditor's possession; but in a case where the document did not come into his possession, as it was never given to him, we do not say that.

[389] The Gemara asks: Rather, how can the mishna be reconciled with Abaye's opinion? As it teaches: With regard to one who found promissory notes, if they include a property guarantee, he may not return them to the creditor. And we established that the mishna is referring to a case when the liable party, i.e., the debtor, admits to the debts, and nevertheless the finder may not return the note due to the suspicion that perhaps he wrote the promissory note with the intention to borrow the money in Nisan but he did not actually borrow it until Tishrei.

[390] The Gemara elaborates: Granted, according to Rav Asi, who says that the halakha that a promissory note may be written for a borrower in the absence of the lender applies only with regard to deeds of transfer, the mishna can be established as referring to promissory notes that are not deeds of transfer, and it is as we stated above. But according to Abaye, who says that a document's witnesses, with their signatures, acquire the lien on the lender's behalf, what is there to say? Why shouldn't one return the promissory notes even if they include a property guarantee for the loan?

[391] The Gemara answers that Abaye could have said to you that this is the reason for the ruling in the mishna: It is that the tanna suspects that there was repayment and collusion. Although the debtor admits his debt, he is suspected to be lying, as after he repaid the debt he might have colluded with the creditor to repossess land that he sold during the period of the loan, and the debtor and creditor would split the money between them.

[392] The Gemara asks: But according to Shmuel, who says that we do not suspect repayment and collusion, what is there to say? How can the mishna be explained? This works out well if Shmuel holds in accordance with the opinion of Rav Asi, who says that only in the case of deeds of transfer is it permitted to write a promissory note for a borrower in the absence of the lender. Accordingly, Shmuel can establish the mishna as referring to promissory notes that are not deeds of transfer. But if Shmuel holds in accordance with the opinion of Abaye, who says that a document's witnesses, with their signatures, acquire the lien on the creditor's behalf, what is there to say?

[393] The Gemara answers: Shmuel can establish the mishna as referring to a case when the purported liable party does not admit to the debt, and therefore the finder may not return the promissory notes to the creditor.

[394] The Gemara asks: If so, in a case when the promissory notes do not include a property guarantee, why must the finder return them to the purported creditor? Granted, the creditor cannot collect the debt from liened property that had been sold, but he can collect it from the debtor's unsold property, even though the debtor claims to be exempt.

[395] The Gemara answers: Shmuel conforms to his standard line of reasoning, as Shmuel says that Rabbi Meir would say: In the case of a promissory note that does not include a property guarantee, the creditor collects neither from liened property that has been sold nor from unsold property. Therefore, there is no harm in the finder returning the promissory note to the creditor.

[396] The Gemara asks: But since the creditor cannot collect the debt, why should the finder return the promissory note? For what purpose can the creditor use it? Rabbi Natan bar Oshaya says: The creditor can use it to cover the opening of his flask. Its only value is as a piece of paper.

[397] The Gemara asks: If the document has only the value of the paper, let the finder return it to the debtor, to cover the opening of the debtor's flask. The Gemara answers: The debtor is

[398] the one who says that these matters, the loan, never happened and that the promissory note is forged. Therefore, he has no claim to the paper on which the promissory note is written.

[399] § Rabbi Elazar says: The dispute in the mishna between Rabbi Meir and the Rabbis is in a case when the purported liable party does not admit to the debt. As, Rabbi Meir holds that with a promissory note that does not include a property guarantee, one can collect a debt neither from liened property that has been sold nor from unsold property. And the Rabbis hold that it is only from liened property that one cannot collect a debt using this promissory note but that one does collect a debt from unsold property. But in a case when the liable party admits to the debt, everyone agrees that the finder must return the promissory note, and we do not suspect the creditor and the debtor of engaging in repayment and collusion [veliknuneya] to the detriment of one who purchased land from the debtor.

[400] And Rabbi Yoḥanan says: The dispute is in a case when the liable party admits to the debt. As, Rabbi Meir holds that it is only from liened property that one cannot collect a debt using a promissory note that does not include a property guarantee, but one does collect a debt from unsold property. And the Rabbis hold that one collects a debt from liened property too. But in a case when the liable party does not admit to the debt, everyone agrees that the finder may not return the promissory note, as we suspect that perhaps there was repayment.

[401] It is taught in a baraita in accordance with the opinion of Rabbi Yoḥanan, and from it there is also a conclusive refutation of one element of the opinion of Rabbi Elazar and a conclusive refutation of two elements of the opinion of Shmuel.

[402] The baraita teaches: In a case where one found promissory notes and they include a property guarantee, even if both the creditor and the debtor agree about the existence of the debt, the finder should not return it to this creditor or to that debtor. If they do not include a property guarantee, then in a case when the debtor admits to the debt, one should return the promissory note to the creditor. But if the debtor does not admit to the debt, one should not return it to this creditor or to that debtor. This is the statement of Rabbi Meir.

[403] The baraita continues: As Rabbi Meir would say: With promissory notes that include a property guarantee, one can collect the debt from liened property; but with those that do not include a property guarantee, one collects the debt only from unsold property. And the Rabbis say: With both this type and that type of promissory note, one can collect the debt from liened property.

[404] This is a conclusive refutation of one element of the opinion of Rabbi Elazar, who says that according to Rabbi Meir, with a promissory note that does not include a property guarantee one can

collect a debt neither from liened property that has been sold nor from unsold property. And Rabbi Elazar also says that according to both Rabbi Meir and the Rabbis, we do not suspect that there is collusion between the debtor and the creditor.

405 And the baraita teaches that with a promissory note that does not include a property guarantee the creditor cannot collect a debt from liened property, but he can collect it from unsold property. And the baraita also teaches that according to the opinions of both Rabbi Meir and the Rabbis, we suspect that there is collusion between the debtor and the creditor, as it is taught that if one found promissory notes that include a property guarantee, even if both the creditor and the debtor agree about the existence of the debt, the finder should not return it to this creditor or to that debtor. Apparently, we suspect collusion. This refutes Rabbi Elazar's opinion that there is no suspicion of collusion.

406 The Gemara asks: But aren't these two elements of Rabbi Elazar's statement that are refuted by the baraita? Why was it stated above that only one element is refuted?

407 The Gemara answers: It is actually one element, as both elements have the same one reason; because Rabbi Elazar says that the dispute in the mishna is in a case when the liable party does not admit his debt, he explains Rabbi Meir's opinion in this manner, i.e., that a promissory note that does not include a property guarantee cannot be used to collect the debt even from unsold property.

408 The Gemara elaborates on the statement that the baraita serves as a conclusive refutation of two elements of the opinion of Shmuel: One element is like the element of the opinion of Rabbi Elazar that was refuted, as Shmuel also establishes the dispute in the mishna as referring to a case when the liable party does not admit to the debt, and the baraita states that in such a case there is no dispute.

409 And the other one is that which Shmuel says: If one found a deed of transfer in the marketplace, in which it is stipulated that the debtor transfers the rights to his property from the date that the document was signed, he must return it to its owner, and we do not suspect that there was repayment and that there is collusion between the creditor and the debtor.

410 There is a conclusive refutation of that statement as well, as the baraita here teaches: Even if they both agree, he should return it neither to this person nor to that person. Apparently, we suspect that there was repayment. And all the more so here, in the case of a deed of transfer, when the liable party does not admit that he owes money, the deed should certainly not be returned, as we suspect that there was repayment.

411 § Shmuel said: What is the reason for the opinion of the Rabbis, who say that one can collect a debt from liened property even if the promissory note does not include a property guarantee? They hold that omission of the property guarantee from the promissory note is a scribal error, as one would certainly not lend money without a property guarantee.

412 Rava bar Ittai said to Rav Idi bar Avin: Did Shmuel actually say this; i.e., that the omission of this clause is considered a scribal error? But doesn't Shmuel say that enhancement, superior-quality land, and a lien require consultation? When a scribe writes a deed of sale for a field he must ask the seller whether to write explicitly that if there is a lien on the field, and the field is then is repossessed from the buyer, in which case the seller must compensate the buyer for any enhancement of the value of the field that occurred while it was in his possession, that this compensation will be made from superior-quality land, and that he liens all of his land as security for this sale. This indicates that Shmuel holds that a property guarantee is not written in every promissory note.

413 The Gemara asks: Shall we say that the one who says this statement quoting Shmuel does not say that statement quoting Shmuel? Perhaps it is a dispute between the amora’im who transmitted the statements of Shmuel.

414 The Gemara answers: This is not difficult. Here, where Shmuel said that the omission of a property guarantee is a scribal error, it was with regard to a promissory note, as a person does not give away his money for nothing. When one lends his money, he requires a property guarantee. There, by contrast, where Shmuel said that a scribe must consult with the seller with regard to writing a property guarantee, it is with regard to a case of buying and selling land, as a person is apt to purchase land for a day. It is conceivable that the buyer is willing to risk that there is a prior lien on the land, thinking that even if he owns the property only for one day he can earn a profit.

415 As evidence of this distinction, the Gemara gives an example: It is like that incident in which Avuh bar Ihi purchased a loft from his sister. Her creditor came and repossessed the loft from him. He came before Mar Shmuel to file a claim against his sister. Shmuel said to him: Did she write you a guarantee in the deed of sale? He said to Shmuel: No. Shmuel said to him: If so, go to peace (see Berakhot 64a), as there is nothing that can be done. He said to Shmuel: But wasn’t it you, Master, who said that omission of the guarantee of the sale from the document is a scribal error? Shmuel said to him: This statement applies only to promissory notes, but with regard to deeds of buying and selling it does not apply, as a person is apt to purchase land for a day.

416 § Abaye said: Consider the case of Reuven, who sold a field to Shimon with a property guarantee, and Reuven’s creditor came and repossessed the field from Shimon, as he had a prior lien on the property. It is the halakha that Reuven can go and litigate with the creditor, and the creditor cannot say to him: I am not legally answerable to you since I am taking the field from Shimon. This is because Reuven can say to his creditor: That which you take from him comes back to me, as I sold the field to Shimon with a guarantee, so you cannot claim that I am not a legal party in this matter.

417 There are those who say that Abaye said: Even if Reuven sold the field to Shimon without a property guarantee, Reuven can dispute the legal claim in court, as he can say to the creditor: It is not amenable to me that Shimon would have a grievance against me for selling him property that was subsequently repossessed.

418 And Abaye said: Consider the case of Reuven, who sold a field to Shimon without a property guarantee, and disputants emerged disputing Reuven’s prior ownership of the field. As long as Shimon has not yet taken actual possession of the land,

419 he can withdraw from the transaction and is not required to pay for the land. Once he has taken possession of the land, he cannot withdraw, as Reuven, the seller, can say to him: The purchase of the land was like purchasing a tied sack whose content is unknown and might not be worth anything. Since you were aware of that and accepted it, as you purchased it without a guarantee, you cannot withdraw your purchase. From when is it that he has taken possession? It is from when he walks along the borders of the field to inspect them.

420 And there are those who say: Even if he bought the field with a property guarantee, the buyer cannot withdraw from the sale, as the seller can say to him: Show me your document of authorization to repossess, which a court provides to a buyer when the land he purchased is seized from him by a third party who demonstrated that it did not belong to the seller, and then I will pay you. I do not

wish to cancel the sale and reimburse you unless it is clear that the field is being taken from you legally.

421 § It was stated that with regard to a case of one who sells a field to another and it is found subsequently that it did not belong to the seller, and the rightful owner repossesses the field from the buyer and the buyer then demands reimbursement from the seller, Rav says that the buyer has the right to be repaid the money that he paid for the field, and he also has the right to compensation for the enhancement of the value of the field while it was in his possession. And Shmuel says that he has the right to the money, but he does not have the right to compensation for the enhancement.

422 The students raised a dilemma before Rav Huna: What is the halakha if the seller specified that the buyer would receive payment for any enhancement in the value of the field in the event that the field is taken by the rightful owners? Is the reason for the opinion of Shmuel because the seller did not specify that the buyer would receive the enhancement when he sold him the field, but here, in this case, he did specify it? Or perhaps Shmuel's reason is that since the buyer is reimbursed but the seller does not have the right to the land, i.e., he is not given back the land, the transaction appears to have been a loan, and therefore payment for enhancement of the field appears to be interest. Rav Huna said to them: Yes and no, and the matter was unclear to him.

423 It was stated that Rav Naḥman says that Shmuel says that he has the right to the money, but he does not have the right to the value of the enhancement, even if the seller specified in the deed of sale that he would compensate the buyer for the value of the enhancement in the event that the field was repossessed. What is the reason? Since the seller does not have the right to the land, the buyer appears to be standing and taking payment for the right to use his money, which is interest.

424 Rava raised an objection to the statement of Rav Naḥman: It is taught in a mishna (Gittin 48b) that one cannot appropriate liened property that has been sold as payment for consuming produce or for enhancement of land, cases that will be explained later, or for the sustenance of a man's wife and his daughters after his death, to which he committed in his marriage contract. This is despite the fact that each of these financial liabilities or commitments predated the sale of the land. These ordinances were instituted by the Sages for the betterment of the world, as these liabilities are not of a fixed amount, and the purchaser of the liened property cannot assess the risk he is assuming should some other person come to collect compensation from that property.

425 The mishna indicates that we do not appropriate liened property for these purposes, but we do appropriate unsold property. And in any event, it is taught in the mishna that one of these purposes is for the enhancement of land. What, is it not referring to a case where one purchases a field from a robber, in which case the field did not belong to the seller? And it says that the seller must pay the buyer the value of the field's enhancement, provided he has unsold property.

426 The Gemara responds: No, it is referring to a case of a creditor, where one sold a field and his creditor subsequently repossessed it from the buyer due to the seller's prior debt to him. In that case, the sale of the land was valid, and it does not appear to have been a loan. Therefore, the seller's payment of the enhancement does not appear to be interest.

427 The Gemara asks: If this mishna is referring to the case of a creditor, say the first clause of the mishna: One cannot appropriate liened property for consuming produce. This is apparently referring to a case where the field was full of unharvested produce and was appropriated from the buyer along with the produce. The buyer then claims payment for the value of the produce as well. And if the

reference is to the case of a creditor, does a creditor have the right to appropriate produce from the buyer? But doesn't Shmuel say that a creditor collects the value of the enhancement of the field? This indicates that he does collect the value of enhancement, but he does not collect the produce.

[428] Rather, it is obvious that the mishna is referring to the case of a robber, who stole the field and sold it, and a robbery victim, who recovers his field, including the produce, from the buyer. And from the fact that the first clause is referring to a robber and a robbery victim, the latter clause, i.e., the case of the enhancement of land, is also referring to a robber and a robbery victim. Rava's objection to Shmuel's opinion remains.

[429] The Gemara rejects the premise: Are the cases comparable? This case, with regard to consuming produce, is as it is, and that case, with regard to the enhancement of land, is as it is. The former case is referring to a case of robbery and the latter case is referring to the case of a creditor.

[430] The Gemara asks: But it is not taught that way in a baraita that elaborates on the mishna, stating: What is the case in which one appropriates property for enhancement of land? It is a case where one robbed another of a field and it is appropriated by the court from his possession. When he collects payment, he collects the principal, i.e., the value of the field itself, from liened property, and he collects the enhancement from unsold property.

[431] The Gemara asks: What are the circumstances of the case? If we say that the case is as it is taught in the baraita, which indicates that it is the robber who collects, from whom does the robber collect? Who owes him money? Rather, is it not referring to a case where one robbed another of a field and sold it to another person, i.e., to a third party, and that third party invested in the field and enhanced it? Accordingly, when the court appropriates the land from the purchaser, he collects the value of the enhancement from the unsold property of the robber who sold it to him. This interpretation poses a difficulty to Shmuel's opinion.

[432] The Gemara answers: Shmuel could have said to you: Did you not explain the baraita by adding information, i.e., that the robber sold the field to a third party? If so, you could also explain that rather than referring to a robber, it is referring to a creditor. This interpretation would accord with the opinion of Shmuel.

[433] The Gemara suggests: Come and hear another baraita that elaborates on the mishna and poses a difficulty to the opinion of Shmuel: What is the case in which one appropriates property for consuming produce? It is the case of one who robbed another of a field, and it is appropriated from his possession. When he collects payment, he collects the principal from liened property and he collects the produce from unsold property.

[434] The Gemara asks: What are the circumstances? If we say that the case is as it is taught in the baraita, which indicates that it is the robber who collects, from whom does the robber collect? Rather, is it not referring to a case where one robbed another of a field and sold it to yet another person, and that third person enhanced it?

[435] Rava said: With what are we dealing here? It is a case where one stole a field full of produce from another, and he consumed the produce and dug pits, ditches, and caves in the field, damaging it. When the robbery victim comes to collect the principal, the value of the field before it was damaged, he collects it from the robber's liened property. When the robbery victim comes to collect the value of the produce from the robber, he collects it from unsold property.

436 Rabba bar Rav Huna said: It is a case where

437 gentile thugs took the field from the robber by force due to previous dealings between them. In that case, when the robbery victim comes to collect the principal, he collects it from liened property, and when the robbery victim comes to collect payment for the produce, he can collect only from unsold property.

438 The Gemara explains: Rava did not state his explanation of the baraita in accordance with the explanation of Rabba bar Rav Huna, because the phrase: It is appropriated from his possession, indicates that the field was taken from him legally and not by thugs. And Rabba bar Rav Huna did not state his explanation of the baraita in accordance with the explanation of Rava, because the phrase: It is appropriated from his possession, indicates that the field is appropriated in its unadulterated form, and was not damaged.

439 Rav Ashi stated that the baraita teaches its rulings disjunctively. According to Rav Ashi, the baraita is referring to a case where one robbed another of a field while it was full of produce, and he consumed the produce and sold the field. When, after the true owner recovers the field from purchaser, the purchaser comes to collect the principal from the robber, i.e., the amount that he paid for the field, he collects it from the robber's liened property. When the robbery victim comes to collect payment for the produce, he collects only from unsold property.

440 The Gemara raises a difficulty: According to both Rava and Rabba bar Rav Huna, the money that the robber owes the robbery victim has the status of a loan by oral agreement, as it is not accompanied by documentation, and one who is owed a loan by oral agreement cannot collect from liened property.

441 The Gemara answers: Here we are dealing with a case where the robber stood trial for his robbery and was found guilty, and he subsequently sold the land. Since he sold it after his liability was well known, the debt is equivalent to one that is written in a promissory note, and can be collected from liened property.

442 The Gemara asks: If so, the owner should collect payment for the produce as well from liened property. The Gemara answers: It is referring to a case when the robber stood trial for the principal, but did not yet stand trial for the produce. The Gemara asks: And why was it stated without qualification? According to this explanation, the distinction is not between the principal and the produce but rather between debts for which the robber stood trial and those for which he did not stand trial. The Gemara answers: The normal way of things is that when a person files a claim, he first claims the principal and only afterward does he file claims with regard to other property, such as produce.

443 § The Gemara questions the statement that Rav Naḥman cited in Shmuel's name: But does Shmuel hold that one who buys land from a robber does not have the right to the value of the enhancement of the land?

444 But didn't Shmuel say to Rav Ḥinnana bar Sheilat, who was a scribe: When you write a deed of sale, consult with the parties, and if they agree, write that the seller commits to compensate the buyer, in the event that the land is appropriated from him, with superior-quality land, and for the value of the enhancement of the land and the produce as well? That was the standard formula for deeds of sale.

[445] The Gemara clarifies: To what case is this statement referring? If it is a case where the seller's creditor repossesses the land, does a creditor have rights to the produce? But doesn't Shmuel say that a creditor collects the value of the enhancement of the field, indicating that he does collect the value of the enhancement, but he does not collect the produce? Rather, is it not referring to a case of one who buys land from a robber, and the owner subsequently repossesses it? This contradicts Shmuel's earlier statement that one who buys land from a robber does not have the right to the value of the enhancement.

[446] Rav Yosef said: Here we are dealing with a case where the robber owns land, which he can return to the buyer instead of paying him money. In that case, the transaction appears to be a sale and not payment of interest for a loan.

[447] Abaye said to him: But is it permitted for one to borrow a se'a of grain for return of a se'a in a case where he owns land? The Sages render prohibited executing a loan of produce for return of the same amount of produce, lest the price rise in the interim, causing the debtor to return a higher value than he borrowed, which appears to be interest. This is the halakha even in a case where the borrower owns land. Similarly, in the case where the robber owns land, the payment of the value of the enhancement resembles the payment of interest.

[448] Rav Yosef said to him: The distinction between the two cases is that there, with regard to borrowing a se'a and returning a se'a, the case in question involves a loan, whereas here, it is a case involving a sale. Since the field was bought from the robber, the additional value that the robber pays does not appear to be interest.

[449] There are those who say that this is what Rav Yosef said: Here we are dealing with a case where the buyer performed an act of acquisition at the time he purchased the land from the robber's possession, thereby formalizing a condition that should the field be appropriated from him, he will be reimbursed for any enhancement in its value. Since he acquired this right at the time of the purchase, it does not appear as though he is receiving interest.

[450] Abaye said to him: But is it permitted for one to borrow a se'a for a se'a in a case where he performed an act of acquisition formalizing such a condition at the time he purchased the land from the lender's possession? Isn't it still considered to be interest and therefore prohibited?

[451] Rav Yosef said to him: There, with regard to borrowing a se'a and returning a se'a, it is a case involving a loan, whereas here it is a case involving a sale. Buying at a low price and selling for a higher price is not considered to be interest.

[452] The Gemara returns to discuss Shmuel's statement itself that was mentioned above. Shmuel says: A creditor collects the value of the enhancement of the land. Rava says: Know that this is true, as this is the standard formulation that the seller writes to the buyer in a deed of sale: I will stand and silence and purify and cleanse this sale, i.e., I accept responsibility if the land is repossessed by my creditor. The text of the document continues: This applies to this property itself, and the labor invested in it, and its enhancement; and I will present its value before you. The witnesses then sign the document and attest: And this seller consented and accepted upon himself all of the commitments enumerated in the document. Evidently, a creditor can collect the value of the enhancement.

[453] Rav Ḥiyya bar Avin said to Rava: If that is so, in the case of a gift, where the owner does not write this formulation to the recipient in the deed of gift, would you indeed say that the creditor does

not repossess the value of the enhancement of the land from the recipient of the gift? Rava said to him: Indeed.

[454] Rav Ḥiyya bar Avin said to Rava: But is the legal power of a gift stronger than that of a sale, as in the case of a sale the buyer loses the value of the enhancement if the land is repossessed? Rava said to him: Yes, it is indeed stronger. Since in a case of repossession, the recipient of the gift does not receive the value of the enhancement back from the one who gave him the gift, he is under no obligation to relinquish this value to the creditor.

[455] Rav Naḥman said: This following baraita supports the opinion of Mar Shmuel; but our colleague, Rav Huna, interprets it as referring to other matters, so it does not support Shmuel's opinion. As it is taught in a baraita: With regard to a case of one who sells a field to another, and it is appropriated from the buyer's possession, as it was liened to the seller's debt, when the buyer then collects compensation from the seller, he collects the principal from liened property, and he collects the enhancement from unsold property. Evidently, the value of the enhancement is also repossessed by the creditor.

[456] But our colleague, Rav Huna, interprets it as referring to other matters, i.e., to the case of one who buys a field from a robber. In that case, the robbery victim is certainly entitled to the value of the enhancement of the land.

[457] It is taught in another baraita: In a case of one who sells a field to another, and the buyer enhances it, and then a creditor comes and repossesses the field, in this case when the buyer collects compensation, the halakha is as follows: If the value of the enhancement of the field is greater than the buyer's expenses in generating that enhancement, he takes the difference in value between the enhancement and the expenses from the owner of the land, i.e., the seller, and he is compensated for the expenses by the creditor. And if the expenses were greater than the enhancement of the field, he receives compensation for his expenses, only up to the value of the enhancement, from the creditor.

[458] The Gemara asks: But how does Shmuel interpret the baraita? If it is referring to one who buys a field from a robber, the first clause in the baraita poses a difficulty to Shmuel's opinion, as Shmuel says that one who buys a field from a robber does not have the right to compensation for the enhancement of the field, and the baraita states that the buyer is entitled to compensation for the enhancement. If it is referring to a creditor, then both the first clause and the latter clause in the baraita pose a difficulty to Shmuel's opinion, as Shmuel says that a creditor collects the enhancement of the field and needs to pay nothing.

[459] The Gemara suggests two answers: If you wish, say that the baraita is referring to one who buys a field from a robber, in a case where the robber owns land with which he can compensate the buyer instead of paying him money. In that case, the compensation does not appear to be interest. Alternatively, it is referring to a case where the buyer performed an act of acquisition at the time he purchased the land from the robber's possession, thereby formalizing a condition that should the field be appropriated from him, he will be reimbursed for any enhancement in its value. Since the buyer acquired the enhancement at the time he paid for the field, it does not appear as if he is receiving interest.

[460] If you wish, say instead that it is referring to a creditor, but nevertheless it is not difficult according to the opinion of Shmuel. Here, in the baraita, the reference is to enhancement

[461] of the field that reaches one’s shoulders, i.e., the produce that grew due to the improvements made by the purchaser is almost fully grown and ripened, and it can soon be harvested and carried upon one’s shoulders. At that point, the produce is considered independent of the land and is therefore not collected by the creditor unless he pays for the expenses. And there, in Shmuel’s statement that the creditor collects the enhancement without paying compensation, the reference is to enhancement that does not reach one’s shoulders, i.e., whose growth is not almost complete. At that point, the produce is considered to be part of the land.

[462] The Gemara asks: But there were daily incidents of this type, and Shmuel would collect payment from buyers even for enhancement that reaches one’s shoulders, without requiring the creditors to compensate them for their expenses.

[463] The Gemara answers that this is not difficult; these instances when Shmuel did not require the creditor to compensate the purchaser were cases where the creditor was owed by the debtor the same amount of money as the value of the land and the enhancement. That baraita, which states that the creditor must compensate the purchaser for the enhancement, is referring to a case where he was owed by the debtor only the same amount of money as the value of the land, without the enhancement, as in this case the creditor gives the buyer the value of his enhancement to the land and thereby dismisses from the buyer any claim to the land.

[464] The Gemara asks: This works out well according to the one who says that even if the purchaser has money, he is unable to dismiss the creditor from his claim to the land by paying its value. But according to the one who says that when the purchaser has money he can dismiss the creditor by paying the value of the land, let the purchaser say to him: If I had money, I would have dismissed you from the entire plot of land. Now that I do not have enough money to pay off the entire debt, give me at least a se’a of land from the land that you wish to repossess, which is the amount of my enhancement.

[465] The Gemara answers: Here we are dealing with a case where the debtor, who sold this land to the purchaser, set aside his land as designated repayment [apoteiki] for the debt, as he said to the creditor: You will be repaid only from this piece of land. Consequently, the buyer cannot dismiss the creditor from any part of the land, even though he enhanced its value.

[466] § In a case where one who bought a field from a robber recognized that it was not the seller’s, i.e., he knew that it was stolen property, but he purchased it nevertheless, when the true owner repossesses the field Rav says that the purchaser has the right to be reimbursed for the money that he paid for the field, but he does not have the right to be reimbursed for the enhancement of the field in his possession. And Shmuel says that he does not have the right to be reimbursed even for the money he paid for the field, as he knew that the sale was invalid.

[467] The Gemara asks: With regard to what principle do Rav and Shmuel disagree? The Gemara answers: Rav holds that such a person knows that the sale is invalid and that he does not have the right to the land, and therefore he clearly resolved to give the money to the seller as a deposit. The Gemara asks: But if that is his objective, let him say to the seller explicitly that he is giving him the money as a deposit. The Gemara answers: The purchaser thought that the seller would not accept it as a deposit, and therefore he gave it to him in this fashion so that he would hold it for him in the interim.

[468] And Shmuel holds that such a person knows that he does not have the right to the land, and therefore he clearly resolved to give the money to the seller as a gift. The Gemara asks: But if so, let him say to the seller that he is giving him the money as a gift. The Gemara answers: If he would say so explicitly, the matter would be embarrassing for the seller. Therefore, the purchaser used this ploy in order to give a gift to the seller.

[469] The Gemara asks: But didn't Rav and Shmuel already disagree about this principle one time? As it was stated concerning one who betroths his sister: Rav says: The money he gave for the betrothal is returned, since the betrothal does not take effect; and Shmuel says: This money is a gift, meaning that he wished to give a gift to his sister and he did so in this manner. Rav says: The money must be returned since a person knows that betrothal does not take effect with his sister, and he decided to give the money to her for the purpose of a deposit. The Gemara raises a difficulty: And let him explicitly say to her that he is giving her the money for the purpose of a deposit. The Gemara answers: He thought she would not accept it from him.

[470] And Shmuel says: The money is considered to be a gift because a person knows that betrothal does not take effect with his sister, and he decided to give the money to her for the purpose of a gift. The Gemara again raises a difficulty: And let him explicitly say to her that he is giving it to her for the purpose of a gift. The Gemara answers: He thought the matter would be embarrassing to her and she would refuse to accept the money. He therefore attempted to give it her by an alternative method.

[471] The Gemara explains: It is necessary to present the disagreement in both instances because if it were stated only with regard to that case, of buying property from a robber, one might have reasoned that it is specifically in that case that Rav says that the money returns to the purchaser, as people do not tend to give gifts to non-relatives, and therefore it is clear that the purchaser intended for the money to be a deposit. But with regard to the case of one who betroths his sister, one might say that Rav concedes to Shmuel that the money was given as a gift. It is therefore necessary to present Rav's opinion in both cases.

[472] And conversely, if the disagreement were stated only in that case, i.e., betrothal of one's sister, one might have reasoned that it is only in that case that Shmuel says the money is a gift, but in this case, where the purchaser is a non-relative, one might say that Shmuel concedes to Rav that the money is a deposit. It is therefore necessary to present the disagreement in both instances.

[473] The Gemara asks: Both according to Rav, who says that the money is a deposit, and according to Shmuel, who says that the money is a gift, when this purchaser takes possession of the land despite knowing that his acquisition is invalid, with what justification does he take possession of the land, and how does he justify consuming its produce?

[474] The Gemara answers that the purchaser reasons: I will take possession of the land, and work it, and consume the produce that is in it, just as the seller would have done. And when the owner of the land comes and claims it, the money that I paid for it will be designated for a different purpose. According to Rav, who says that the money is a deposit, it will be a deposit, and according to Shmuel, who says that the money is a gift, it will be a gift.

[475] Rava said: With regard to the aforementioned halakhic disputes, the halakha is that in a case where one bought a field and it turned out to be stolen, the purchaser has the right to demand that the seller return the money he paid for the land, and he also has the right to demand that the seller compensate him for the value of the enhancement, in accordance with the opinion of Rav. And this is

the halakha even if the seller did not explicitly obligate himself to compensate him for the enhancement. But if the purchaser recognized that the field was not the seller’s and he purchased it anyway, he has the right to demand that the seller return the money he paid for the land, but he does not have the right to demand compensation for the enhancement, in accordance with the opinion of Rav.

476 Rava issued another ruling with regard to a dispute cited above: Omission of the guarantee of the sale from the document is a scribal error. This is the halakha both with regard to promissory notes and with regard to deeds of buying and selling, i.e., deeds of sale.

477 § Shmuel asked Rav: If one robbed another of a field and sold it, and then purchased it from the original owner, what is the halakha? Can the robber now repossess the field from the person to whom he sold it before he legally owned it? Rav said to him: No, he cannot. What did the first person, the robber, sell to the second person, the purchaser, when he sold him the field? He sold him any rights to the field that will come into his possession. Consequently, the rights that the robber has now acquired are transferred to the purchaser.

478 The Gemara asks: What is the reason that the robber would buy the land he had already sold in order to retroactively uphold the sale? Mar Zutra said: It is preferable for him not to be called a robber by the purchaser when the original owner demands he return the field. Rav Ashi said: It is preferable for him to maintain his reliability, i.e., to be considered an honest person.

479 The Gemara asks: What is the practical difference between these two opinions? The Gemara answers: The practical difference between them is in a case where the purchaser died. According to the one who says that the robber bought it because it is preferable for him not to be called a robber,

480 in this case, since the purchaser already died, the owner is not present to call the seller a robber, so he presumably did not intend to retroactively validate the sale. And conversely, according to the one who says that he bought the land because it is preferable for him to maintain his reliability, it is preferable for him to maintain his reliability with regard to the purchaser’s children too.

481 The Gemara challenges this distinction: Ultimately, the purchaser’s children will also call the seller a robber if the field is appropriated from them. Therefore, there is no difference between the two explanations of Rav’s ruling in a case where the purchaser has died.

482 Rather, the practical difference between them is in a case where the robber himself died, and his children subsequently bought the field from its owner. According to the one who says that the motivation is that it is preferable for a person not to be called a robber, he already died and this motive is not applicable. While according to the one who says that his motivation is that it is preferable for him to maintain his reliability, in this case also, even though the robber died, it is still preferable for him to maintain his reliability, i.e., one is concerned about the reputation he will have after his death, not only while he is alive.

483 The Gemara rejects this distinction as well: Ultimately, if the sale is revoked after his death, people will call his children the children of a robber. Just as one does not want to be called a robber during his lifetime, one presumably does not want his children to be called the children of a robber after his death.

484 Rather, the practical difference between them is in a case where the robber gave the land to the recipient as a gift rather than selling it. According to the one who says that it is preferable for him to

maintain his reliability, in the case of a gift also, it is preferable for him to maintain his reliability. While according to the one who says that the motivation is that it is preferable for him not to be called a robber, in this case the robber could say to the recipient of the gift: What did I rob you of? You incurred no loss.

485 § The Gemara discusses various scenarios relating to the halakha of one who sold stolen land and then acquired it from the robbery victim. It is obvious that if, after selling the stolen land, the robber sold it again to another person, or bequeathed it, or gave it as a gift, it is clear that the robber does not want to establish it before, i.e., transfer ownership of it to, the original buyer. Therefore, the robber's purchase of the land from the robbery victim is not assumed to be for the purpose of validating the original sale. The buyer can demand compensation from the robber for the invalid sale, but the land remains in the possession of the second buyer or the recipient of the gift or the inheritance.

486 Likewise, it is clear that if the land that he stole and then sold later came into his possession not by purchase but as an inheritance, the buyer does not have the rights to it, as an inheritance is acquired passively, and the robber did not make an effort to acquire it. Here too, the buyer can claim only compensation and not the land itself.

487 If the robber collected the land that he had sold as payment for a debt owed to him by the robbery victim, we need to see the circumstances. If the robbery victim has other land from which the robber could have collected the debt, and nevertheless the robber said: I want to collect this land, apparently the robber wanted to establish it before the buyer and validate the sale.

488 And if the robbery victim does not have other land, and the robber had no choice as to which land to collect, there is no reason to assume that the robber was attempting to validate the sale. He merely wanted to be paid money for his debt, and not to secure the land for the buyer.

489 With regard to a case where the robbery victim gave the land as a gift to the robber, Rav Aḥa and Ravina disagree. One says that a gift has the same status as an inheritance, as it is also acquired passively, and one says that a gift has the same status as a sale. This is because were it not for the fact that the robber took the trouble to ingratiate himself with the owner, he would not have given it to him as a gift. It is clearly for this reason that the robber took the trouble to ingratiate himself with him, i.e., in order to validate the sale and thereby maintain his reliability.

490 The Gemara asks: And until when can it be assumed that the robber bought the land because it is preferable for him to maintain his reliability? Rav Huna says: Until the time of standing trial. Once the purchaser takes the robber to court, it is too late for the robber to protect his reputation, as the purchaser has demonstrated that he does not consider the robber to be trustworthy.

491 Ḥiyya bar Rav says that the robber would still buy the land from the owner in order to maintain his reliability up until the time that a document of authorization by the court to locate and seize property from the robber comes into the purchaser's possession. It is only once the robber avoids immediately reimbursing the purchaser and the court is compelled to authorize the purchaser to appropriate the robber's property that the robber's reliability is no longer a factor. Rav Pappa says that the robber's reliability remains a motive to acquire the field until the days of announcement begin. During the days of announcement the court assesses the value of the robber's property in order to compensate the purchaser.

[492] § Rami bar Ḥama objects to Rav’s statement, the focal point of this discussion, that the robber transfers to the buyer any rights to the land that he might acquire; after all, by means of what mode of acquisition does this purchaser acquire this land? It is by means of this deed of sale that the robber gave him. The purchase is invalid, as this document is merely a shard, since the robber did not own, at the time of the sale, the land he purported to sell.

[493] Rava said to him in response: Let Rav’s statement be understood as applying to a case where the buyer said to the robber that he trusts him to resolve the legal issue. By virtue of that satisfaction that the robber received from the buyer’s not having said anything to him to question his rights to the land, but rather having relied on him, the robber therefore takes the trouble and brings to him the opportunity to purchase the land and resolves to transfer the land’s ownership to him.

[494] Rav Sheshet raises an objection to Rav’s statement from a baraita that states that if one says: That which I will inherit from my father is hereby sold to you, or: That which my net will catch is sold to you, he has said nothing, as one cannot sell that which he does not yet own. But if one says: That which I will inherit from my father today is hereby sold to you, or: That which my net will catch today is sold to you, his statement stands. The first halakha of the baraita indicates that one cannot sell that which he does not yet own, which contradicts Rav’s ruling.

[495] Rami bar Ḥama said about this objection: This is the great man and this is his refutation of Rav’s opinion; i.e., this refutation is compelling.

[496] Rava said in response: I see that he is a great man, but I do not see the conclusive refutation. Here, in the case of validating a sale, the purchaser relies on the seller and is confident he will acquire the land; but there, in the case of the baraita, the purchaser does not fully rely on the seller. The Gemara explains: Here, in the case of validating the sale, the purchaser relies on the seller to go take the trouble and provide him with the land so that he will not be called a robber. Whereas there, in the case of the baraita, the purchaser does not fully rely on the seller, as it is uncertain whether the seller will actually inherit his father’s property or catch anything with his net.

[497] The Gemara relates that the Sages sent Rav Sheshet’s objection and presented it before Rabbi Abba bar Zavda for his evaluation. Rabbi Abba bar Zavda said to them: This objection need not be introduced inside the study hall for further clarification, as it is clear and compelling. Rava disagreed and said: This objection needs to be brought inside the study hall and inside the innermost area of the study hall. In other words, it should be examined carefully, as it is not compelling. This is because here, the purchaser relies on the seller, whereas there, in the case of the baraita, the purchaser does not fully rely on the seller.

[498] There was an incident in Pumbedita where the court ruled in accordance with the opinion of Rav, and the Sages refuted the ruling based on the baraita cited earlier. Rav Yosef said to them: This objection need not be introduced inside the study hall for further clarification, as the objection is clear and compelling. And Abaye said to him: It needs to be brought inside the study hall and inside the innermost area of the study hall, as here the purchaser relies on the seller, whereas there the purchaser does not fully rely on the seller.

[499] The Gemara asks concerning the baraita cited earlier: And what is different in the first clause, where the sale is not valid, and what is different in the latter clause, where the sale is valid? In both cases, the seller does not yet own the merchandise. Rabbi Yoḥanan said: In the latter clause, when the seller states: I am selling that which I will inherit from my father today, he does so for the honor of

his father. He believes that his father will die that day, and his intention is to raise money for the burial. Consequently, the Sages instituted an ordinance that the sale is valid. Similarly, in the case of a person who says: That which my net will catch today is sold to you,

[500] the Sages instituted an ordinance that the sale is effective because of their concern for his immediate livelihood.

[501] § The Gemara continues to discuss the matter of selling property that one does not yet own. Rav Huna says that Rav says: With regard to one who says to another: With regard to the field that I am about to buy, when I buy it, it will be retroactively transferred to your ownership from now, the stipulation takes effect, and once he buys it, the second party has acquired the field.

[502] Rava said: The statement of Rav is reasonable only with regard to an unspecified field, as one is capable of buying a field. But with regard to a case where one says to another that he is selling him this specific field that is not yet in his possession, the transaction does not take effect, as who is to say that the current owner will sell it to him? Since it is not in his power alone to purchase the field, it is tantamount to an entity that has not yet come into being, and therefore he cannot sell it to anyone.

[503] The Gemara emphatically rejects Rava's qualification of Rav's statement in the form of an oath: By God! Rav said his statement even in a case where the seller said: This field. After all, in accordance with whose opinion did Rav state his halakha? It was in accordance with the opinion of Rabbi Meir, who says that a person can transfer ownership of an entity that has not yet come into the world.

[504] As it is taught in a baraita: With regard to one who says to a woman: Be betrothed to me after I convert, or: After you convert, or if he is a slave and says: After I am freed, or if she is a maidservant and he says: After you are freed, or if he says to a married woman: After your husband dies, or if he says to a widow waiting for her yavam to perform the ritual through which he frees her from her levirate bonds [ḥalitza]: After your yavam performs ḥalitza with you, or if he says to his wife's sister: After your sister dies (see Leviticus 18:18), in all these cases she is not betrothed. Since he cannot betroth her at the present moment, his attempt at betrothal is ineffective.

[505] Rabbi Meir says: She is betrothed. Rabbi Meir holds that one can acquire that which is not yet available, and the acquisition will take effect once the item is available. In this case as well, the betrothal will take effect once it becomes possible for her to become betrothed to him.

[506] And isn't the case of betrothing a specific woman comparable to the case of selling this specific field? And yet, Rabbi Meir says that she is betrothed. It is therefore clear that Rav, who accepts the opinion of Rabbi Meir, holds that the sale is effective even if the seller specified a particular field.

[507] § Shmuel says: With regard to one who finds a deed of transfer, i.e., a promissory note that establishes a lien on the debtor's property from the date it is written, regardless of whether or not he borrows the money at that time, in the marketplace, he must return it to its owner, i.e., the creditor, as, if one were to be concerned because of the possibility that the debtor wrote the note intending to borrow money, but did not borrow it in the end, he is nevertheless liable, since he committed himself to pay at the time it was written. And if one were to be concerned because of the possibility that repayment had already taken place, this is not a justified concern, as in general we are not concerned

that there was repayment, as, if it were so that the debtor had repaid it, he certainly would have torn up the note.

[508] Rav Naḥman said: My father was one of the scribes of the judges of Mar Shmuel, and I was about six or seven years old, and I remember that they made an announcement, saying: Those deeds of transfer that are found in the marketplace should be returned to their owners, the creditors, in accordance with the opinion of Shmuel.

[509] Rav Amram said: We, too, learn similarly in a mishna (20a): One must return any court enactment, i.e., a promissory note that has been authenticated by the court, to its owner. Apparently, we are not concerned that there may have been repayment. Rabbi Zeira said to him: The mishna is not proof for Shmuel's ruling, as it is stated not with regard to all court enactments but with regard to bills of foreclosure, which award property to a creditor as payment for the debt owed to him, and bills of authorization to locate and seize property from the debtor, both of which are not subject to repayment.

[510] Rava said to him: And are these bills not subject to repayment? But didn't the Sages of Neharde'a say that after property is repossessed in order to pay an unpaid debt based on the court's appraisal of its value, the property is returned if the debtor pays the debt until twelve months of the year have passed after the repossession? And furthermore, Ameimar said: I am from Neharde'a, and nevertheless, I hold that property repossessed based on an appraisal of an article's value can always be returned. If the debtor pays his debt, he can reclaim his property at any point. Consequently, even bills of foreclosure or authorization might be obsolete, and nevertheless the mishna states that one who finds them must return them to the creditor.

[511] Rather, Rava said that the mishna is not proof for the ruling of Shmuel for a different reason: There, this is the reason that the documents are returned: As I can say that if the debtor has already repaid his debt, it is he who caused the loss to himself, as at the time he repaid his debt he should have either ripped up the document, or alternatively, he should have demanded of the creditor to write another document for the debtor's redeemed property, returning it to him.

[512] The reason for a new document to be written is that according to the letter of the law, the land need not be returned by the creditor to the debtor, and it is due to the principle: "You shall do that which is right and good in the eyes of the Lord" (Deuteronomy 6:18), that the Sages said that the land should be returned. Therefore, it is as though the debtor is purchasing it anew, and the creditor must write a bill of sale.

[513] The Gemara explains why this reasoning is not applicable to deeds of transfer or other promissory notes. With regard to a found promissory note, what is there to say to justify returning it to the creditor? That if it is so that the debtor repaid the debt, he should have ripped up the promissory note? This is not so, as one could say that the creditor avoided returning the note, as he said to him: Tomorrow I will give you the note, as it is not with me now. Alternatively, the creditor may have held back the note as security for the debtor's payment of the fee of the scribe who wrote the promissory note. Consequently, it is possible that the debtor was never given back the note and was unable to rip it up, through no fault of his own.

[514] § Rabbi Abbahu says that Rabbi Yoḥanan says: With regard to one who finds a promissory note in the marketplace, even if a ratification of the court is written in it, he may not return it to the owner, i.e., the creditor.

[515] The Gemara explains: It is not necessary to say that one should not return the promissory note in a case where a ratification is not written in it, as in that case there is room to say that the debtor wrote it intending to borrow money, but he did not end up borrowing it, and therefore the creditor has no rights to the promissory note. But even if a ratification is written in it, one should not return it. And what is this authorization? It is an approval that the promissory note has been ratified by the court, which examined the note and the signatures of the witnesses and found everything to be in order. The reason one may not return the promissory note to the creditor is that we are concerned that repayment has already taken place.

[516] Rabbi Yirmeya raised an objection to Rabbi Abbahu from the mishna that states (20a): One must return any court enactment, i.e., a promissory note that has been authenticated by the court, to its owner. Apparently there is no concern about repayment. Rabbi Abbahu said to him: Yirmeya, my son, not all court enactments are equal. Rather, the ruling that one must return such a document applies only in a case where the debtor has the presumptive status of one who denies his debts, and therefore, if he claims the debt was repaid, his claim is not accepted.

[517] In response to this explanation of that mishna, Rava said: But does it necessarily follow that just because a debtor assumed the presumptive status of one who denies his debts after one time that he did so, he will never again repay a debt that he owes, and therefore the promissory note should be returned to his creditor? Rather, Rava said: The mishna is referring to a bill of foreclosure, or a bill of authorization, which are not subject to repayment, in accordance with the explanation of Rabbi Zeira.

[518] The Gemara adds: And with regard to the topic of one who denies his debts, since it came to us, let us say something about it. As Rav Yosef bar Minyumi said that Rav Naḥman said: If the court said to the litigant against whom they ruled: Go and give the other litigant what you owe him,

[519] and later on the debtor said: I repaid him, his claim is deemed credible. He must take an oath and is exempt from payment. Therefore, if the creditor comes and asks the court to write an authorization for him to appropriate the property of the debtor, they do not write an authorization and give the document to him.

[520] By contrast, if the court merely said: You are liable to give him what you owe him, but did not complete the process by saying: Go and give it to him, and later on the debtor said: I repaid the debt, his claim is not deemed credible. The assumption is that since he did not pay on his own without the need for litigation, he does not intend to pay until the court finalizes its verdict against him. Therefore, since the debtor is suspected of lying, the creditor takes an oath and collects what he is owed. In this case, if the creditor comes and asks the court to write an authorization for him to appropriate the property of the debtor, they write the document and give it to him.

[521] Rav Zevid says in the name of Rabbi Naḥman: Both in the case where the court said: Go and give him what you owe him, and in the case where the court said: You are liable to give him, if the debtor subsequently said: I repaid the debt, his claim is deemed credible. Therefore, if the creditor comes and asks the court to write an authorization, they do not write the document and give it to him.

[522] Rather, if there is room to make a distinction between different cases, this is how there is room to distinguish between them: If the court said to the debtor: Go and give him what you owe him, and subsequently the debtor said: I repaid the debt, and the witnesses testify concerning him that he did not repay it when the debt was demanded in their presence, and later the debtor said again: I repaid the debt, in such a case, the debtor has assumed the presumptive status of one who denies his debts

with regard to that money, and he is no longer believed when he claims that he repaid the debt unless witnesses substantiate his claim.

[523] By contrast, if the court said: You are liable to give him what you owe him, and subsequently the debtor said: I repaid the debt, and the witnesses testify concerning him that he did not repay the debt when it was demanded in their presence, and later the debtor said again: I repaid, in this case, the debtor does not assume the presumptive status of one who denies his debts with regard to that money. His claim that he repaid the debt in the absence of witnesses is accepted after he takes an oath to that effect.

[524] What is the reason that he is not presumed to be lying? It is because before the court verdict was finalized, the debtor was merely trying to evade the creditor, thinking to himself: Since the court has not yet finalized the verdict, I can delay payment until the Sages in the court investigate my case further, as I am not actually liable to pay until the verdict is finalized.

[525] Rabba bar bar Ḥanna says that Rabbi Yoḥanan says: If one says to another: I have one hundred dinars in your possession that you borrowed from me, and the other says in response: Nothing of yours is in my possession, and the witnesses testify concerning him that, in fact, he does have such a debt, and subsequently the debtor said: I repaid the debt, in that case the debtor assumes the presumptive status of one who denies his debts with regard to that money.

[526] It is like the ruling in this case, where Shabbtai, son of Rabbi Marinus, wrote a pledge to give his daughter-in-law a cloak [itztela] of fine wool [demileta] in her marriage contract, and he accepted upon himself the status of a guarantor for the contract. Her marriage contract was lost, and there was a disagreement between the parties as to its content. Shabbtai said to her: These matters never occurred; I never wrote that I would give you such a cloak. Witnesses then came and said: Yes, he did write her this pledge. Ultimately, he said to them: I paid it, i.e., I gave her the cloak. This case came before Rabbi Ḥiyya. He said to Shabbtai: You have assumed the presumptive status of one who denies his debts with regard to that cloak. His claim was therefore not accepted, even by means of an oath.

[527] Rabbi Avin says that Rabbi Ela says that Rabbi Yoḥanan says: If one was obligated to take an oath to counter another person’s claim brought against him, and later he said: I took the oath, and the witnesses testify against him that he did not take an oath when it was demanded of him in their presence, and the defendant subsequently said again: I took the oath, he assumes the status of one who denies his obligations with regard to that oath.

[528] The Rabbis stated this ruling before Rabbi Abbahu. He said to them: Rabbi Avin’s statement is reasonable in a case where one was obligated by a court to take an oath. But if one voluntarily obligated himself to take an oath, and he later claims that he took the oath, he is deemed credible. This is because a person is prone to say incidentally that he will take an oath and then change his mind; this does not render him a liar. The Rabbis then brought Rabbi Abbahu’s analysis back to Rabbi Avin and presented it before him. Rabbi Avin said to them: I also said this halakha specifically with regard to one who was obligated by a court to take an oath, as Rabbi Abbahu explained.

[529] It was also stated that Rabbi Avin says that Rabbi Ela says that Rabbi Yoḥanan says: If one was obligated by a court to take an oath to counter the claim of another person, and he subsequently said: I took the oath, and the witnesses testify against him that he did not take an oath when it was demanded of him in their presence, and later the defendant said again: I took the oath, he has

assumed that status of one who denies his obligations with regard to that oath. This wording is explicitly in accordance with Rabbi Abbahu’s explanation.

530 § Rabbi Asi says that Rabbi Yoḥanan says: With regard to one who finds a promissory note in the marketplace, and a ratification is written in it, and the date of the loan is written in it, and evidently it was written on that same day, he must return it to the owner, i.e., the creditor.

531 The Gemara explains why there is no concern that perhaps the debtor does not owe the money: If one were to be concerned because perhaps the debtor wrote the promissory note intending to borrow money, but he ultimately did not borrow it, this is not a concern, as a ratification is written in the promissory note. Since only the creditor would have brought the note for ratification, it is clear that the loan occurred. And if one were to be concerned because perhaps there was repayment, this is not a concern, as we are not concerned that there was repayment on the same day that the loan was taken, since normally one would not take a loan for less than one day.

532 Rabbi Zeira said to Rabbi Asi: Does Rabbi Yoḥanan actually say this? Isn’t it you who said in the name of Rabbi Yoḥanan that one who borrowed money and wrote a promissory note for the loan, and subsequently repaid the debt, may not reuse it to borrow another time, as its lien is already forgiven by virtue of the repayment? A promissory note is valid only for the debt for which it was written.

533 Rabbi Zeira explains: When did the debtor take the second loan? If we say that it was the day after the first loan, when the promissory note was written, or another later date, then Rabbi Yoḥanan’s statement is difficult. Why does he specifically give as the reason for the promissory note’s disqualification: As its lien is already forgiven? Instead, he should derive the disqualification of the promissory note from the fact that it is antedated, i.e., dated prior to the actual loan, and we learned in a mishna (Shevi’it 10:5): Antedated promissory notes are invalid. Therefore, Rabbi Yoḥanan could not have been referring to a case where the second loan took place after the date of the first loan.

534 Rather, is Rabbi Yoḥanan’s statement not referring to a case where the second loan took place on the same day as the first loan? Evidently, people do occasionally repay their loans on the same day as they take the loan.

535 Rabbi Asi said to him: Did I say that people do not repay their loans on the same day at all? Rather, I said that it is uncommon for people to repay their loans on the same day. Therefore, if a note is found on the same day it was written, it is reasonable to assume that it has not yet been repaid, even though there is a remote possibility that it has.

536 Rav Kahana says an alternative explanation: Rabbi Yoḥanan is referring to a case when the liable party, i.e., the debtor, admits to the debt. The Gemara asks: If that is so, what is the purpose of stating that the note may be returned? This is obvious.

537 The Gemara answers: Lest you say that even if this debtor admits to the debt, perhaps he actually repaid it, and the fact that the debtor says: I did not repay it, is because he wants to go back and use the promissory note to borrow money again. And the reason he prefers to claim that he did not repay the first debt is that he is concerned about saving the scribe’s fee that he would have to pay for another promissory note. Therefore, Rabbi Yoḥanan teaches us that this possibility need not be taken into account, as, if that were so, the creditor himself would not allow such a scheme. He would be afraid to act in such a manner, thinking: The Sages will hear about me that I reused the note, and will cause me to lose the payment owed to me.

[538] The Gemara asks: In what way is this case different from that which we learned in a mishna (12b): With regard to one who found promissory notes, if they include a property guarantee for a loan, he may not return them to the creditor.

[539] And we interpreted this mishna as referring to a case when the liable party admits to the debt. And the reason the promissory notes may not be returned is due to the concern that perhaps the debtor wrote the note in order to borrow the money in Nisan, but he ultimately did not borrow it until Tishrei, and the creditor will come to unlawfully repossess land from purchasers who bought the debtor's land between Nisan and Tishrei. He is entitled to collect land only from those who bought land from the debtor after the loan took place, causing the lien on the debtor's land to take effect.

[540] The Gemara points out the contradiction between this mishna and Rabbi Kahana's explanation of Rabbi Yoḥanan's statement: And this indicates that we do not say that if that were so, if the promissory note were antedated, the creditor himself would not allow the debtor to use it, as he would say to him: Write another note dated properly in Tishrei, lest the Sages hear about the fact that the date is incorrect and disqualify the promissory note, causing me to lose the money.

[541] The Gemara answers: The Sages say that there, in the case of the mishna, since the creditor benefits by using this promissory note, as he can repossess land from purchasers who bought from the debtor between Nisan and Tishrei, it is satisfactory to him, and he does not say anything to the debtor about using this promissory note. By contrast, here, in the case to which Rabbi Yoḥanan is referring, since the creditor does not benefit from reusing the promissory note, as ultimately, the note is written for the current date, what is there for him to repossess from purchasers by means of the note that he cannot repossess by means of a new promissory note? Therefore, he would not allow the debtor to borrow more money from him with a promissory note whose lien was forgiven, as this would result only in risk and have no potential benefit.

[542] § Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: With regard to one who claims to have repaid a debt that has already been established by a court enactment, i.e., a rabbinic ordinance obligating one to pay a debt, e.g., the main sum in a marriage contract, but he has no witnesses,

[543] he has said nothing. His claim is not accepted. What is the reason that he is not believed? It is because one who is owed any money based on a court enactment is considered like one who is holding a promissory note in his hand, against which a claim of repayment is not accepted without supporting evidence.

[544] Rabbi Ḥiyya bar Abba said to Rabbi Yoḥanan: But what are you adding? Isn't this principle stated in a mishna (Ketubot 88b), which teaches: If a woman produced a bill of divorce, and there was no accompanying marriage contract, she collects payment of her marriage contract? This is an example of Rabbi Yoḥanan's principle that a court enactment enables one to collect a debt even without the relevant document.

[545] Rabbi Yoḥanan said to him: True, this mishna is a source for my principle; but had I not lifted up the shard for you, you would not have found a pearl beneath it. In other words, if Rabbi Yoḥanan had not pointed out the principle, Rabbi Ḥiyya bar Abba would not have realized that it was underlying the ruling of the mishna.

[546] Abaye said: What qualifies this proof as a pearl? It is not a compelling proof, as perhaps in the mishna we are dealing with a place where they do not write a marriage contract, as in such a place, a

woman’s bill of divorce is the same as her marriage contract. But in a place where they do write a marriage contract, if she is holding a marriage contract then she collects payment, and if not, she does not collect payment. There is no proof from the mishna in support of Rabbi Yoḥanan’s principle.

[547] Abaye then said: What I said is not correct. As, if it enters your mind that we are dealing with a place where they do not write a marriage contract, but in a place where they do write a marriage contract, if she is holding a marriage contract then she collects payment, and if not she does not collect payment, then through what means does a widow from her betrothal collect payment of her marriage contract? She has neither a marriage contract nor a bill of divorce.

[548] If it is suggested that she can collect payment by means of witnesses to the death of her husband, let the husband’s heir, from whom she is demanding payment, claim and say: I paid it; she has no proof that she did not receive the money. And if you would say that indeed, the heir can claim that he has paid what he owes, if so, what did the Sages accomplish with their ordinance that a widow from betrothal receives payment of her marriage contract? The heirs can always exempt themselves.

[549] Mar Kashisha, son of Rav Ḥisda, said to Rav Ashi, questioning the underlying assumption of Abaye: And from where do we derive that a widow from her betrothal has the right to receive payment of her marriage contract?

[550] If we say that this halakha is derived from that which we learned in a mishna (Ketubot 54b): If a woman became widowed or divorced, whether from betrothal or from marriage, she collects all that she is entitled to, both the main sum of her marriage contract instituted by the Sages and the additional sum that her husband added; that mishna cannot serve as a source for the halakha that a widow from her betrothal has the right to receive payment of her marriage contract. As perhaps the mishna is referring to a case where the husband wrote a marriage contract for her, but if he did not, she does not receive any money at all.

[551] And if you would say: In that case, what is the purpose of stating this halakha since it is obvious that she can collect payment if she has a written contract, then one could respond that it is stated to exclude the opinion of Rabbi Elazar ben Azarya, who says that a widow from betrothal does not receive that which the husband committed to pay in the marriage contract, as he wrote the marriage contract only on the condition that he would marry her. He did not intend to obligate himself in a situation where he died before their marriage. Therefore, it was necessary for the mishna to mention that a widow from betrothal who has a written marriage contract collects payment.

[552] The language of the mishna is also precise according to this understanding, as it teaches: She collects all that she is entitled to. Granted, if you say that the mishna is referring to a case where the husband wrote her a marriage contract, this is why the mishna teaches that she collects all that she is entitled to, i.e., even the amount that the husband added to the main sum of the marriage contract. But if you say that it is referring a case where he did not write her a marriage contract,

[553] then what is meant by the wording: She collects all that she is entitled to? What she has is only the main sum of the marriage contract of one hundred or two hundred dinars that she can collect. Clearly, the mishna is referring to a case where the husband wrote a marriage contract, and it does not indicate that a betrothed widow receives payment of her marriage contract.

[554] And if one would say that the marriage contract of a betrothed woman is instead derived from that which Rav Ḥiyya bar Ami teaches, that is also difficult. He teaches: One does not enter acute

mourning on the day of the death of his betrothed wife, nor may he become ritually impure at her funeral if she dies, if he is a priest; and similarly, she does not enter acute mourning for him if he dies, and she may not become ritually impure at his funeral. If she dies, he does not inherit her property. If he dies, she collects payment of her marriage contract.

[555] If it is derived from here that a betrothed woman receives payment of a marriage contract, this is not proof, as perhaps this too is referring to a case where he wrote a marriage contract for her. And if you would say that if it is referring to a case where he wrote her a marriage contract, what is the purpose of stating this? One could answer that while this clause is obvious, it was necessary for Rav Ḥiyya bar Ami to state that conversely, if she dies, he does not inherit her property.

[556] Rather, Abaye retracted his objection to Rabbi Yoḥanan's proof from the mishna, not because of the case of a widow from betrothal, but due to an indication from within the mishna itself. Because if it enters your mind that we are dealing with a place where they do not write a marriage contract, where a woman's bill of divorce is effectively her marriage contract, and therefore she can use her bill of divorce to collect payment of her marriage contract, that does not make sense; is it written in a bill of divorce that the husband is liable to pay the wife the one hundred or two hundred dinars she is owed? In fact, this is not written in a bill of divorce.

[557] And even if you would say that since the Sages instituted that she use the bill of divorce to collect her marriage contract, it is considered as though the liability of the husband to pay one hundred or two hundred dinars is written in it, and it would still be problematic to say that the bill of divorce is sufficient for her to collect payment. The husband should still be able to claim that he is exempt, and say: I already paid it.

[558] And if you would say that if the husband would state such a claim, we would say to him: If, in fact, you paid her, you should have torn up the bill of divorce, and he could respond and say to us: She did not allow me to tear it up, because she said: I need the bill of divorce to remarry, by using it as proof that I am divorced.

[559] And if you would say that we would then say to him: You should have torn up the bill of divorce and written on the back of it: The reason that we tore up this bill of divorce is not because it is an invalid bill of divorce, but rather it is in order that the woman not collect payment of her marriage contract again with it, this suggestion is not always applicable. Does everyone who collects payment of a marriage contract collect payment in court, where it is possible to write such a legal statement? Therefore, the suggestion that a bill of divorce serves as a marriage contract remains untenable. This leads to the conclusion that the basis for collecting payment of a marriage contract where such a document does not exist must be a court enactment, in accordance with the interpretation of Rabbi Yoḥanan.

[560] MISHNA: If one found bills of divorce, or bills of manumission of slaves, or wills, or deeds of a gift, or receipts, he may not return these items to the one who is presumed to have lost them, as I say it is possible that they were written and then the writer reconsidered about them and decided not to deliver them.

[561] GEMARA: It can be inferred from the mishna that the only reason that these documents are not returned is that there is a concern that the person obligated by the document reconsidered with regard to them and decided not to deliver them. But if the writer says: Give this found document to the intended recipient, the finder must give it to him. And since the mishna places no limitation on this,

presumably this is the halakha even if a long time passed since it was lost, and there is no concern that perhaps the document belongs to someone else with the same name.

[562] And the Gemara raises a contradiction from a mishna (Gittin 27a): With regard to an agent who was bringing a bill of divorce to a woman, and it was lost by him, if he found it immediately, the bill of divorce is still valid. If not, then it is not valid, as it is possible that the bill of divorce that he found is not the same one that he lost, and this second bill of divorce belongs to someone else whose name and wife's name are identical to the names of the husband and wife in the lost bill of divorce.

[563] Rabba says: This is not difficult, because there, in tractate Gittin, the mishna is stated with regard to a place where caravans passing through are common, and there is a concern that the found bill of divorce belongs to someone else with the identical name. By contrast, the mishna here is stated with regard to a place where caravans passing through are uncommon, so there is no such concern.

[564] The Gemara adds: And even in a place where caravans passing through are common, there is not always a concern that the bill of divorce may belong to another man with an identical name, and this concern is only where it has been established that there are two men named, for example, Yosef ben Shimon in that one city.

[565] As, if you do not say so, that this concern is taken into account only in a place where it is known that there are two people with this same name, then there is a difficulty presented in the form of a contradiction between this statement of Rabba and another statement of Rabba. As there was a certain bill of divorce that was found in the court of Rav Huna, in which it was written that the bill of divorce was written in Sheviri City, which is located on the Rakhis River. Rav Huna said about this:

[566] We are concerned about the possibility that there are two cities named Sheviri and that this bill of divorce may belong to someone else who lives in the other Sheviri, and therefore it should not be returned. And Rav Ḥisda said to Rabba about this issue: Go out and examine this halakha, as in the evening Rav Huna will ask you about it. He went out, examined it, and discovered a relevant source, as we learned in a mishna (20a): One must return any court enactment, i.e., a promissory note that has been authenticated by the court, to its owner. Since the bill of divorce was found in the court, it is in this category and must be returned.

[567] The Gemara concludes its proof that even in a place where passing caravans are common, the concern that the bill of divorce belongs to another couple applies only if it is known that there is another couple in the same locale with the same names as those written in the bill of divorce: And the court of Rav Huna is comparable to a place where passing caravans are common, as many people from different places pass through for judgment. And yet, Rabba resolved that if one finds a bill of divorce there, he should return it. Evidently he holds that if it is established that there are two people named Yosef ben Shimon in the city, then there is indeed a concern and the document should not be returned, but if not, there is no concern.

[568] The Gemara relates that Rabba performed an action, i.e., issued a practical ruling, with regard to a certain bill of divorce that was found in a flax house in the city of Pumbedita, in accordance with his halakha, and he instructed that the bill of divorce should be returned.

[569] There is disagreement as to the exact details of the case. There are those who say that this occurred in the place where people sell flax, and it is specifically because it was not established that two couples with the same names lived in the city where the bill of divorce was written that Rabba

ruled that the bill of divorce should be returned despite the fact that passing caravans are common there.

[570] And there are those who say that it occurred in the place where people soak flax, and he ruled that the bill of divorce should be returned even though it was established that there were two couples with the same names living in the city where the bill of divorce was written, as passing caravans are uncommon there.

[571] Similarly, Rabbi Zeira raises a contradiction between the mishna and a baraita, and he resolves the contradiction employing the same distinction. We learned in the mishna: With regard to an agent who was bringing a bill of divorce to a woman and he lost it, if he found it immediately, the bill of divorce is still valid, but if not, it is not valid. And Rabbi Zeira raises a contradiction between this mishna and a baraita that states: If one found a woman's bill of divorce in the marketplace, in a case when the husband admits that he wrote and gave it to the wife, the finder must return it to the wife; but if the husband does not admit to this, he may return it neither to this one, the husband, nor to that one, the wife.

[572] In any event, the baraita teaches that in a case when the husband admits that he wrote it, the finder must return it to the wife, and this is the halakha even if it was found after a long time.

[573] And Rabbi Zeira answers that here, in the case of the mishna, the bill of divorce is valid only if it is found immediately, as it is a case where it is found in a place where passing caravans are common. And there, in the baraita, the bill of divorce can be returned even if it was found after a long time, as it is a case where it is found in a place where passing caravans are uncommon.

[574] The Gemara compares the rulings of Rabba and Rabbi Zeira. There are those who say, with regard to Rabbi Zeira's statement that the finder should not return the bill of divorce in a place where passing caravans are common: And this applies specifically in a case where it is established that there are two couples in the town with the same names. In that case, Rabbi Zeira holds that the bill of divorce should not be returned, and this is the same ruling as that of Rabba. And there are those who say: In a place where passing caravans are common, even if it is not established that there are two couples with the same names, the bill of divorce should not be returned, and Rabbi Zeira disagrees with the ruling of Rabba.

[575] The Gemara asks: Granted, Rabba does not state his explanation in accordance with that of Rabbi Zeira and raise a contradiction from the baraita, as he holds that a mishna serves as a stronger basis for raising a difficulty than a baraita, as the Mishna, redacted by Rabbi Yehuda HaNasi, employs more precise language; but what is the reason that Rabbi Zeira does not state his explanation in accordance with that of Rabba and raise a contradiction from the Mishna?

[576] The Gemara answers: Rabbi Zeira could have said to you: Does the mishna actually teach that if the one who wrote the document says: Give it to the intended recipient, the finder must give it to him, and that this is the halakha even if a long time passed since it was lost? This was only an inference from the mishna. Perhaps the mishna merely means to indicate that if the writer says: Give it to the intended recipient, the finder must give it to him, but actually, this is to be understood as we maintain in the mishna in Gittin, that this halakha applies only if the document was found immediately. Therefore, Rabbi Zeira posed his question from the baraita.

[577] The Gemara asks: According to the one who says that according to the opinion of Rabbi Zeira a document may not be returned in a place where passing caravans are common, and this is the halakha even if it was not established that there are two people named Yosef ben Shimon in town, and he disagrees with Rabba, with regard to what do Rabbi Zeira and Rabba disagree? What is the foundation of their dispute?

[578] The Gemara answers: Rabba maintains his opinion based on the mishna (20a) that teaches: One must return any court enactment. He understands that we are dealing with a document that was found in court, and a court is equivalent to a place where passing caravans are common. And therefore, he maintains that it is specifically in a place where it is established that there are two people with the same name that the finder should not return the document to its presumed owner; but in a place where it is not established that there are two people with the same name, he should return it.

[579] And Rabbi Zeira, who disagrees with Rabba, could have said to you: Does the mishna teach that one must return any court enactment that was found in court? It teaches that one must return any court enactment, without specifying the location where the court enactment was found, and it is actually referring to a case where the documents were found outside the court. If it was found inside the court, it should not be returned. Therefore, Rabbi Zeira was not convinced by Rabba's proof.

[580] Rabbi Yirmeya states an alternative resolution to the contradiction between the mishna here and the baraita, on the one hand, and the mishna in Gittin on the other: A found bill of divorce should be returned only in a case where the witnesses who signed the bill of divorce say: We have never signed a bill of divorce of a person named Yosef ben Shimon other than this one, in which case there is no concern that the bill of divorce belongs to someone else.

[581] The Gemara asks: If that is so, what is the purpose of stating that one returns the bill of divorce? Since it clearly belongs to him, there is no question that it must be returned to him. The Gemara answers that it is necessary lest you say that one should be concerned that perhaps it happened that another bill of divorce was written in which the names of the husband and the wife are identical to the names of the husband and wife of the second bill of divorce, and the names of the witnesses on that bill of divorce are identical to the names of the witnesses on this bill of divorce, when in fact they are different witnesses. To counter this, the mishna teaches us that this is not a concern.

[582] Rav Ashi stated another resolution to the contradiction: The bill of divorce should be returned only in a case where the person claiming to have lost it provides a clear-cut distinguishing mark, e.g., he says: There is a hole in the bill of divorce next to such and such a letter.

[583] The Gemara comments: And Rav Ashi permits one to return such a bill of divorce specifically when the one claiming to have lost it says that the hole is next to such and such a letter, as that is a clear-cut distinguishing mark. But if he said only that it had a hole without mentioning its precise location, one should not return the bill of divorce, as that is not considered a clear-cut distinguishing mark.

[584] The Gemara explains: Rav Ashi is uncertain whether a lost item is returned to its owner on the basis of distinguishing marks by Torah law or whether it is by rabbinic law. Therefore, in the case of a bill of divorce, he holds that one may rely only on a clear-cut distinguishing mark, as everyone agrees that a lost item is returned to its owner on the basis of a clear-cut distinguishing mark by Torah law.

[585] The Gemara relates that Rabba bar bar Ḥana

[586] lost a bill of divorce, which had been given to him to deliver, in the study hall. When it was found, he said: If they request a distinguishing mark, I have one for it. If it depends on visual recognition, I have methods of recognition for it. They returned the bill of divorce to him. He said afterward: I do not know if they returned it to me due to the distinguishing mark that I supplied, and they hold that distinguishing marks are used to return lost items by Torah law, or if they returned it to me due to my visual recognition, and it was specifically because I am a Torah scholar, as Torah scholars are relied upon when they say that they recognize an item, but an ordinary person would not be relied upon to recognize the item and have it returned to him.

[587] § The Gemara discusses the matter itself cited above: If one found a woman's bill of divorce in the marketplace, in a case when the husband admits that he wrote and gave it, the finder must return it to the wife. If the husband does not admit to this, the finder may neither return it to this one, the husband, nor to that one, the wife.

[588] In any event, the baraita states that when the husband admits that he wrote and gave it, the finder must return it to the wife. The Gemara challenges: But let us suspect that perhaps he wrote the bill of divorce intending to give it in Nisan, but did not give it to her until Tishrei, and the husband went and sold the produce of his wife's property in the interim, between Nisan and Tishrei, since the divorce had not yet taken effect. And the wife might then produce the bill of divorce, which he wrote in Nisan, and come to repossess the produce from the purchasers unlawfully.

[589] This works out well according to the one who says that once he has decided to divorce her, the husband no longer has the rights to his wife's produce. Since the husband had no right to sell the produce, the wife repossessed it rightfully. But according to the one who says that the husband has rights to his wife's produce until the actual time of giving the bill of divorce, what is there to say?

[590] The Gemara answers: When she comes to repossess the produce, we say to her: First bring proof as to when the bill of divorce came into your possession, and then we will allow you to repossess the sold produce.

[591] The Gemara asks: But in what way is it different from promissory notes? As we learned in a mishna (12b): With regard to one who found promissory notes, if they include a property guarantee for the loan, he may not return them to the creditor. And we interpreted the mishna as referring to a case where the liable party admits that he has not yet repaid the debt, and the reason the promissory note cannot be returned is due to the possibility that perhaps he wrote it intending to borrow money in Nisan, but ultimately did not borrow it until Tishrei, and the creditor might therefore use the promissory note to unlawfully repossess property that the debtor sold between Nisan and Tishrei from the purchasers.

[592] According to the Gemara's suggestion with regard to a bill of divorce, there, in the case of a promissory note, it should also be returned, and when the creditor comes to repossess the debtor's property that was sold in the interim, let the court say to him: First bring proof as to when the promissory note came into your possession.

[593] The Sages say that it is not comparable. Here, with regard to a woman's bill of divorce, the purchaser will come and demand that the wife prove when it was given to her, as he will say to himself: The fact that the Sages returned the bill of divorce to her was only so that she would not

dwell alone as a deserted wife and not be able to remarry for lack of a bill of divorce. Now that she is coming to repossess the property her husband sold me, she should go and bring proof as to when the bill of divorce came into her possession.

[594] By contrast, here, with regard to a promissory note, the purchaser will not come and demand proof, because he will infer from the fact that the Sages returned the promissory note to him that it is obviously valid from the date written in it. After all, for what halakha did the court return it to him? It was clearly in order to repossess property with it. Therefore, he will conclude from it: The Sages clarified the matter and determined that, in fact, this promissory note came into the possession of the creditor prior to my purchase of property from the debtor.

[595] § The mishna teaches: Bills of manumission of slaves that are found should not to be returned. The Sages taught in a baraita: If one found a bill of manumission in the marketplace, in a case when the master admits that he gave the bill to the slave, one should return it to the slave. If the master does not admit to it, one should neither return it to this person, the master, nor to that person, the slave.

[596] The Gemara asks: In any event, the baraita states that when the master admits that he gave the bill of manumission to the slave, the one who found it should return it to the slave. But why should he return it? Let us suspect that perhaps he wrote the bill of manumission intending to give it to him in Nisan, but he did not give it to him until Tishrei, and the slave went and bought property in the interim, between Nisan and Tishrei, at which time he was still a slave, in which case the property belongs to his master, and the master then went and sold that property. And if the bill of manumission is returned to the slave, he might produce the bill of manumission, which his master wrote in Nisan, in order to claim that the property was not his master’s to sell, and repossess the property from the purchasers unlawfully.

[597] This works out well according to the one who says that it is in a slave’s interest to leave his master’s authority and attain freedom and in accordance with the opinion of Abaye, who says that when a document serves the interests of its intended recipient, its witnesses, with their signatures, acquire it on his behalf. Accordingly, a slave attains freedom at the moment his bill of manumission is signed, even if it is given to him at a later date. Therefore, the halakha in the baraita works out well. But according to the one who says that it is against a slave’s interests to leave his master’s authority and attain freedom, what is there to say?

[598] The Gemara answers that when the slave comes to repossess the property, we say to him: Bring proof as to when the bill of manumission reached your possession and you were freed.

[599] § The mishna teaches: If one found wills [deyaytiki] or deeds of gift, he should not return them. The Sages taught in a baraita: What is considered a deyaytiki and is collected by the designated recipient after the death of the giver? It is a deed that states: This deed will be to stand [da tehe lemeikam] and exist as proof that if this person dies, his property is to be given to so-and-so. An ordinary deed of gift, by contrast, is any deed in which it is written: This gift is given from today and after the death of the giver.

[600] The Gemara asks: Apparently, only if it is written in the deed: From today and after the death of the giver, the recipient acquires the gift, and otherwise, he does not acquire the gift. Is there no deed of gift that is effective even without the clause: And after my death?

601 Abaye said that this is what the baraita is saying: What deed of gift of a healthy person is considered like the deed of gift of a person on his deathbed, in that the recipient acquires it only after the death of the giver? It is any deed in which it is written: This gift is given from today and after the giver’s death.

602 § The mishna teaches that these documents may not be returned to the one who is presumed to have lost them, as perhaps the one who wrote them reconsidered and decided not to deliver them. The Gemara infers: The reason that these deeds may not be returned is that the one who wrote them doesn’t say to the finder: Give them to their intended recipient. But if he says: Give them, the finder must give them.

603 And the Gemara raises a contradiction to that inference from a baraita that states that if one found wills, or deeds of designated repayment, or deeds of gift, even if both the one who wrote the deed and its intended recipient agree that it is valid, he should return it neither to this person nor to that person.

604 Rabbi Abba bar Memel said: This is not difficult.

605 This halakha applies in a case of a gift given by a healthy person, and that halakha applies in a case of a gift given by a person on his deathbed.

606 The Gemara explains: The mishna that teaches that if the giver says: Give it to its intended recipient, the finder must give it, applies in a case of a gift given by a person on his deathbed, who is capable of retracting his gift.

607 Therefore, the finder must give the deed to the recipient, as we say: What is there to say as a reason for not returning the deed? One might suggest that perhaps the giver initially wrote a deed of gift for this person, but then reconsidered and did not give it to him, and then he wrote a second deed of gift for another person and thereby gave his property to him. And now that his first deed was found, he wishes to retract his gift to that second person to whom he gave the property, by dishonestly validating the first deed.

608 This attempt to retract his latter gift will not succeed. If he gave his property to the recipient of the second deed of gift as the gift of a healthy person, then the second recipient incurs no loss by the first deed being given to its intended recipient. This is because, when the two deeds are produced in court, the recipient of the later one acquires the property, as the owner evidently retracted the first gift. Since one who gave away his property while on his deathbed can subsequently retract his gift, the second recipient acquires the property.

609 So too, if he gave it to the second person as the gift of a person on his deathbed, he incurs no loss. This is because the recipient of the later deed acquires the property, as the giver evidently retracted his gift to the first recipient.

610 And when the baraita teaches that even if both the one who wrote the deed and its intended recipient agree that it is valid, the one who found it should neither return it to this person nor to that person, it is referring to the case of a gift given by a healthy person, who is not able to retract his gift.

611 Therefore, one may not return the deed, as we say that perhaps the giver initially wrote a deed of gift for this person but then reconsidered and did not give it to him, and then he wrote a second deed of gift for another person and thereby gave his property to him; and now he wishes to retract his gift to that second person to whom he gave the property, thinking: Since I cannot retract the gift legally, I

will say to the court that I gave the first deed of gift to this first person, and they will return the deed of gift to him, in order that when he produces this deed of gift, which is dated earlier, he will thereby acquire the property.

612 Rather, we say to the giver: We will not give this document to this person, as perhaps you wrote it but did not give it to him, and then you gave the property to another person, and you now wish to retract your gift to him unlawfully. Therefore, if in fact you did not give this property as a gift to another person, and you wish to return it to this person, then do the following: Write another deed of gift for him now and give it to him, so that if you did previously give the property to another person, he will incur no loss, as the earlier recipient acquires the gift.

613 Rav Zevid objects to this distinction between the mishna and baraita, asking: But don't this mishna and that baraita both teach halakhot with regard to wills? How can Rabbi Abba bar Memel explain that the baraita is referring to the gift of a healthy person? Rather, Rav Zevid said that both this mishna and that baraita are referring to the gift of a person on his deathbed, and nevertheless, the contradiction between them is not difficult; this mishna is referring to him, the giver himself, who authorizes the return of the will to its intended recipient, and that baraita is referring to a case where the giver died, and his son is the one who is authorizing the return of the will.

614 The Gemara explains: The mishna, which indicates that if the giver says: Give it to the recipient, the finder must give it to him, is referring to a case where the giver himself authorizes giving the will, as he is capable of retracting it. Therefore, there is no harm in giving the will to the recipient, as we say that even if in the meantime he already gave the property to another person, the latter recipient incurs no loss. This is because in a case where there are two wills, a first one and a last one, the recipient of the last one acquires the property, as the owner evidently retracted the first will.

615 And when the baraita teaches that even if both the one who wrote the deed and its intended recipient agree that it is valid, the one who found it should neither return it to this person nor to that person, it is referring to a case where the one who wrote it died, and it is his son who authorizes its return to the recipient.

616 In that case, the deed may not be returned, as we say that perhaps his father wrote the deed of gift for this person and then reconsidered and did not give it to him, and after his father died, the son wrote a deed of gift giving the property to another person and gave it to him. And now the son wishes to retract that gift, thinking: Since I cannot retract the gift legally, I will say to the court that my father gave his deed of gift to this first person, and they will return him his deed of gift, and he will then go and appropriate the property from the one who legally acquired the property, as he will be successful in acquiring it, and I will divide it with him.

617 Therefore, we say to the son: We will not give this deed to this person, as perhaps your father wrote it but did not give it to him, and then you gave the property to another person, and now you wish to retract your gift.

618 Rather, if you are telling the truth that your father gave him this property, then you should go now and write another deed of gift for him, so that even if your father did not give him this property, and you wrote a deed of gift giving this property to another person, he will incur no loss. This is because in a case where there are two deeds of gift, a first one and a last one, the recipient of the first one acquires the property.

619 § The Sages taught in a baraita: If one found a receipt for payment of a marriage contract, in a case when the wife admits that it was paid, he should return it to the husband. If the wife does not admit that it was paid, he should neither return it to this person, the husband, nor to that person, the wife.

620 In any event, the baraita states that when the wife admits that it was paid, one should return the receipt to the husband. The Gemara asks: But let us suspect that perhaps the wife wrote the receipt intending to give it to the husband in Nisan, but ultimately she did not give it to him until Tishrei, and she went and sold her marriage contract for financial advantage in the interim, between Nisan and Tishrei. In other words, she received a sum of money and in exchange agreed that if she were to be divorced or widowed and become entitled to payment of her marriage contract, the money would belong to the purchaser of the rights to her marriage contract.

621 And then after the couple is divorced, and the purchaser collects payment of the marriage contract from the husband, the husband will produce the receipt that was written in Nisan and will come to repossess property from the purchasers unlawfully.

622 Rava said:

623 Conclude from the fact that this suspicion is not taken into account that the halakha of Shmuel is accepted. As Shmuel says: In the case of one who sells a promissory note to another, and the seller then forgives the debt of the debtor, it is forgiven, since the debtor essentially had a non-transferable obligation to the creditor alone, and even the creditor's heir can forgive the debt. Therefore, if the wife did engage in the deception mentioned above, it was within her rights, as she is able to forgive the debt of the marriage contract.

624 Abaye said: This is not conclusive proof. Even if you say that the halakha of Shmuel is not accepted, here we are dealing with a case where the marriage contract emerges from her possession, which indicates that she did not sell it. And Rava disagreed with Abaye and said: If the reason there is no suspicion that she sold her marriage contract is due to the fact that the marriage contract emerged from her possession, this reason is insufficient, as we should suspect that there might be two marriage contracts.

625 And Abaye said in response: First, we are not concerned about the remote possibility of two marriage contracts. And furthermore, even if there is only one marriage contract, which was sold before the receipt was given to the husband, the receipt is valid, as a receipt can be used to repossess property from the time it was written, even if it was given on a later date. In saying this, Abaye conforms to his standard line of reasoning, as he says that once a monetary document is written for someone, the document's witnesses, with their signatures, acquire it on his behalf.

626 MISHNA: If one found documents of appraisal of a debtor's property for the purpose of debt collection; or documents concerning food, which were drawn up when one accepted upon himself to provide sustenance for another; documents of ḥalitza; or documents of refusal of a girl upon reaching majority to remain married to the man to whom her mother or brothers married her as a minor after the death of her father; or documents of beirurin, a concept that will be explained in the Gemara; or any court enactment, e.g., a promissory note that has been authenticated by the court, in all of these cases, the finder must return the document to its presumed owner.

627 If one found documents in a ḥafisa or in a deluskema, both of them types of containers, or if he found a roll of documents or a bundle of documents, he must return them. And how many documents are considered to be a bundle of documents? It is three that are tied together. Rabban Shimon ben Gamliel says: If the documents make reference to loans of one person who borrowed money from three people, the finder must return them to the debtor, as they were presumably in his possession before being lost. If the documents make reference to loans of three people who borrowed money from one person, he must return them to the creditor, as they were presumably in his possession before being lost.

628 If one found a document among his documents that were given to him by other people as a trustee, and he does not know what its nature is, i.e., he does not remember who gave it to him or whether the debt mentioned in it has been paid, the document is placed aside until Elijah the prophet comes and clarifies the issue through his prophecy. If there are cancellations of contracts [simponot] among them, he should do what is stated in the simponot.

629 GEMARA: What is meant by documents of beirurin? Here, in Babylonia, the Sages interpret it to mean documents recording each litigant's clarification [beirur] of his claims in a court case. Rabbi Yirmeya, who lived in Eretz Yisrael, said: It is referring to cases where this litigant chooses [borer] one judge, and that litigant chooses one judge, and they choose the third judge for the case. The two litigants sign a document in which they declare which judges they choose.

630 § The Gemara addresses that which the mishna states: And with regard to any court enactment, the one who found it must return it to its presumed owner. The Gemara relates: There was a certain bill of divorce that was found in the court of Rav Huna, in which it was written that the bill of divorce was written in Sheviri City, which is located on the Rakhis River. Rav Huna said about this:

631 We are concerned for the possibility that there are two cities named Sheviri, and that this bill of divorce may belong to someone else who lives in the other Sheviri, and therefore it should not be returned. Rav Ḥisda said to Rabba: Go out and examine this halakha, as in the evening Rav Huna will ask you about it. He went out, examined it, and discovered a relevant source, as we learned in the mishna: With regard to any court enactment, the one who found it must return it to its presumed owner. Since this bill of divorce was found in court, it belongs to this category and should be returned.

632 Rav Amram said to Rabba: How can the Master resolve the halakha in the case of a bill of divorce, which is a ritual matter, from the mishna, which discusses monetary matters? Rabba said to him: Fool, we learned in the mishna that this halakha applies in the case of documents of ḥalitza and documents of refusal as well, which are ritual matters.

633 At that point, the supporting cedar beam of the study hall dislodged. One Sage said: It was due to my fortune that it dislodged, as you spoke to me offensively, and the other Sage said: It was due to my fortune that it dislodged, as it was you who spoke to me offensively.

634 § The mishna teaches: If one found documents in a ḥafisa or in a deluskema, he must return them. The Gemara asks: What is a ḥafisa? Rabba bar bar Ḥana says: It is a small flask. What is a deluskema? Rabba bar Shmuel says: It is a container [telika] used by the elderly.

635 The mishna teaches: If one found a roll of documents or a bundle of documents, he must return them. The Sages taught in a baraita: How many documents constitute a roll of documents? A roll is

three documents rolled together. And how many constitute a bundle of documents? A bundle is three documents tied together.

636 The Gemara infers: Conclude from it that if one lost an item that has a knot, the type of knot can serve as a distinguishing mark by means of which the owner can describe the item, and it therefore must be returned to him.

637 The Gemara rejects this inference: Doesn't Rabbi Ḥiyya teach that the reference is to three documents that are rolled together? The fact that they are rolled together is what serves as a distinguishing mark, rather than the knots.

638 The Gemara asks: If so, this case is identical to the case of a roll of documents, which is also mentioned in the mishna. What is the difference between a roll and a bundle? The Gemara answers: A roll is referring to a case where each and every one of the documents is located at the top of another one, i.e., they are rolled together such that the top of each page is near the bottom of the previous page. A bundle, by contrast, is referring to a case where they are located one on top of the other and rolled together.

639 The Gemara asks: What does the person who found the documents proclaim so that the owner can claim it? The Gemara answers: He proclaims the number of documents that he found, and the owner can describe them by saying that they were rolled together.

640 The Gemara asks: If so, why does the tanna teach specifically a case of three documents? Even if two documents are found, they can also be returned in this manner.

641 Rather, the finder proclaims his find in a manner similar to that which Ravina said: If one finds coins, he simply proclaims that he found coins, without specifying the number. Here too, the finder proclaims that he found documents, and the owner describes them by both their exact number and the fact that they were rolled together. Therefore, if there are only two documents the description is deficient, as the number two is already implicit in the finder's proclamation that he found documents, which is plural.

642 § The mishna teaches that Rabban Shimon ben Gamliel says: If one finds three promissory notes that make reference to the loans of one person who borrowed from three people, he must return them to the debtor. The Gemara explains: The reason for this is that if it enters your mind that these promissory notes belong to the creditors, what are they doing together in one place?

643 The Gemara suggests: Perhaps the three creditors all went to court in order to ratify their promissory notes, and the notes were lost together there. The Gemara responds that the mishna is referring to a case where the promissory notes are ratified.

644 The Gemara asks: Perhaps they fell from the hand of the scribe of the court after he ratified them. The Gemara answers: A person does not leave his ratified promissory note in the possession of the scribe. Therefore, the most likely scenario is that the promissory notes were lost by the debtor.

645 § The mishna teaches: If the promissory notes make reference to the loans of three people who borrowed from one person, the one who found them must return them to the creditor. The Gemara explains: The reason for this is that if it enters your mind that these promissory notes belong to the debtors, what are they doing together?

[646] The Gemara asks: Perhaps the three went to one scribe to write the promissory notes, and the notes were then lost together. The Gemara answers that the mishna is referring to a case where the promissory notes are written in the handwriting of three different scribes.

[647] The Gemara suggests: And perhaps the three debtors went to the court in order to ratify the promissory notes, and they lost them there. The Gemara answers: It is the creditor who ratifies his promissory note; the debtor does not ratify his promissory note.

[648] § The mishna teaches: If there are cancellations of contracts [simponot] among one's documents, he should do what is stated in the simponot. The Gemara cites that which Rav Yirmeya bar Abba says that Rav says: With regard to a simpon that emerges from the possession of a creditor, even if it is written in his own handwriting and is clearly not forged, it is considered as though he were merely jesting and the simpon is invalid.

[649] The Gemara explains: It is not necessary to state this halakha in a case where it is written in the handwriting of a scribe, as it can be said that he happened to have an opportunity to have the scribe write the simpon, and therefore he had him write it before the debt was repaid. But even in a case where it is written in the handwriting of the creditor it is invalid. The creditor may have written the simpon himself before the debt was repaid, thinking: Perhaps the debtor will happen to come at twilight on the eve of Shabbat and wish to repay me. I should prepare a document of cancellation, as, if I do not give him one, he will not give me the money. I will therefore write the document now, so that when he brings me the money, I will give it to him.

[650] The Gemara challenges the statement of Rav based on that which we learned in the mishna: If there are simponot among one's documents, he should do what is stated in the simponot. This is apparently referring to simponot that are in the possession of the creditor.

[651] The Gemara answers that the mishna is to be understood in accordance with that which Rav Safra said in response to another difficulty: It is referring to a case where the simpon was found among torn documents. This indicates that the simpon is valid, as had the debt not been repaid, the creditor would not have put the simpon note among torn documents. Here too, the mishna is referring to a case where the simpon was found among torn documents.

[652] Come and hear another challenge to Rav's statement from a mishna (Bava Batra 172a): If one found among his documents a simpon that says: The debt mentioned in the promissory note of Yosef ben Shimon is repaid, and there are two people by that name who owe him money, the debts mentioned in the promissory notes of both of them are considered repaid, as each can claim that the cancellation is referring to his debt, and the burden of proof rests upon the creditor. Apparently, a simpon that is found in the possession of the creditor is valid.

[653] The Gemara answers that this mishna, too, is to be understood in accordance with that which Rav Safra said in response to another difficulty: It is referring to a case where the simpon was found among torn documents. Here too, the mishna is referring to a case where the simpon was found among torn documents.

[654] Come and hear another challenge to Rav's statement from a mishna (Shevuot 45a): If orphans who inherited their father's property demand repayment of a debt owed to their father from the orphans of the debtor, they are required to take an oath stating: We take an oath that our father did not instruct us on his deathbed that the debt mentioned in this promissory note was repaid and it should

be returned to the debtor, nor did our father say to us on an earlier date that it was repaid, nor did we find among the documents of our father a simpon stating that this promissory note was repaid. This too, seems to indicate that a simpon is valid even if it is found in the possession of the creditor.

655 The Gemara answers by citing the statement of Rav Safra, who said in this context that this reference is to a case where the simpon was found among torn documents.

656 Come and hear another challenge from a baraita: A simpon upon which witnesses are signed is ratified by means of its signatories. The court verifies the validity of the witnesses' signatures and thereby ratifies the document. This too seems to include a simpon that is in the possession of the creditor. The Gemara answers: Say that the baraita reads: Is ratified by obtaining confirmation from its signatories,

657 as we ask the witnesses whether the loan was repaid or whether it was not repaid.

658 Come and hear another challenge from a baraita: A simpon upon which witnesses are signed is valid. Apparently, it is valid even if it is found in the possession of the creditor, as no distinction is made. The Gemara answers: To what witnesses is the baraita referring? It is referring to witnesses of ratification. The fact that the simpon was ratified by the court proves its validity.

659 The Gemara notes that this too stands to reason, from the fact that the baraita teaches in the latter clause: And a simpon upon which witnesses are not signed is invalid. What is meant by the expression: Upon which witnesses are not signed? If we say that it means that there are no witnesses signed on it at all, does it need to be said that it is invalid? Rather, is it not referring to a simpon on which witnesses are signed, just not witnesses of ratification?

660 The Gemara discusses the baraita itself cited above: A simpon upon which witnesses are signed is ratified by means of its signatories. If there are no witnesses signed on it, but the simpon emerges from the possession of a third party serving as a trustee, or if it emerges after the signing of the documents, i.e., the simpon was written on the promissory note beneath the content of the note and the witnesses' signatures, it is valid.

661 The Gemara explains: The reason that it is valid if it emerges from the possession of a third party is that the creditor granted credibility to the third party by placing the simpon in his possession. So too, the simpon is valid in a case where it emerges after the signing of the documents, as, if not for the fact that the debt was repaid, the creditor would not have undermined his note by allowing the simpon to be written on it.

Chapter 2

1 MISHNA: In a case where one discovers lost items, which found items belong to him, and for which items is one obligated to proclaim his find so that the owner of the lost items can come and reclaim them?

2 These found items belong to him: If one found scattered produce, scattered coins, bundles of grain in a public area, round cakes of pressed figs, baker's loaves, strings of fish, cuts of meat, unprocessed wool fleeces that are taken from their state of origin directly after shearing, bound flax stalks, or bound strips of combed purple wool, these belong to him, as they have no distinguishing marks that would enable their owners to claim them. This is the statement of Rabbi Meir.

[3] Rabbi Yehuda says: If one finds any lost item in which there is an alteration, he is obligated to proclaim his find. How so? If he found a round cake of pressed figs with an earthenware shard inside it or a loaf of bread with coins inside it, he is obligated to proclaim his find, as perhaps the owner of the item inserted them as a distinguishing mark by means of which he could reclaim his property in case it became lost.

[4] Rabbi Shimon ben Elazar says: If one finds any anpurya vessels, since their shape is uniform and they are indistinguishable, he is not obligated to proclaim his find.

[5] GEMARA: The mishna teaches as an example of items that one finds without any distinguishing mark: If one found scattered produce. The Gemara asks: And how much produce in how large an area constitutes scattered produce? Rabbi Yitzḥak says: It is considered scattered produce when it has a dispersal ratio of one kav in an area of four by four cubits.

[6] The Gemara asks: What are the circumstances? If he found the produce scattered in a manner indicating that it came there by falling and was not deliberately placed there, then even if the volume of produce in that area was greater than this limit, it should also belong to him, because there is no distinguishing mark that would enable the owner to reclaim it. And if he found produce scattered in a manner indicating intentional placement, then even if the volume of produce in an area that size was less than this limit, he should also not be allowed to keep the produce, as clearly the owner plans on returning to reclaim his produce.

[7] Rav Ukva bar Ḥama said: We are dealing with kernels of wheat that remained during the gathering of grain on the threshing floor. For kernels scattered with a dispersal ratio of one kav in an area of four by four cubits, whose gathering requires great exertion, a person does not exert himself and does not return and take them. Therefore, he renounces his ownership of them and one who finds the kernels may keep them. For kernels scattered in an area smaller than that, the owner exerts himself and returns and takes them. And therefore, he does not renounce his ownership of them.

[8] Rabbi Yirmeya raises a dilemma: If a half-kav of kernels were scattered in an area of two by four cubits, what is the halakha? The aspects of the dilemma are: In the case of one kav of kernels scattered in an area of four by four cubits, what is the reason that the owner renounces his ownership of the kernels? It is due to the fact that gathering the kernels requires great exertion. In the case of a half-kav of kernels scattered in an area of two by four cubits, since gathering them does not require great exertion, he does not renounce his ownership of them. Or perhaps, the owner renounces ownership in the case of one kav of kernels scattered in an area of four by four cubits due to the fact that they are not of significant value. In the case of a half-kav of kernels scattered in an area of two by four cubits, since they are certainly not of significant value, he renounces his ownership of the kernels.

[9] Rabbi Yirmeya raises a related dilemma: If two kav of kernels were scattered in an area of eight by four cubits, what is the halakha? The aspects of the dilemma are: If one kav of kernels is scattered in an area of four by four cubits, what is the reason that the owner renounces ownership? It is due to the fact that gathering them requires great exertion. This is true all the more so in the case of two kav of kernels scattered in an area of eight by four cubits, and since gathering them requires even greater exertion, the owner renounces his ownership of them. Or perhaps, the owner renounces his ownership in the case of one kav of kernels scattered in an area of four by four cubits due to the fact

that they are not of significant value. But in the case of two kav of kernels scattered in an area of eight by four cubits, since they are of significant value, he does not renounce his ownership of them.

[10] If one kav of sesame seeds was scattered in an area of four by four cubits, what is the halakha? The aspects of the dilemma are: In the case of one kav of kernels scattered in an area of four by four cubits, what is the reason that the owner renounces ownership? It is due to the fact that they are not of significant value. And in the case of sesame seeds, since they are of significant value he does not renounce his ownership of them. Or perhaps, the owner renounces ownership in the case of one kav of kernels scattered in an area of four by four cubits due to the fact that gathering them requires great exertion. That is true all the more so in the case of sesame seeds. Since gathering them requires even greater exertion, he renounces his ownership of them.

[11] If one kav of dates was scattered with a dispersal ratio of one kav in an area of four by four cubits, or if one kav of pomegranates was scattered with a dispersal ratio of one kav in an area of four by four cubits, what is the halakha? The aspects of the dilemma are: In the case of one kav of kernels scattered in an area of four by four cubits, what is the reason that the owner renounces ownership? It is due to the fact that they are not of significant value; and also in the case of one kav of dates in an area of four by four cubits or one kav of pomegranates in an area of four by four cubits, since they are not of significant value he renounces ownership of the fruit.

[12] Or perhaps, the owner renounces ownership in the case of one kav of kernels scattered in an area of four by four cubits due to the fact that gathering them requires great exertion. And in the case of one kav of dates in an area of four by four cubits or one kav of pomegranates in an area of four by four cubits, since gathering them does not require great exertion he does not renounce his ownership of them. In all these cases, what is the halakha? The Gemara concludes: All these dilemmas shall stand unresolved.

[13] § It was stated:

[14] With regard to one’s despair of recovering his lost item that is not a conscious feeling, i.e., were he aware of the loss of his property, he would have despaired of its recovery, but he was unaware of his loss when the finder discovered the item, Abaye said: It is not considered despair; the owner maintains ownership of the item, and the finder may not keep it. And Rava said: It is considered despair and the finder may keep it.

[15] The Gemara limits the scope of the dispute. In the case of an item on which there is a distinguishing mark, everyone agrees that despair that is not conscious is not considered despair. And even though we hear that he ultimately despairs of recovering the item, it is not considered despair, as when the item came into the possession of the finder, it was in a prohibited manner that it came into his possession. It is prohibited because when the owner learns that it fell from his possession, he does not despair of its recovery immediately. Instead, he says: I have a distinguishing mark on the item; I will provide the distinguishing mark to the finder, and I will take it.

[16] With regard to an item swept away by the tide of the sea or by the flooding of a river, even though the item has a distinguishing mark, the Merciful One permits the finder to keep it as we seek to state below, later in the discussion.

[17] When they disagree, it is with regard to an item in which there is no distinguishing mark. Abaye said: Despair that is not conscious is not considered despair, as he did not know that the item fell

from him; therefore, he cannot despair of recovering it. Rava said: Despair that is not conscious is considered despair, as when he discovers that it fell from him, he will despair of its recovery; as he says upon this discovery: I have no distinguishing mark on the item. Therefore, it is considered from now, when the item fell, that he despairs.

[18] The Gemara proceeds to cite a series of proofs for and against the opinions of Abaye and Rava and provides a mnemonic representing those proofs: Peh, mem, gimmel, shin; mem, mem, kuf, gimmel, tet, yod; kaf, kaf, samekh, ayin, zayin.

[19] The Gemara suggests: Come and hear a proof from the mishna: If one found scattered produce, it belongs to him. The Gemara asks: Why does it belong to him; isn't the owner unaware that they fell from him? Apparently, despair that is not conscious is considered despair. The Gemara rejects that proof: Didn't Rav Ukva bar Ḥama say: We are dealing with kernels of wheat that remained during the gathering of grain on the threshing floor? The owner knowingly left the kernels on the threshing floor because it was not worth his while to gather them. That is a deliberate loss, and therefore the despair is conscious. Therefore, this clause in the mishna is not relevant to the dispute in question.

[20] The Gemara suggests: Come and hear a proof from the mishna: If one found scattered coins, these belong to him. The Gemara asks: Why do they belong to the one who finds them; isn't the owner unaware that they fell from him? Apparently, despair that is not conscious is considered despair. The Gemara rejects that proof: There too, it is not a case of unconscious despair, in accordance with the statement of Rabbi Yitzḥak, who says: A person is prone to feel his money pouch constantly. Here too, a person is prone to feel his money pouch constantly; therefore, it is reasonable to assume that shortly after the coins fell, the owner became aware of his loss.

[21] The Gemara suggests: Come and hear a proof from the mishna: If one found round cakes of pressed figs or baker's loaves, these belong to him. The Gemara asks: Why do they belong to the one who finds them; isn't the owner unaware that they fell from him? Apparently, despair that is not conscious is considered despair. The Gemara rejects that proof: There too, it is not a case of unconscious despair. Since these items are heavy he knows that they fell, and it is reasonable to assume that shortly after they fell the owner became aware of his loss.

[22] The Gemara suggests: Come and hear a proof from the mishna: If one found strips of purple wool, these belong to him. The Gemara asks: And why do they belong to the one who finds them; isn't the owner unaware that they fell from him? Apparently, despair that is not conscious is considered despair. The Gemara rejects that proof: There too, it is not a case of unconscious despair. Since they are significant and valuable, the owner feels around for them to ensure that they are not lost, and therefore, it is reasonable to assume that shortly after the strips fell, the owner became aware of his loss. This reasoning is in accordance with the statement of Rabbi Yitzḥak with regard to coins.

[23] The Gemara suggests: Come and hear a proof from a baraita: In the case of one who finds coins in synagogues, and in study halls, and in any place where the multitudes are found, these coins belong to him due to the fact that the owners despair of their recovery. Why do they belong to him; isn't the owner unaware that the coins fell from him? Rabbi Yitzḥak says: A person is prone to feel his money pouch constantly; therefore, it is reasonable to assume that shortly after the coins fell, the owner became aware of his loss.

[24] The Gemara suggests: Come and hear a proof from a mishna (Pe'a 8:1): From when is it permitted for any person to collect gleanings, which the Torah designates as exclusively for the poor (see

Leviticus 19:9–10)? It is permitted once the nemushot have walked in the field. And we say in interpreting the mishna: What are nemushot? And Rabbi Yoḥanan said: They are the elderly people who walk leaning on a cane. Since they walk slowly, they will see any stalks that remain and take them. Reish Lakish said: They are the second wave of gleaners who pass through the field after the initial gleaners, collecting any stalks that remain.

[25] The Gemara asks: And why is it permitted for any person to take the stalks, given that although the poor who are here renounce ownership of the stalks after seeing the nemushot pass through the field, there are poor people in another place who are unaware of the passing of the nemushot and do not renounce ownership? Apparently, despair that is not conscious is considered despair. The Sages say in rejecting that proof: Since there are poor people here, those poor people in the other places despair of the gleanings from the outset, and they say: The poor people who are there gather the gleanings.

[26] The Gemara suggests: Come and hear a proof from a mishna (Ma’asrot 3:4): If dried figs are found on the path, and even if they were found at the side of a field where dried figs are spread to dry, and likewise, if there is a fig tree whose branches extend over a path and one found figs beneath it, those figs are permitted and taking them is not prohibited due to the prohibition of robbery. And as these are ownerless property, one who finds them is exempt from the obligation to separate tithes. In the case of olives or of carobs, it is prohibited to take the fruit.

[27] Granted, the first clause of the mishna is not difficult according to the opinion of Abaye, as he can explain that one consciously despairs of recovering the dried figs. Since dried figs are significant and valuable, one feels around for them to ensure that they have not become lost. It is reasonable to assume that shortly after the fruits fell, the owner became aware of his loss and despaired of recovering them. In the case of the fig tree, too, one knows that it is a common occurrence for the fruit of the fig tree to fall from the tree and he renounces ownership from the outset.

[28] But the latter clause of the mishna is difficult according to the opinion of Rava, as it teaches: In the case of olives or of carobs, it is prohibited to take the fruit. Apparently, despair that is not conscious is not considered despair. Rabbi Abbahu said: The halakha of an olive is different, since its appearance proves the identity of the owner, as the fruit fallen from the tree appears similar to the fruit on that tree, and even though the olives fall off the tree, the one who finds the olives knows that an olive tree that is located in a place that is owned by a specific person belongs to that person and the owner will not renounce ownership of his fruit.

[29] The Gemara asks: If so, then even in the first clause as well, it should be prohibited to take the fruit that fell from the fig tree. Rav Pappa said: A fig becomes disgusting with its fall from the tree. Even if the fruit can be attributed to the tree of origin, since it is no longer fit for consumption, the owner would not want the fruit and consequently renounces his ownership of it.

[30] The Gemara suggests: Come and hear a proof from a baraita: A thief who took an item from this person and gave it to that person, and likewise, a robber who took an item from this person and gave it to that person,

[31] and likewise, in the case of the Jordan River or another river that took an item from this person and gave it to that person, in all those cases, that which the person took, he took, and that which the person gave, he gave. Likewise, that which the river took, it took, and that which the river gave, it gave. The person who received the item need not return it.

[32] The Gemara asks: Granted in the cases of the robber and the Jordan River, one could say that the owner sees them take the item and despairs of its recovery; but in the case of the thief, who takes the item surreptitiously, does the owner see him take the item and would that lead him to despair? The Gemara explains: Rav Pappa interpreted the term thief in the baraita to be referring to armed bandits [listim]; therefore, the owner is aware that the item was taken and he despairs of its recovery. The Gemara asks: If so, this is the same as a robber, why mention two identical cases? The Gemara answers: The baraita mentioned two types of robbers; in both cases the owner was aware that his item was taken.

[33] The Gemara suggests: Come and hear a proof from a baraita: If a river swept away one's beams, one's wood, or one's stones and placed them into the field of another, these items belong to the owner of the field due to the fact that the respective owners despaired of their recovery. The Gemara infers from the baraita: The reason they belong to the finder is that the owners despaired; but in an unspecified case, where it is not definitively known that the owners despaired, they do not belong to the finder. Apparently, despair that is not conscious is not considered despair. The Gemara rejects the proof: With what are we dealing here? It is a case where the owners are capable of rescuing the beams, wood, or stones; therefore, their decision not to rescue them is a clear indication of despair.

[34] The Gemara asks: If so, say the latter clause of the same baraita: If the owners were pursuing the items, the finder is obligated to return them. If it is a case where the owners are capable of rescuing the items, why did the baraita specifically cite a case where the owners were pursuing the items? Even if they were not pursuing the lost items, the items also remain in their ownership, as they did not despair of their recovery. The Gemara answers: With what are we dealing here? It is a case where the owners are capable of rescuing the items with difficulty. In that case, if the owners pursue the items, it indicates that they did not despair of their recovery, but if the owners do not pursue the items, it indicates that they despaired of their recovery.

[35] The Gemara suggests: Come and hear a proof from a baraita (Tosefta, Terumot 1:5): When did the Sages say that in the case where one separates teruma without the owner's consent, his teruma is considered teruma? It is in a case where there was someone who entered another's field and gathered produce from it and separated teruma without the owner's permission. If the owner is concerned about his actions and views it as robbery, his teruma is not teruma, but if he is not concerned, his teruma is teruma.

[36] The baraita continues: And from where would he know whether the owner is concerned about his actions and views it as robbery or not? If the owner came and found him separating teruma and said to him: You should have gone to take the produce of better quality and separate teruma from that, then if produce of better quality than the produce he had separated is found, his teruma is considered teruma, since the owner is assumed to have been sincere and pleased that the other has separated teruma from his produce. But if not, his teruma is not teruma, as it may be assumed that the owner was angry at him and was speaking sarcastically. The baraita adds: If the owners were gathering and adding to the teruma he had separated, indicating that they agree to his act of separation, either way, whether or not better-quality produce was found, his teruma is considered teruma.

[37] The Gemara questions the ruling of the baraita: But why is that the halakha, that if produce of better quality than the produce he had separated is found his teruma is teruma? At the time that he separated the teruma, he did not know that the owner would ultimately agree. The baraita states that

the teruma is teruma from the moment he separated it, despite the fact that it was only later that he learned that the owner agreed. Apparently, in the case of despair as well, despair that is not conscious is considered despair, contrary to the opinion of Abaye. Rava interpreted the matter in accordance with the opinion of Abaye: This is a case where the owner designated him as an agent.

[38] So too, it is reasonable, as if it enters your mind that the owner did not designate him as an agent, would his teruma be teruma? But doesn't the Merciful One state: "So you also shall set apart a gift unto the Lord of all your tithes" (Numbers 18:28)? Once the verse states "you," the addition of the word "also" in the term "you also" serves to include an agent. Therefore, an agent separating teruma has the same halakhot as an owner separating teruma. Just as when you, the owner, separate teruma, it is with your knowledge, so too when your agent separates teruma, it must be with your knowledge. Evidently, in any event, one needs to be appointed as an agent to be capable of separating teruma for another.

[39] Rather, with what are we dealing here? It is a case where the owner designated him as an agent and said to him: Go and separate teruma, but he did not say to him: Separate teruma from these specific crops. And when the owner's intent is unspecified, and it is unclear which of his crops are meant to be separated when the agent separates teruma, it is from the crops of intermediate quality that he separates teruma. And in this case, the agent went and separated teruma from higher-quality produce, and the owner of the field came and found him and said to him: You should have gone to take the produce of better quality and separate teruma from that. If produce of better quality than the produce he had separated is found, his teruma is considered teruma. But if not, his teruma is not teruma.

[40] The Gemara digresses with a related incident: Ameimar, Mar Zutra, and Rav Ashi happened to come to the orchard [levustana] of Mari bar Isak. His sharecropper came and placed dates and pomegranates before them. Ameimar and Rav Ashi ate the fruit, but Mar Zutra did not eat the fruit due to the concern that the sharecropper had provided them with the fruit without the approval of the owner of the field. Meanwhile, Mari bar Isak came and found them eating his fruit and said to his sharecropper: Why didn't you bring the Sages fruit from those higher-quality fruits?

[41] Ameimar and Rav Ashi said to Mar Zutra: Now why is the Master not eating the fruit? But isn't it taught in a baraita: In a case where the owner of the field came and found him and said to him: You should have gone to take the produce of better quality and separate teruma from that; if produce of better quality than the produce he had separated is found, his teruma is considered teruma. Here too, it is clear that Mari bar Isak approved of the actions of his sharecropper. Mar Zutra said to them that this is what Rava said: The Sages said that the statement: You should have gone to take the produce of better quality and separate teruma, indicates consent of the owner only with regard to the matter of teruma, due to the fact that it is a mitzva and the owner is amenable to having the mitzva fulfilled. But here, in this incident, it is due to shame that he said this: Why did you not bring these Sages fruit from those higher-quality fruits? He did not really want to give them the fruit.

[42] The Gemara suggests: Come and hear another proof from a baraita with regard to despair that is not conscious. It is written: "And if any part of their carcass falls upon any sowing seed that is to be sown, it is ritually pure. But when water is placed upon the seed, and any part of their carcass falls thereon, it is ritually impure unto you" (Leviticus 11:37–38). Produce becomes susceptible to contracting ritual impurity only after coming into contact with one of seven liquids: Wine, honey, oil,

milk, dew, blood, and water. It is taught in the baraita: If the dew is still upon the produce and has not yet dried, and if the owner was glad that the dew moistened the produce and kept it fresh, that produce falls into the category of: “But when water is placed upon the seed,” and the produce is susceptible to contracting ritual impurity. If the produce had dried when the owner found it, then even though he was glad that the dew had moistened the produce,

[43] the produce is not in the category of: “But when water is placed [khi yuttan] upon the seed,” and the produce is not susceptible to contracting ritual impurity.

[44] What is the reason that if the produce dried, the fact that the owner is glad does not render it susceptible to ritual impurity? Is it not due to the fact that we do not say: Since the matter was revealed that he is amenable to the moisture now, he was also amenable from the outset? The same should be true with regard to despair that is not conscious. The fact that when he becomes aware of his loss he despairs of its recovery does not indicate that he despaired from the outset, contrary to the opinion of Rava. The Gemara rejects the proof: It is different there, as although the phrase is vocalized to mean: “When it is placed,” it is written: When one places [ki yitten], from which it is derived that the produce is rendered susceptible to ritual impurity only if the owner places the liquid on the produce.

[45] The Gemara asks: If so, in the first clause of the baraita, too, the produce should not be rendered susceptible to contracting impurity, because the dew fell on the produce and was not placed there by the owner. The Gemara answers: There, the explanation is in accordance with the opinion of Rav Pappa, as Rav Pappa raised a contradiction: The verse states: “But when water is placed [vekhi yuttan] upon the seed, and any part of a carcass falls thereon, it is ritually impure unto you” (Leviticus 11:38). The word “yuttan” is written in the defective form, as if it says “ki yitten.” Accordingly, this would mean that one must actively place the water on the produce. Yet, we read it, based on the tradition as to its correct pronunciation, as if it is written “ki yuttan,” which includes any situation where the produce becomes wet. How so? How can the way the verse is written and the way it is read be reconciled?

[46] Rav Pappa explains that we require that the situation described by the words “when water is placed [ki yuttan]” be similar to the situation described by the words: When one places [dekhi yitten]: Just as the term places [yitten] indicates that it is with the knowledge of the owner that the produce becomes wet, as he himself is placing the water, so too, the term “is placed [yuttan]” means that it is with his knowledge that the produce becomes wet, despite the fact that he did not place the water himself. Therefore, no proof may be cited with regard to the matter of despair, where there is no Torah derivation requiring awareness from the outset.

[47] The Gemara suggests: Come and hear a proof from that which Rabbi Yoḥanan says in the name of Rabbi Yishmael ben Yehotzadak: From where is it derived with regard to a lost item that the river swept away that it is permitted for its finder to keep it? It is derived from this verse, as it is written: “And so shall you do with his donkey; and so shall you do with his garment; and so shall you do with every lost item of your brother, which shall be lost from him, and you have found it” (Deuteronomy 22:3). The verse states that one must return that which is lost from him, the owner, but is available to be found by any person. Excluded from that obligation is that which is lost from him and is not available to be found by any person; it is ownerless property and anyone who finds it may keep it.

[48] And the prohibition written in the verse against keeping an item that is lost only to its owner is similar to the allowance to keep an item lost to all people that is inferred from the verse; just as in the case of the allowance, whether there is a distinguishing mark and whether there is no distinguishing mark, it is permitted for the finder to keep it, so too in the case of the prohibition, whether there is a distinguishing mark and whether there is no distinguishing mark, it is prohibited for the finder to keep it, until there is proof that the owner despaired of its recovery. The Gemara concludes: The refutation of the opinion of Rava is indeed a conclusive refutation.

[49] And although in disputes between Abaye and Rava, the halakha is typically ruled in accordance with the opinion of Rava, the halakha is in accordance with the opinion of Abaye in the disputes represented by the mnemonic: Yod, ayin, lamed; kuf, gimmel, mem.

[50] Rav Aḥa, son of Rava, said to Rav Ashi: And now that the opinion of Rava was conclusively refuted, and the halakha is that despair that is not conscious is not considered despair, if those dates are blown off the tree by the wind, how do we eat them? Perhaps their owner did not despair of their recovery. Rav Ashi said to him: Since there are repugnant creatures and creeping animals that eat the dates after they fall, the owner despairs of their recovery from the outset. Therefore, one who finds the dates may keep them.

[51] Rav Aḥa asked: Perhaps the tree belonged to minor orphans who, because they are not capable of relinquishing property, cannot despair of recovering the dates from the outset. Accordingly, what is the justification for eating found dates? Rav Ashi said to him: We do not presume a valley to be land belonging to orphans, and therefore that is not a concern.

[52] Rav Aḥa asked: If the presumptive status of the trees was previously established as belonging to orphans, what is the halakha? If the trees are surrounded by fences that prevent repugnant creatures and creeping animals from gaining access, what is the halakha? Rav Ashi said to him: The dates are forbidden in those cases.

[53] § The mishna teaches that if one found bundles of grain in a public area, these belong to him. Rabba says with regard to this ruling: And this is the halakha even with regard to an item on which there is a distinguishing mark. The Gemara comments: Apparently, Rabba holds that the legal status of a distinguishing mark that is prone to be trampled is not that of a distinguishing mark. Since the owner of the lost item knows that the mark is prone to be trampled, he does not rely on it and he despairs of recovering the item. Rava said: The Sages taught this halakha only with regard to an item on which there is no distinguishing mark, but with regard to an item on which there is a distinguishing mark, the one who finds it is obligated to proclaim his find. The Gemara comments: Apparently, Rava holds that the legal status of a distinguishing mark that is prone to be trampled is that of a distinguishing mark.

[54] And there are those who teach the dispute with regard to this halakha independent of the mishna. With regard to the legal status of a distinguishing mark that is prone to be trampled, Rabba says: It is not a distinguishing mark. And Rava says: It is a distinguishing mark.

[55] The Gemara cites proof from that which we learned in a baraita: If one finds bundles of grain in a public area, these belong to him; if he finds them in a secluded area, the finder takes them and proclaims his find. What are the circumstances? If it is a case where there is no distinguishing mark on the bundles, when one finds them in a secluded area, what does he proclaim? Rather, is it not a case where there is a distinguishing mark on the bundles, and there is then a reason for him to

proclaim his find. And yet, it is taught in the baraita that if he finds the bundles in a public area those bundles belong to him. Apparently, a distinguishing mark that is prone to be trampled is not a distinguishing mark. This is a conclusive refutation of the opinion of Rava.

[56] Rava could have said to you: Actually, it is a case where there is no distinguishing mark on the bundles. And with regard to that which you said: When one finds them in a secluded area, what does he proclaim? He proclaims that the owner should provide the location where he lost the bundles and thereby recover his bundles. And Rabba said: The location, provided by the owner, is not a distinguishing mark that would enable the return of an item to its owner. As it was stated that the amora'im disputed this matter: With regard to location, Rabba says: It is not a distinguishing mark, and Rava says: It is a distinguishing mark.

[57] The Gemara suggests: Come and hear a proof from a baraita: If one finds bundles of grain in a public area, these belong to him; if he finds them in a secluded area, the finder takes them and proclaims his find. And with regard to the sheaves, i.e., large bundles, whether he finds them in a public area or whether he finds them in a secluded area, the finder takes them and proclaims his find. How does Rabba explain the baraita, and how does Rava explain the baraita? Rabba explains, according to his line of reasoning, that the baraita is referring to bundles with a distinguishing mark. And Rava explains, according to his line of reasoning, that the baraita is referring to bundles whose location is their distinguishing mark.

[58] The Gemara elaborates. Rabba explains, according to his line of reasoning, that the baraita is referring to bundles with a distinguishing mark: If one finds bundles of grain in a public area, these belong to him due to the fact

[59] that they are trampled. Even if there had been a distinguishing mark on the bundles it would have been destroyed when it was trampled. If he finds them in a secluded area, the finder takes the sheaves and proclaims his find, as due to the absence of pedestrian traffic they are not trampled and the distinguishing mark remains intact. And with regard to the sheaves, whether he finds them in a public area or whether he finds them in a secluded area, the finder takes them and proclaims his find. Since they protrude high above the ground, they are not trampled.

[60] And Rava explains, according to his line of reasoning, that the baraita is referring to bundles whose location is their distinguishing mark: If one finds bundles of grain in a public area, these belong to him due to the fact that they are kicked and they consequently roll to a different location than where they were placed. If he finds them in a secluded area, he is obligated to proclaim his find. Due to the absence of pedestrian traffic they are not kicked and do not roll, and they therefore remain in the location where they were placed. And with regard to the sheaves, whether he finds them in a public area or whether he finds them in a secluded area, the finder takes them and proclaims his find. Since they are heavy, they do not roll when kicked.

[61] The Gemara suggests: Come and hear a proof from the mishna: If one found baker's loaves, these belong to him. The Gemara infers: But if one finds loaves of a homeowner, he is obligated to proclaim his find. What is the reason? When one finds loaves of a homeowner he is obligated to proclaim his find because there is a distinguishing mark on the loaves. As each person shapes his loaves in a unique manner, it is known that the loaves of a person belong to that person. And there is no difference if the loaves were found in a public area, and there is no difference if the loaves were found in a secluded area; the finder takes the item and proclaims his find. Apparently, the legal status

of a distinguishing mark that is prone to be trampled is that of a distinguishing mark. This is a conclusive refutation of the opinion of Rabba.

[62] Rabba could have said to you: There, this is the reason that one must return the loaves of a homeowner found in a public area. It is due to the fact that one does not pass by food without picking it up. Therefore, it can be assumed that it will not be trampled. The Gemara asks: But aren't there gentiles who do not treat food with deference and who will trample the loaves? The Gemara answers: Gentiles are concerned that the loaves were placed in a public area for reasons of sorcery. The Gemara asks: But aren't there beasts and dogs that will trample the loaves? The Gemara answers: The mishna is referring to a place where beasts and dogs are not commonly found.

[63] The Gemara suggests: Let us say that this dispute between Rabba and Rava is parallel to a dispute between tanna'im in the mishna. Rabbi Yehuda says: If one finds any lost item in which there is an alteration, he is obligated to proclaim his find. How so? If he found a round cake of pressed figs with an earthenware shard inside it, or a loaf of bread with coins inside it, he must proclaim his find. One may conclude by inference that the first tanna of the mishna holds that even in that case those items belong to him.

[64] In explaining the tannaitic dispute, the Sages assumed that everyone agrees that the legal status of a distinguishing mark that could come to mark an item on its own without having been placed there intentionally is that of a distinguishing mark, and everyone agrees that one passes by food without picking it up. Accordingly, what is the basis of their dispute? Is it not with regard to the matter of a distinguishing mark that is prone to be trampled that they disagree? As one Sage, the first tanna, holds that its legal status is not that of a distinguishing mark, and one Sage, Rabbi Yehuda, holds that its legal status is that of a distinguishing mark.

[65] Rav Zevid said in the name of Rava: If it enters your mind that the first tanna holds that the legal status of a distinguishing mark that is prone to be trampled is not that of a distinguishing mark and that one passes by food without picking it up, then in the case of loaves of a homeowner that were found in a public area, where the loaves would be trampled and their distinguishing mark destroyed, why does he proclaim his find?

[66] Rather, Rav Zevid said in the name of Rava that everyone holds that the legal status of a distinguishing mark that is prone to be trampled is that of a distinguishing mark and that one passes by food without picking it up. And here, it is with regard to the legal status of a distinguishing mark that could come to mark an item on its own that they disagree. The first tanna holds that the legal status of a distinguishing mark that could come to mark an item on its own is not that of a distinguishing mark, and Rabbi Yehuda holds that the legal status of a distinguishing mark that could come to mark an item on its own is that of a distinguishing mark.

[67] And Rabba could have said to you that everyone agrees that the legal status of a distinguishing mark that is prone to be trampled is not that of a distinguishing mark and that one does not pass by food without picking it up. And here, it is with regard to the legal status of a distinguishing mark that could come to mark an item on its own that they disagree. The first tanna holds that the legal status of a distinguishing mark that could come to mark an item on its own is not that of a distinguishing mark, and Rabbi Yehuda holds that the legal status of a distinguishing mark that could come to mark an item on its own is that of a distinguishing mark.

[68] There are those who say, in explaining the tannaitic dispute, that the Sages assumed that everyone agrees that the legal status of a distinguishing mark that could come to mark an item on its own without having been placed there intentionally is that of a distinguishing mark, and everyone agrees that the legal status of a distinguishing mark that is prone to be trampled is not that of a distinguishing mark. What, then, is the basis of their dispute? Is it not with regard to the matter of whether one passes by food without picking it up that they disagree. As one Sage, the first tanna, holds that one passes by food without picking it up, and one Sage, Rabbi Yehuda, holds that one does not pass by food without picking it up.

[69] Rav Zevid said in the name of Rava: If it enters your mind that the first tanna holds that the legal status of a distinguishing mark that is prone to be trampled is not that of a distinguishing mark and that one passes by food without picking it up, then in the case of loaves of a homeowner that were found in a public area, where the loaves would be trampled and their distinguishing mark destroyed, why does he proclaim his find?

[70] Rather, Rav Zevid said in the name of Rava that everyone holds that the legal status of a distinguishing mark that is prone to be trampled is that of a distinguishing mark and that one passes by food without picking it up. And here, it is with regard to the legal status of a distinguishing mark that could come to mark an item on its own that they disagree. The first tanna holds that the legal status of a distinguishing mark that could come to mark an item on its own is not that of a distinguishing mark, and Rabbi Yehuda holds that the legal status of a distinguishing mark that could come to mark an item on its own is that of a distinguishing mark.

[71] And Rabba could have said to you that everyone agrees that the legal status of a distinguishing mark that is prone to be trampled is not that of a distinguishing mark and that one does not pass by food without picking it up. And here, it is with regard to the legal status of a distinguishing mark that could come to mark an item on its own that they disagree. The first tanna holds that the legal status of a distinguishing mark that could come to mark an item on its own is not that of a distinguishing mark, and Rabbi Yehuda holds that the legal status of a distinguishing mark that could come to mark an item on its own is that of a distinguishing mark.

[72] § Rav Zevid said in the name of Rava that this is the principle of a lost item: Once the owner of a lost item says: Woe is me for the monetary loss, this indicates that he has despaired of its recovery.

[73] And Rav Zevid said in the name of Rava: The halakha is that if one finds bundles of grain in a public area, those bundles belong to him. If he finds the bundles in a secluded area in a manner indicating that they had fallen, those bundles belong to him. If he finds the bundles in a manner indicating that they had been placed there, the finder takes them and proclaims his find. And both this ruling and that ruling are in the case of an item in which there is no distinguishing mark. But in the case of an item on which there is a distinguishing mark, it is no different if the bundles were found in a public area and it is no different if the bundles were found in a secluded area; whether the bundles were found in a manner indicating that they had fallen or whether they were found in a manner indicating that they had been placed there, he is obligated to proclaim his find.

[74] § The mishna teaches that strings of fish are among the list of found items that one may keep. The Gemara asks: Why not let the knot with which the fish are tied serve as a distinguishing mark? The Gemara answers: The mishna is referring to the fisherman’s knot with which everyone ties his fish, which is not distinctive. The Gemara asks: But why not let the number of fish tied on the string serve

as a distinguishing mark? The Gemara answers: The mishna is referring to a number of fish that is equal to that on all strings of fish in that area.

[75] The Sages raised a dilemma before Rav Sheshet: In items that have no other distinguishing mark, is their number a distinguishing mark or is it not a distinguishing mark? Rav Sheshet said to them: You learned it in a baraita: If one found silver vessels, copper vessels, fragments of lead, and any metal vessels, that person who found them shall not return the item to its owner until the owner provides a distinguishing sign or until the owner accurately provides its weight. And from the fact that weight serves as a distinguishing mark, measure and number also serve as a distinguishing mark.

[76] The mishna teaches that cuts of meat are among the list of found items that one may keep. The Gemara asks: Why not let the weight of the cut serve as a distinguishing mark? The Gemara answers: The mishna is referring to a weight that is equal, i.e., all cuts of meat in that area are of that weight. The Gemara asks: But why not let the cut of meat itself serve as a distinguishing mark, as it came, for example, either from the neck or from the thigh of the animal? Isn't it taught in a baraita: If one found cuts of fish, or a fish that was bitten, he is obligated to proclaim his find, and if he found barrels of wine, or of oil, or of grain, or of dried figs, or of olives, these belong to him? Apparently, the distinguishing mark in the cuts of fish is the part of the fish from which they were cut.

[77] The Gemara answers: With what are we dealing here in the baraita? It is in a case where there is a distinguishing mark in the shape of the cut, as in that case of Rabba bar Rav Huna who would cut the meat with three corners, forming a triangle. The distinguishing mark is not the part of the fish from where it had been cut. The language of the baraita is also precise, as the case of cuts of fish is taught juxtaposed to and similar to a fish that was bitten, in which case the bite is a distinguishing mark. The Gemara concludes: Learn from it that it is the shape of the cut that is a distinguishing mark, not the place from where it was cut.

[78] The Master said in the baraita: If one found barrels of wine, or of oil, or of grain, or of dried figs, or of olives, these belong to him. The Gemara asks: But didn't we learn in a mishna (25a): With regard to jugs of wine or jugs of oil, if one finds any of these he is obligated to proclaim his finding. Rabbi Zeira said that Rav said: The mishna is referring to a case of sealed jugs. Each person seals his jugs and barrels in a unique manner. Therefore, the seal constitutes a distinguishing mark. The Gemara asks: One may conclude by inference that the baraita is referring to a case of open barrels, and if it is referring to a case of open barrels, it is a deliberate loss. Since the wine in open barrels will spoil, it is obvious that one need not return it to the owner. Rav Hoshaya says: The baraita is referring to a case where one covers the barrel with the lid but does not seal it.

[79] Abaye said: You can even say that both this mishna and that baraita are referring to jugs and barrels that are sealed, and it is not difficult. Here, in the mishna, where one is required to return the jugs, it is referring to a case where one found the jugs before the storehouses of wine were opened. At that point, the distinguishing mark of the seal proves that the jug belongs to its owner. There, in the baraita, where one is not required to return the barrels, it is referring to a case where one found the barrels after the storehouses of wine were opened. Since the storekeepers sold their barrels to the public, the seal would no longer serve as an indicator of the identity of the owner. This is just as in that case where Rav Ya'akov bar Abba found a barrel of wine after the storehouses were opened. He came before Abaye to ascertain what he should do with the barrel. Abaye said to him: Go take the barrel for yourself.

[80] § Rav Beivai raised a dilemma before Rav Naḥman: Is the location where the lost item was found a distinguishing mark, or is it not a distinguishing mark? Rav Naḥman said to him that you learned it in the baraita: If one found barrels of wine, or of oil, or of grain, or of dried figs, or of olives, these belong to him. And if it enters your mind that location is a distinguishing mark, let the finder proclaim what he found, and have the location serve as a distinguishing mark. Rav Zevid said: With what are we dealing here? We are dealing with the case of a barrel that was found on the bank of the river. Since it is the place where ships dock and merchandise belonging to many people is loaded and unloaded, the bank of a river cannot serve as a distinguishing mark.

[81] Rav Mari said: What is the reason that the Sages said that in the case of a lost item, the location of the bank of a river is not a distinguishing mark? It is because we say to one seeking to reclaim his item by providing its location on the bank of a river: Just as it happened that you lost an item there, it also happened that another person lost an item there. Some say a slightly different version of that which Rav Mari said: What is the reason that the Sages said that location is not a distinguishing mark? It is because we say to one seeking to reclaim his item by providing its location: Just as it happened that you placed an item in that place, it also happened that another placed an item in that place.

[82] The Gemara relates: There was a certain man who found pitch near the winepress. He came before Rav to ascertain what he should do with the pitch. Rav said to him: Go take the pitch for yourself. Rav saw that the man was hesitating, uncertain that he was entitled to the pitch. Rav, in an attempt to allay his qualms, said to him: Go divide it with Ḥiyya my son, as Rav would certainly not want his son to take a share of a stolen item. The Gemara suggests: Let us say that Rav holds that location is not a distinguishing mark. Rabbi Abba said: That is not Rav’s reasoning. Rather, it is due to the despair of its owner that the Sages touched upon this matter and permitted the finder to keep such a found item. As, Rav saw that grass was growing through the pitch, indicating that it had been there for an extended period.

[83] § The mishna teaches: Rabbi Shimon ben Elazar says: If one finds any anpurya vessels he is not obligated to proclaim his find. The Gemara asks: What are anpurya vessels? Rav Yehuda says that Shmuel says: They are new vessels, as the eye of its purchaser has not yet sufficiently seen them to be able to recognize them. The Gemara asks: What are the circumstances? If there is a distinguishing mark on the vessels, when the eye of its purchaser has not yet sufficiently seen them, what of it? He can describe the mark after even a short glance and claim his item. If there is no distinguishing mark on the vessels, then when the eye of the one who purchases them has sufficiently seen them, what of it?

[84] The Gemara answers: Actually, it is a vessel in which there is no distinguishing mark, and the practical difference is with regard to returning the vessel to a Torah scholar on the basis of visual recognition. When the eye of a Torah scholar has sufficiently seen them he is certain about them, and we return a lost item to him on the basis of his description of the vessel. When the eye of a Torah scholar has not sufficiently seen them, he is not certain about them, and we do not return a lost item to him, as Rav Yehuda says that Shmuel says: With regard to these three matters alone, it is normal for Sages to amend their statements and deviate from the truth: With regard to a tractate, if he is asked whether he studied a particular tractate, he may humbly say that he did not, even if he did. And

with regard to a bed, if he is asked whether he slept in a particular bed, he may say that he did not, to avoid shame in case some unseemly residue is found on the bed.

[85] And he can lie with regard to a host [ushpiza], as one may say that he was not well received by a certain host to prevent everyone from taking advantage of the host's hospitality. What is the practical difference that emerges from this statement with regard to matters in which Torah scholars deviate from the truth? Mar Zutra says: The practical difference is with regard to returning a lost item on the basis of visual recognition. If we know about him that he alters his statements only with regard to these three matters, we return the lost item to him, but if he alters his statements with regard to other matters, we do not return the lost item to him.

[86] The Gemara relates: A silver goblet was stolen from the host of Mar Zutra Ḥasida. Mar Zutra saw a certain student of Torah who washed his hands and dried them on the cloak of another. Mar Zutra said: This is the one who does not care about the property of another. He bound that student, and the student then confessed that he stole the goblet.

[87] It is taught in a baraita: Although Rabbi Shimon ben Elazar holds that one does not need to proclaim his finding of anpurya vessels, he concedes that the finder is obligated to proclaim his find of new vessels that the eye of its purchaser has sufficiently seen. And these are new vessels that the eye of its purchaser has not yet sufficiently seen and concerning which the finder is not obligated to proclaim his find: for example, branches [badei] upon which needles or utensils for spinning are hanging, or strings of axes. When is it permitted for the one who finds all those items that the tanna mentioned in the baraita to keep them? It is when he found them one at a time. But if he found them two at a time, the finder is obligated to proclaim his find.

[88] The Gemara clarifies: What is the meaning of the term badei? It means branches. And why did the tanna call them branches? It is because the item upon which one hangs another item [davar detalu bei midei], he calls it a branch, like that which we learned there (Sukka 44b): One leaf on one branch.

[89] § The baraita continues: And likewise, Rabbi Shimon ben Elazar would say: In the case of one who rescues a lost item from a lion, or from a bear, or from a leopard, or from a cheetah [bardelas], or from the tide of the sea, or from the flooding of a river; and in the case of one who finds a lost item in a main thoroughfare [seratya] or a large plaza [pelatya], or in any place where the multitudes are found, these items belong to him due to the fact that the owner despairs of their recovery.

[90] A dilemma was raised before the Sages: When Rabbi Shimon ben Elazar says that if one finds a lost item in any place where multitudes are found, the item belongs to him, did he refer only to a place where there is a majority of gentiles; but in a place where there is a majority of Jews, the owner does not despair of recovering the item, because he relies on the Jews to return his item? Or perhaps, even in a place where there is a majority of Jews, he also says that the item belongs to the one who found it.

[91] And if you say that even in a place where there is a majority of Jews, he also said that the item belongs to the one who found it, do the Rabbis disagree with him or do they not disagree?

[92] And if you say that the Rabbis disagree with him, in a place where there is a majority of Jews, they certainly disagree. In a place where there is a majority of gentiles, do the Rabbis disagree, or do they not disagree?

[93] And if you say that the Rabbis disagree with him even in a place where there is a majority of gentiles, is the halakha in accordance with the opinion of Rabbi Shimon ben Elazar, or is the halakha not in accordance with his opinion?

[94] And if you say that the halakha is in accordance with the opinion of Rabbi Shimon ben Elazar, does this halakha apply specifically in a place where there is a majority of gentiles, or is the halakha in accordance with his opinion even in a place where there is a majority of Jews?

[95] The Gemara suggests: Come and hear a proof from a baraita: In the case of one who finds coins in synagogues [bevatei khenesiyyot] and study halls or in any place where the multitudes are found, these coins belong to him, due to the fact that the owner despairs of their recovery. Who is the one about whom you heard that he follows the multitudes, i.e., that he attaches significance to the loss of an item in a place where the multitudes are present? It is Rabbi Shimon ben Elazar. Conclude from the baraita that Rabbi Shimon ben Elazar holds that a lost item belongs to the finder even in a place where there is a majority of Jews, as synagogues and study halls are places frequented exclusively by Jews.

[96] The Gemara rejects the proof. With what are we dealing here? We are dealing with a case where the coins are scattered and there is no distinguishing mark on them. The Gemara asks: If it is a case where the coins are scattered, why did the baraita establish the case specifically in a place where the multitudes are found? Even in a place where the multitudes are not found, the coins belong to the finder.

[97] Rather, actually the baraita is referring to a case where the coins are bound, and with what are we dealing here? This is a case where the coins were found in the houses of assembly [bevatei khenesiyyot] of gentiles, not in synagogues. That resolves the matter of synagogues; but with regard to study halls, which are exclusive to Jews, what can be said? The Gemara answers: The baraita is referring to our study halls in which gentile guards or custodians are sitting. The Gemara notes: Now that you have arrived at this explanation, the batei khenesiyyot in the baraita can be explained as referring to our synagogues, in which gentiles are sitting.

[98] Come and hear a proof from a mishna (Makhshirin 2:8): In a case when one found a lost item in a city where both Jews and gentiles reside, if the city has a majority of Jews he is obligated to proclaim his find. If there is a majority of gentiles he is not obligated to proclaim his find. Who is the one about whom you heard that he follows the multitudes, i.e., that he attaches significance to the loss of an item in a place where the multitudes are present? It is Rabbi Shimon ben Elazar. Resolve from this mishna that when Rabbi Shimon ben Elazar says that the item belongs to the finder, it is referring specifically to a place where there is a majority of gentiles, but in a place where there is a majority of Jews, no, it does not belong to the finder.

[99] The Gemara rejects this proof: In accordance with whose opinion is this mishna? It is in accordance with the opinion of the Rabbis. The Gemara suggests: In any case, resolve the dilemma from the mishna that the Rabbis concede to Rabbi Shimon ben Elazar in a place where there is a majority of gentiles.

[100] The Gemara rejects this explanation: Rather, actually the mishna is in accordance with the opinion of Rabbi Shimon ben Elazar, and he stated his opinion even in a place where there is a majority of Jews. And with what are we dealing here? This is a case where the found item is concealed. The Gemara asks: If the item is concealed, what is the reason the item is with the finder?

Clearly it was placed there and the owner will return to retrieve it. And didn’t we learn in a mishna (25b): In a case where one found a vessel in a garbage dump, if the vessel is concealed he may not touch it, but if it is exposed, the finder takes the item and proclaims his find.

101 The Gemara answers: It can be explained as Rav Pappa says elsewhere, that it is referring to a garbage dump that is not designed to be cleared, and the owner of the land reconsidered and decided to clear it. If one finds concealed vessels he should proclaim his find, because otherwise the vessels will be cleared with the rest of the garbage dump. Here too, the mishna is referring to a garbage dump that is not designed to be cleared, and the owner of the land reconsidered and decided to clear it. If one finds concealed items, his course of action is determined by the identity of the majority of the residents of the city. If they are Jews, he must proclaim his find, and if not, he need not proclaim his find. No proof can be cited to resolve the dilemma.

102 And if you wish, say instead that actually the mishna is in accordance with the opinion of the Rabbis. Is it taught in the mishna that the items are his? It is taught that he is not obligated to proclaim his find. He may not keep them, but he shall place the items in his possession and a Jew will come and provide a distinguishing mark to describe the items and take them.

103 Come and hear a proof from that which Rav Asi says: If one found a barrel of wine in a city whose population has a majority of gentiles, keeping the barrel is permitted in terms of the halakhot of finding lost items because it presumably belonged to a gentile, and deriving benefit from the wine is prohibited, as it is presumed to be wine of a gentile. If a Jew came and provided a distinguishing mark to describe it, drinking the wine is permitted for its finder, as it proved to be the wine of a Jew. Nevertheless, it belongs to the finder, because the owner despaired of recovering a barrel misplaced in a public area.

104 The Gemara explains the proof: In accordance with whose opinion is this statement of Rav Asi? It is in accordance with the opinion of Rabbi Shimon ben Elazar. Conclude from it that when Rabbi Shimon ben Elazar stated his opinion, it was only with regard to a place where there is a majority of gentiles; but in a place where there is a majority of Jews, the owner does not despair of recovering his lost item. The Gemara rejects the proof: Actually, I will say to you that even with regard to a place where there is a majority of Jews, Rabbi Shimon ben Elazar also stated his opinion, and Rav Asi holds in accordance with the opinion of Rabbi Shimon ben Elazar in one case, that of a place where there is a majority of gentiles, and disagrees with him in one case, that of a place where there is a majority of Jews.

105 The Gemara clarifies: And once it was established that deriving benefit from the wine is prohibited, then with regard to the fact that it is permitted in terms of the halakhot of finding lost items, for what matter is that halakha relevant? Rav Ashi said: It is relevant with regard to deriving benefit from its container, which is permitted.

106 The Gemara relates: There was a certain man who found four dinars that were bound in a cloth and cast into the Biran River. He came before Rav Yehuda and asked how to proceed. Rav Yehuda said: Go proclaim your finding. The Gemara asks: But isn’t it a case of an item lost in the tide of the sea that should therefore belong to the finder? The Gemara answers: The Biran River is different. Since it contains obstacles, the owner does not despair of recovering the lost item. The Gemara asks: But isn’t it a place where the majority of the population is gentiles? Conclude from it that the halakha is not in accordance with the opinion of Rabbi Shimon ben Elazar even in a place where there is a

majority of gentiles. The Gemara answers: The Biran River is different, as Jews dammed it and Jews dredge it. Since Jews dammed it, say that the coins fell from a Jew, and since Jews dredge it, the owner of the coins does not despair of recovering them.

107 The Gemara relates: Rav Yehuda was moving along behind Mar Shmuel in the market where pounded grain was sold. Rav Yehuda said to Shmuel: If one found a purse [arnakei] here, what is the halakha? Shmuel said to him that the halakha is as the mishna states: These belong to him. Rav Yehuda asked him: If a Jew came and provided a distinguishing mark to describe it, what is the halakha? Shmuel said to him: The finder is obligated to return it. Rav Yehuda asked: These are two contradictory rulings. Shmuel said to him: By law, it belongs to him. When I said the finder is obligated to return it if he learns the identity of the owner, that was beyond the letter of the law. This is like that incident where Shmuel's father found these donkeys in the desert and returned them to their owner after the passage of twelve months of the year, as he acted beyond the letter of the law.

108 The Gemara relates: Rava was moving along behind Rav Naḥman in the tanner's market, and some say in the marketplace frequented by the Sages. Rava said to Rav Naḥman: If one found a purse here, what is the halakha? Rav Naḥman said to him that the halakha is as the mishna states: These belong to him. Rava asked him: If a Jew came and provided a distinguishing mark to describe it, what is the halakha? Rav Naḥman said to him that in this case as well, the halakha is as the mishna states: These belong to him. Rava asked: But isn't the owner justifiably standing and screaming that the purse belongs to him? Rav Naḥman said to him: He becomes as one who screams to no avail about his house that collapsed or about his ship that sank in the sea.

109 The Gemara relates: There was a certain kite that took meat in the marketplace and cast it among the palm trees of the house of bar Maryon. The one who found the meat came before Abaye to ask how to proceed. Abaye said to him: Go take it for yourself. The Gemara asks: But isn't the marketplace of kosher meat a place where there is a majority of Jews? Conclude from it that the halakha is in accordance with the opinion of Rabbi Shimon ben Elazar even in a place where there is a majority of Jews. The Gemara answers: A kite is different, as an item taken by a kite is similar to a lost item swept away in the tide of the sea. The Gemara raises another issue: But doesn't Rav say: Meat that was obscured from sight and unsupervised for a period of time is forbidden, as its source is unknown? The Gemara answers: This is a case where the finder stands and sees the meat from the moment that it was taken by the kite until it was cast among the trees.

110 The Gemara relates: Rabbi Ḥanina found a slaughtered young goat between Tiberias and Tzippori and the Sages permitted it to him. Rabbi Ami said: The Sages permitted it to him in terms of the halakhot of finding lost items in accordance with the opinion of Rabbi Shimon ben Elazar, and they permitted it to him in terms of the halakhot of the slaughter of kosher animals, in accordance with the opinion of Rabbi Ḥananya, son of Rabbi Yosei HaGelili. As it is taught in a baraita: In a case where one's young goats and roosters were lost, and the owner went and found them slaughtered, Rabbi Yehuda deems the meat forbidden, and Rabbi Ḥananya, son of Rabbi Yosei HaGelili, deems it permitted.

111 Rabbi Yehuda HaNasi says: The statement of Rabbi Yehuda appears to be correct in a case where he found the slaughtered animals in a garbage dump, as the concern is that they were thrown away because the slaughter was unfit. And the statement of Rabbi Ḥananya, son of Rabbi Yosei HaGelili, appears correct in a case where he found them in the house. The Gemara infers: From the fact that

the Sages permitted the meat to him in terms of the halakhot of slaughter, apparently, this place is one where there is a majority of Jews. Conclude from it that the halakha is in accordance with the opinion of Rabbi Shimon ben Elazar even in a place where there is a majority of Jews. Rava said: It is a place where there is a majority of gentiles but the majority of slaughterers are Jews.

112 The Gemara relates: Rabbi Ami found slaughtered fledglings between Tiberias and Tzippori. He came before Rabbi Asi to ask how to proceed, and some say he came before Rabbi Yoḥanan, and some say he came to the study hall. And they said to him: Go take it for yourself. Rabbi Yitzḥak Nappaḥa found a skein of thread from which a net was woven. He came before Rabbi Yoḥanan to ask how to proceed, and some say he came to the study hall. And they said to him: Go take it for yourself, because he found it in a place frequented by the multitudes.

113 MISHNA: And for these found items, one is obligated to proclaim his find: If one found produce inside a vessel, or a vessel by itself; coins inside a pouch, or a pouch by itself; piles of produce; piles of coins,

114 three coins stacked one atop another; bundles of grain in a secluded area; loaves of a homeowner, as each shapes his loaves in his own unique manner; wool fleeces that are taken from the house of a craftsman, as each craftsman processes the wool in his own unique manner; jugs of wine; or jugs of oil. If one finds any of these, he is obligated to proclaim his find.

115 GEMARA: The Gemara infers from the mishna: The reason one is obligated to proclaim his find is that he found produce inside the vessel or coins inside the pouch; but if he found a vessel and produce was before it, or if he found a pouch and coins were before it, those, the produce and coins, belong to him. The Gemara comments: We learn from this mishna by inference that which the Sages taught explicitly in a baraita: If one found a vessel and produce was before it, or if he found a pouch and coins were before it, those, the produce and coins, belong to him. If some of the produce is in the vessel and some of the produce is on the ground, or if some of the coins are inside the pouch and some of them are on the ground, one is obligated to proclaim his find.

116 And the Gemara raises a contradiction from another baraita: If one found an item on which there is no distinguishing mark alongside an item on which there is a distinguishing mark, he is obligated to proclaim that he found both. If the owner of the item with the distinguishing mark came and took his item but did not claim ownership of the other item, the other person, who found the items, acquires the item on which there is no distinguishing mark. This halakha should also apply when one finds a vessel on which there is a distinguishing mark and produce on which there is no distinguishing mark.

117 The Gemara cites several possible resolutions to this contradiction. Rav Zevid said that this is not difficult: This baraita, where the finder is obligated to proclaim his finding of both the vessel and the produce, is referring to a container and flax. Since the flax fibers are intertwined, when part of the flax falls out of the container, all of the flax would fall out. Therefore, the fact that the flax is completely outside the container is not an indication that it was never in the container. That mishna, from which it is inferred that produce found outside the vessel belongs to the finder, is referring to a basket and produce. Had the produce fallen out of the basket, presumably some produce would remain in the basket, because the individual units of produce are not connected. Therefore, the fact that no produce was found in the basket indicates that the produce did not fall out of the basket.

[118] Rav Pappa said: Both this ruling and that ruling are referring to a basket and produce, and nevertheless it is not difficult: This baraita, where the finder is obligated to proclaim his finding of the produce found outside the vessel, is referring to a case where some produce remains in the basket. That mishna, from which it is inferred that produce found outside the vessel belongs to the finder, is referring to a case where no produce remains in the basket.

[119] And if you wish, say instead: Both this ruling and that ruling are referring to a case where no produce remains in the basket, and nevertheless it is not difficult: This baraita, where the finder is obligated to proclaim his finding of the produce found outside the empty vessel, is referring to a case where the mouth of the basket is facing the produce, indicating that the produce fell from it. That mishna, from which it is inferred that produce found outside the vessel belongs to the finder, is referring to a case where the mouth of the basket is not facing the produce.

[120] And if you wish, say instead: Both this ruling and that ruling are referring to a case where the mouth of the basket is facing the produce, and nevertheless, it is not difficult: That mishna, from which it is inferred that produce found outside the vessel belongs to the finder, is referring to a case where the empty basket has a rim. Had the produce fallen out of the basket, the rim would have prevented some of the produce from falling. This baraita, where the finder is obligated to proclaim the produce found outside the empty vessel, is referring to a case where the basket has no rim and therefore the produce in its entirety could have fallen from the basket.

[121] § The mishna teaches: And for these found items, one is obligated to proclaim his find: Piles of produce and piles of coins. Conclude from it that number is a distinguishing mark, and one reclaims his produce or coins by correctly declaring the number of piles. The Gemara rejects that proof. Perhaps one should teach the mishna as stating: A pile of produce. It is not the number of piles but their location that serves as a determining mark. Based on that emendation, conclude from it that location is a distinguishing mark. The Gemara rejects that proof as well. Perhaps one should teach the mishna as stating: Piles of produce. Since the authoritative version of the mishna is unclear, no proof can be cited from it.

[122] § The mishna teaches: And for these found items, one is obligated to proclaim his find: Three coins stacked one atop another. Rabbi Yitzḥak from Migdal says: And one is obligated to proclaim the find in a case where the coins are arranged in well-ordered towers. This is also taught in a baraita: If one found scattered coins, these belong to him. If the coins are arranged in well-ordered towers, he is obligated to proclaim his find. The baraita elaborates: And these coins are arranged in towers: Three coins stacked one atop another.

[123] The Gemara notes an apparent contradiction in the baraita. This baraita itself is difficult. In the first clause of the baraita, you said: If one found scattered coins, these belong to him, from which it can be inferred that if the coins partially overlap [meshalḥefei shalḥufei], he is obligated to proclaim his find. Say the latter clause of the baraita: If the coins are arranged in well-ordered towers, he is obligated to proclaim his find, from which it can be inferred that if the coins partially overlap, those coins belong to him. The Gemara answers: The tanna of the baraita calls any pile of coins that is not arranged in well-ordered towers: Scattered.

[124] Rabbi Ḥanina says: The Sages taught that one must proclaim his find only when he finds coins minted by three different kings, but if all the coins were minted by one king, one is not obligated to proclaim his find. The Gemara asks: What are the circumstances? If the coins are arranged in well-

ordered towers, then even if all the coins were minted by one king, the finder should also be obligated to proclaim his find. And if the coins are not arranged in well-ordered towers, then even if the coins were minted by three kings, the finder should also not be obligated to proclaim his find.

125 Rather, if Rabbi Ḥanina's ruling was stated, this is how it was stated: The Sages taught that one must proclaim his find only when he finds coins of different sizes minted by one king, which are similar to coins minted by three kings. But if they are coins of the same size minted by one king, he is not obligated to proclaim his find. The Gemara elaborates: According to this interpretation, what are the circumstances of coins that are arranged in well-ordered towers and which one must proclaim? It is when the bottom coin is broadest, and the intermediate-sized coin is atop it and the smallest coin is atop the intermediate one, as we say: They were placed there and are not lost at all. But if one finds coins minted by one king, each of them sized like the other, even if each is placed upon the other, those coins belong to the finder. The reason is that it is possible to say that it is happenstance and they fell together, so their arrangement is not a distinguishing mark.

126 And Rabbi Yoḥanan says: Even if the coins were minted by one king, one is also obligated to proclaim his find. The Gemara asks: What does one proclaim in order to invite the owner to describe his item? The Gemara answers: He proclaims that he found coins and the owner specifies the number of coins. The Gemara asks: If so, why does the mishna specifically teach a case where one found three coins when even if one found two coins they could be identified by their number? Ravina said: Since the finder proclaims that he found coins, using the plural term, indicating that there were at least two coins, if the owner claims that he lost two coins, the default of the plural term, he is not providing a distinguishing mark. Therefore, the mishna teaches a case of three coins.

127 Rabbi Yirmeya raises a dilemma: If one found coins configured like a round bracelet, what is the halakha? If they were configured like a straight line, what is the halakha? If they were configured like a triangle, what is the halakha? If they were configured like a ladder, one partially upon the other and partially protruding, what is the halakha?

128 The Gemara suggests: Resolve at least one of these dilemmas, as Rav Naḥman says that Rabba bar Avuh says: For any arrangement of coins such that if one were to introduce a wood chip between the coins he could thereby lift them all at once with that wood chip, he is obligated to proclaim his find. Based on that criterion, one can conclude that if one finds coins configured like a ladder, he is obligated to proclaim his find.

129 Rav Ashi raises a dilemma:

130 If they were configured like the stones of the house of worship dedicated to the Roman deity Mercury, what is the halakha?

131 The Gemara suggests: Come and hear a resolution of the dilemma. As it is taught in a baraita: If one found scattered coins, these belong to him. If they were configured like the stones of the house of worship dedicated to Mercury, he is obligated to proclaim his find. The Gemara explains: And these are coins that were configured like the stones of the house of worship dedicated to Mercury: One was situated here on one side, and one was situated there alongside it, and one was situated atop the two of them.

132 § The Sages taught in a baraita: In the case of one who finds a sela coin in the marketplace and another person finds him and says: It is mine, and the distinguishing mark is that it is new, or that it is

a coin minted by the emperor Nero, or that it is minted by king so-and-so, he has not said anything and the finder need not give him the sela. Moreover, even if his name is written on the sela he has not said anything, due to the fact that there is no distinguishing mark for a coin that is effective in its recovery, as the finder says: Perhaps he spent the coin and it fell from another person.

[133] MISHNA: If one found, behind a wooden fence or behind a stone fence, bound fledglings, or if he found them in the paths that run through fields, he may not touch them, as they were certainly placed there intentionally. In a case where one found a vessel in a garbage dump, if it is concealed, he may not touch it, as a person certainly concealed it there. If it is exposed, the finder takes the item and proclaims his find.

[134] GEMARA: What is the reason that one may not touch the fledglings? The Gemara answers: The reason is that we say with regard to these birds: A person concealed them, and if one takes them, their owner has no distinguishing mark on them that would enable him to reclaim them. Therefore, let the finder leave the birds in place until their owner comes and takes them.

[135] The Gemara asks: But why? Let the knot binding them serve as their distinguishing mark. Rabbi Abba bar Zavda said that Rav said: This is a case where the birds were bound at their wings. Since everyone binds them in that manner, the knot binding the birds is not a distinguishing mark.

[136] The Gemara asks: And let their location serve as their distinguishing mark. Rav Ukva bar Ḥama said: This is a case where the birds hop and do not remain in place. The Gemara asks: If it is a case where the birds hop, perhaps the birds came to that location from elsewhere and it is permitted for the finder to keep them.

[137] The Gemara answers: It can be said that the birds came from elsewhere and it can be said that a person concealed them, and the result is uncertainty with regard to whether the placement of the birds was deliberate, i.e., whether or not they are lost items. And Rabbi Abba bar Zavda says that Rav says: In any case of uncertainty as to whether the placement of an item was deliberate, one may not take it ab initio. And if he took it, he need not return it.

[138] § The mishna teaches: In a case where one found a vessel in a garbage dump, if it is concealed, he may not touch it, as a person certainly concealed it there. If it is exposed, the finder takes the item and proclaims his find. The Gemara raises a contradiction from a baraita: If one found a vessel concealed in a garbage dump, the finder takes the item and proclaims his find, because it is routine for a garbage dump to be cleared. Therefore, presumably it was not placed there; rather, it is a lost item and one is obligated to proclaim his find.

[139] Rav Zevid said that this is not difficult: This mishna is referring to containers or cups. That baraita is referring to knives or a fork [vehamnik]. The Gemara elaborates: In the case of containers or cups, which are large, it is inconceivable that they fell there inadvertently, so he may not touch them. In the case of knives or forks, which are small, there is room for uncertainty as to whether it was placed there or whether it fell, so the finder takes the item and proclaims his find.

[140] Rav Pappa said: Both this baraita and that mishna are referring to containers and cups, and nevertheless, it is not difficult: Here, the baraita is referring to a garbage dump that is designed to be cleared; therefore, he must take the vessel and proclaim his find to prevent it from being cleared with the garbage. There, the mishna is referring to a garbage dump that is not designed to be cleared; as it is possible that the owner placed it there, the finder may not touch it.

141 The Gemara asks: How could one be obligated to proclaim his find of a vessel in a garbage dump that is designed to be cleared? Even if the owner of the vessel concealed it there, it is a deliberate loss and the owner renounced ownership of the vessel. The Gemara answers: Rather, the baraita is referring to a garbage dump that is not designed to be cleared, and the owner of the land reconsidered and decided to clear it.

142 The Gemara asks: Granted, according to Rav Pappa, this is the reason that the tanna teaches in the baraita: He takes it and proclaims his find, because it is routine for a garbage dump to be cleared, as the ruling is dependent on whether the dump is ultimately cleared. But according to Rav Zevid, the reason for the ruling in the baraita is that the utensils found were knives and forks. What is the relevance of the statement in the baraita: Because it is routine for a garbage dump to be cleared? The Gemara answers that according to Rav Zevid, it means: Because it is routine for a garbage dump to inadvertently have small utensils cleared, i.e., discarded, into it.

143 MISHNA: If one found lost items in a heap of stone rubble or in an old wall, these belong to him. If one found lost items in a new wall from its midpoint and outward, they belong to him. If he found the items from its midpoint and inward, they belong to the homeowner. If the homeowner would rent the house to others on a regular basis and there was a steady turnover of residents, even if one found lost items inside the house, these belong to him. Since the owner of the lost items cannot be identified based on location, he will certainly despair of recovering his lost items.

144 GEMARA: The mishna teaches that if one found a lost item in a heap of rubble or in an old wall it belongs to him. The Sages taught in a baraita: It is his due to the fact that when the owner of the heap or wall claims the property, the finder can say to him: They belong to the Amorites, who lived in Eretz Yisrael before it was conquered by the Jews. The Gemara asks: Is that to say that Amorites conceal items but Jews do not conceal items? Perhaps it was the homeowner who placed the item in the wall or the heap. The Gemara answers: No, the baraita is necessary only in the specific case

145 where the item is extremely rusted, indicating that it had been left there for a long time.

146 § The mishna teaches: If one found lost items in a new wall from its midpoint and outward, they belong to him. But if he found the items from its midpoint and inward, they belong to the homeowner.

147 Rav Ashi said: The determination of ownership with regard to a knife found in a wall follows the handle, and the determination of ownership with regard to a money pouch follows the laces at the opening of the pouch. If the handle or laces face inward, they belong to the homeowner. If the handle or laces face outward, they belong to the finder.

148 The Gemara asks: But if so, what is the applicability of the ruling of the mishna, which teaches: If one found lost items in a new wall from its midpoint and outward, they belong to him, and from its midpoint and inward, they belong to the homeowner? But instead, to determine ownership, let us see if its handle faces inward or if its handle faces outward, or if its straps face inward or if its straps face outward. The Gemara answers: The mishna is referring to a case where one found rags or metal strips.

149 It is taught: If the hollow in the wall was filled with lost items, e.g., coins, the homeowner and the finder divide them. The Gemara asks: Isn’t that obvious? The Gemara answers: No, it is necessary to teach this only in a case where the hollow in the wall is inclined toward one side of the

wall. Lest you say that all the items were initially on the elevated side, and due to the incline they slipped and filled the entire space, the tanna teaches us that the homeowner and the finder divide them.

150 § The mishna teaches: If the homeowner would rent the house to others on a regular basis and there was a steady turnover of residents, even if one found lost items inside the house, these belong to him. The Gemara asks: And why do they belong to the finder? Let us follow the last renter and determine that he is the owner of the items.

151 Didn't we learn in a mishna (Shekalim 7:2): With regard to money that was found before animal merchants in Jerusalem, it is always assumed to be money of the second tithe, as most of the animals purchased in Jerusalem were bought with second-tithe money. This halakha applies both during a Festival and throughout the year, as people would typically purchase animals for meat with their second-tithe money. If the money was found on the Temple Mount it is considered non-sacred money. This halakha applies even during a Festival, when people would come to Jerusalem with second-tithe money in hand, as it can be assumed that one who entered the Temple Mount had already spent that money and only non-sacred money is left in his possession.

152 The mishna continues: And if the coins were found elsewhere in Jerusalem, the following distinction applies: If it was found during the rest of the days of the year, it is considered non-sacred money. But if the money was found during the Festival, when many people would come to Jerusalem with their second-tithe money, all money is presumed to be second-tithe money.

153 And Rav Shemaya bar Ze'eira says in explanation of the mishna: What is the reason that during the rest of the year the money is considered non-sacred, even on the day after the Festival? Since the markets of Jerusalem tend to be cleaned every day, any money left there would already have been found by the street cleaners. Consequently, any money found there must have been left there recently. Apparently, we say that each of the first coins is gone, and these coins are other ones, i.e., they were left there after the conclusion of the Festival. Here too, with regard to lost items found in a rented house, why not say that the items belonging to each of the first renters are gone and these items belong to the last renter?

154 Reish Lakish said in the name of bar Kappara: The mishna that states that the item belongs to the finder is referring to a case where the homeowner rendered his house an inn [pundak] for three Jews. Since it is unclear to which of them the item belonged, the owner despairs of its recovery.

155 The Gemara previously (see 24a) raised a dilemma with regard to the halakha stated by Rabbi Shimon ben Elazar that a lost item found in a location frequented by the multitudes belongs to the finder. Is the halakha in accordance with his ruling? Moreover, is his ruling specifically with regard to a location with a gentile majority, or is it even applicable in a location with a Jewish majority? Based on the opinion of bar Kappara, the Gemara suggests: Conclude from it that the halakha is in accordance with the opinion of Rabbi Shimon ben Elazar even in a location with a Jewish majority.

156 The Gemara rejects this conclusion, and presents an alternative explanation of the latter clause of the mishna. Rather, Rav Menashya bar Ya'akov said: The mishna is referring to a case where he rendered his house an inn for three gentiles. According to that explanation, perhaps Rabbi Shimon ben Elazar issued his ruling specifically in a location with a gentile majority.

[157] Rav Naḥman said that Rabba bar Avuh said: Even if you say that the owner rendered his house an inn for three Jews, one cannot conclude that Rabbi Shimon ben Elazar issued his ruling even in an area with a Jewish majority. What is the reason that the item belongs to the finder? It is because the person from whom the item fell despairs of its recovery. The one who lost the item says: Now, no other person was with me here, only these residents of the inn. I said in their presence several times to return the item to me, and they did not return it to me; and is it likely that now they are going to return it? If their intention was to return the item, they would have already returned it to me, and the fact that they did not yet return it to me indicates that it is their intention to rob me of the item.

[158] And Rav Naḥman follows his standard line of reasoning, as Rav Naḥman says: If one saw a sela coin

[159] that fell from one of two people, he is obligated to return it. What is the reason? The person from whom the sela fell does not despair of recovering it. He says: After all, no other person was with me, only this one who was with me, as he is unaware that the sela was found by a third party. He therefore thinks: I will seize him and say to him: It is you who took it.

[160] In a case where the coin fell from one of three people, the finder is not obligated to return it. What is the reason? The person from whom the sela fell certainly despairs of recovering it. He says: After all, two other people were with me. If I seize this one, he will say: I did not take it. And if I seize that one, he will say: I did not take it. Since he cannot make a definitive claim, he despairs of recovering his coin.

[161] Based on the fact that by Torah law, one must return a lost item to its owner only if it is worth one peruta, Rava said: With regard to that which you said, that in a case where the coin fell from one of three people the finder is not obligated to return it, we said this only in a case where the total value of the lost coin, when divided by three, does not amount to the value of one peruta for each and every one of them; but if it amounts to the value of one peruta for each and every one of them, he is obligated to return it. What is the reason? Say that perhaps they are partners, i.e., they own the coin jointly; consequently, they do not despair, as each assumes that one of the other two found it and is holding it for the three of them.

[162] There are those who say that Rava said: Even if its total value is only two perutot, which is insufficient to provide each of the three partners with one peruta, one is obligated to return it. What is the reason? Say that perhaps they are partners and one relinquishes his share to another. In that case, the remaining two partners each have a one peruta share, rendering the finder liable to return it.

[163] § And Rava says: In a case where one saw a sela coin that fell from another, if he took the coin in order to steal it, before the despair of the owner, he violates all of the following mitzvot: He is liable due to the prohibition: “You shall not…rob” (Leviticus 19:13); and due to the positive mitzva, stated with regard to found items, of: “You shall return them to your brother” (Deuteronomy 22:1), and due to the prohibition, stated with regard to one who finds an item: “You may not disregard” (Deuteronomy 22:3). And even if he returned it after the despair of the owner, it is merely a gift that he gave him; and the transgression that he performed, he performed, and he remains in violation of these mitzvot.

[164] Rava continues: If he took the coin in order to return it, before the despair of the owner, and then, after the despair of the owner, he intended to steal it; he violates a commandment, due to his failure to fulfill the positive mitzva of: “You shall return them to your brother.” He does not violate the

prohibition: “You shall not…rob,” because at the time he took the coin he did not intend to keep it. And he does not violate the prohibition: “You may not disregard,” because he did not disregard the lost item. He took it with the intention of returning it.

165 If he waited until the owner despaired of recovering the lost item and only then took it, he violates a commandment, but only due to his failure to fulfill the positive mitzva of: “You may not disregard,” as he took no action to return the lost item to its owner.

166 Rava says: In the case of this person who saw that a dinar coin fell from another into the sand, and then he found it and took it, he is not obligated to return it to its owner. What is the reason? The reason is that the one from whom the money fell despairs of finding it. Even if the finder sees that the owner brought a sifter and is sifting through the sand, ostensibly indicating that he did not despair of finding his coin, perhaps the owner is saying: Just as a coin fell from me in the sand, so too, a coin fell from another person and I will find some item to offset my loss.

167 MISHNA: If one found items without a distinguishing mark in a store, those items belong to him, as, since the store is frequented by the multitudes, the owner despairs of its recovery. If the items were found between the storekeeper’s counter and the storekeeper, the items belong to the storekeeper; since his customers do not typically have access to that area, presumably the items are his. If one found coins before a money changer, those coins belong to him. If the coins were found between the money changer’s chair and the money changer, those coins belong to the money changer, because his clients do not typically have access to that area.

168 In the case of one who purchases produce from another or in a case where another sent him produce as a gift, and he found coins intermingled with the produce, those coins belong to him. If the coins were bundled, this serves as a distinguishing mark and the finder takes the coins and proclaims his find.

169 GEMARA: The mishna teaches that if one found coins before a money changer, those coins belong to him. Rabbi Elazar says: Even if the coins were found placed upon the table itself they belong to the finder.

170 The Gemara challenges: We learned in the mishna: If one found coins before a money changer, those coins belong to him; this indicates by inference that if they were found upon the table, the coins belong to the money changer. The Gemara responds: Say the latter clause of the mishna: If the coins were found between the money changer’s chair and the money changer, those coins belong to the money changer; this indicates by inference that if they were found upon the table, the coins belong to the finder. The Gemara concludes: Rather, due to the contradictory inferences from the first and the latter clauses, no inference is to be learned from this mishna.

171 The Gemara asks: And Rabbi Elazar himself, from where does he derive this halakha that coins found on the table belong to the finder, given that apparently one cannot infer this ruling from the mishna? Rava said: The mishna is difficult for him: Why did the tanna teach specifically that when the coins are found between the money changer’s chair and the money changer, those coins belong to the money changer? Let the tanna teach instead: If the coins were found on the table, or: If the coins were found in the money-changing establishment, as it is taught in the first clause of the mishna: If one found items without a distinguishing mark in a store, those items belong to him. Rather, learn from it that since the money changer typically places his money in his drawer, even if the coins were found placed upon the table itself these coins belong to him.

[172] § The mishna teaches: In the case of one who purchases produce from another, and he found coins intermingled with the produce, those coins belong to him. Reish Lakish says in the name of Rabbi Yannai: The Sages taught this only

[173] in the case of one who purchases produce from a merchant, who acquired the produce from several suppliers and is unable to determine the source of the coins. But in the case of one who purchases produce from a single owner, he is obligated to return the coins to the seller. And likewise, the tanna who recited mishnayot and baraitot in the study hall of Rav Naḥman taught a baraita before Rav Naḥman: The Sages taught that the coins belong to the buyer only in the case of one who purchases produce from a merchant, but in the case of one who purchases produce from a single owner, he is obligated to return the coins to the seller.

[174] Rav Naḥman said to the tanna: But does the owner thresh the grain himself? His workers thresh the grain, and the coins could belong to one of them. The tanna said to Rav Naḥman: Based on the difficulty you raise, should I delete it from the collection of authoritative baraitot? Rav Naḥman said to the tanna: No. Interpret the baraita as referring to a case where the grain was threshed by his Canaanite slave or maidservant, and therefore any coins found intermingled with the produce belong to the owner.

[175] MISHNA: This mishna is an excerpt from a halakhic midrash concerning lost items, based on the verse: “You shall not see your brother’s ox or his sheep wandering, and disregard them; you shall return them to your brother…And so shall you do with his donkey; and so shall you do with his garment; and so shall you do with every lost item of your brother, which shall be lost from him, and you have found it; you may not disregard it” (Deuteronomy 22:1, 3). The garment was also included in the generalization that one must return all of these items. And why did it emerge from the generalization that it should be specified? To draw an analogy to it and to say to you: What is notable about a garment? It is notable in that there are distinguishing marks concerning it and it has claimants asserting ownership, and its finder is obligated to proclaim his find. So too with regard to any item concerning which there are distinguishing marks and it has claimants asserting ownership, its finder is obligated to proclaim his find.

[176] GEMARA: When the mishna says that the garment was included in the generalization that one must return all of these items, in what generalization is it included? Rava said: It is included in the generalization: “And so shall you do with his donkey; and so shall you do with his garment; and so shall you do with every lost item of your brother, which shall be lost from him, and you have found it; you may not disregard it” (Deuteronomy 22:3).

[177] Rava says: Why do I need all the specific items that the Merciful One writes that one must return: An ox, a donkey, a sheep, and a garment? One of them would seem to suffice.

[178] Rava answers: They are all necessary, as a unique halakha is derived from each example. As, if the Merciful One had written only “garment,” I would say: This matter, i.e., the mitzva to return a lost item, applies only in a case where the owner brings witnesses capable of testifying about the item itself or he describes distinguishing marks concerning the item itself; but with regard to returning a donkey to its owner in a case where he brings witnesses with regard to the saddle or describes distinguishing marks concerning the saddle and not on the donkey, say that we do not return the donkey to the owner. To counter this, the Merciful One writes: “Donkey,” from which it is derived

that a donkey is returned to its owner even in a case where he describes distinguishing marks on the saddle.

179 Rava continues: With regard to the specific mentions of “ox” and “sheep” that the Merciful One writes, why do I need them? Rava answers: From “ox” it is derived that one must return even the sheared wool of its tail; and from “sheep” it is derived that one must return even its sheared wool. The Gemara challenges: And let the Merciful One write only “ox,” from which it is derived that one must return even the sheared wool of its tail, and derive all the more so that one must return the more substantial sheared wool of a sheep.

180 Rather, Rava said: The term “donkey” stated with regard to damage in the category of Pit, according to the opinion of Rabbi Yehuda (see Exodus 21:33 and Bava Kamma 54a), and the term “sheep” stated with regard to a lost item, according to the opinion of everyone, are difficult. There is no explanation for why they are stated.

181 The Gemara suggests: And say that the term “sheep” comes to teach the obligation to return the animal’s dung? The Gemara answers: One need not return dung, because the owner has renounced its ownership. The Gemara suggests: And perhaps the term “sheep” comes to teach the obligation to return an item based on its owner providing distinguishing marks, as we raised a dilemma: Is the halakha that an item can be identified using distinguishing marks by Torah law or is it by rabbinic law? Therefore, the Merciful One writes: “Sheep” in order to teach that it is not only through the testimony of witnesses, but even based on distinguishing marks that we return lost items to their owner. Resolve the dilemma and conclude that the halakha that an item can be identified using distinguishing marks is by Torah law.

182 The Gemara rejects this proof. The Sages say: One can understand the matter from the fact that the tanna teaches the concept of distinguishing marks together with the term garment. As it is taught in the mishna: What is notable about a garment? It is notable in that there are distinguishing marks concerning it and it has claimants asserting ownership, and its finder is obligated to proclaim his find. So too with regard to any item concerning which there are distinguishing marks and it has claimants asserting ownership, its finder is obligated to proclaim his find. Conclude from it that the term “sheep” does not come to teach the obligation to return an item based on its owner providing distinguishing marks.

183 The Sages taught in a baraita: The verse states: “And so shall you do with his donkey; and so shall you do with his garment; and so shall you do with every lost item of your brother, which shall be lost from him, and you have found it” (Deuteronomy 22:3). The Rabbis derive that this phrase serves to exclude a lost item in which there is not the value of one peruta, which due to its negligible value is not considered lost. Rabbi Yehuda says that this halakha is derived from the conclusion of that verse: “Which shall be lost from him, and you have found it.” The term “and you have found it” serves to exclude a lost item in which there is not the value of one peruta.

184 The Gemara asks: What is the practical difference between the two opinions? Ostensibly, the Rabbis and Rabbi Yehuda both state the same halakha. Abaye said: There is no practical difference. Rather, the interpretation of the meaning of the verse is the difference between them. One Sage, the Rabbis, derives it from the phrase: “Which shall be lost from him”; and one Sage, Rabbi Yehuda, derives it from the term: “And you have found it.”

185 The Gemara asks: And according to the first Sage, the Rabbis, who derives the halakha that one need not return a lost item worth less than one peruta from the phrase “which shall be lost from him,” what does he do with the term: “And you have found it”?

186 The Gemara answers: According to the Rabbis, that term is necessary for the derivation of the halakha in accordance with the opinion of Rabbenai. As Rabbenai says in interpreting the verse: “And so shall you do with every lost item of your brother’s, which he has lost, and you have found it” (Deuteronomy 22:3), that the term “and you have found it” means that it assumes the status of a found item only when it actually enters his possession.

187 The Gemara asks: And according to Rabbi Yehuda, who derives the halakha that one need not return a lost item worth less than one peruta from the term: “And you have found it,” what does he do with the phrase: “Which has been lost from him”?

188 The Gemara answers: According to Rabbi Yehuda, that phrase is necessary for the derivation of the halakha in accordance with the opinion of Rabbi Yoḥanan. As Rabbi Yoḥanan says in the name of Rabbi Shimon ben Yoḥai: From where is it derived with regard to a lost item that the river swept away that it is permitted for its finder to keep it? It is derived from this verse, as it is written: “And so shall you do with his donkey; and so shall you do with his garment; and so shall you do with every lost item of your brother, which shall be lost from him, and you have found it” (Deuteronomy 22:3). The verse states that one must return that which is lost from him, the owner, but is available to be found by any person. Excluded from that obligation is that which is lost from him and is not available to be found by any person; it is ownerless property and anyone who finds it may keep it.

189 The Gemara asks: And the other tanna, Rabbi Yehuda, who derived from the term: “And you have found it,” that one need not return a lost item worth less than one peruta, from where does he derive the halakha of Rabbenai that the item assumes the status of a found item only when it actually comes into his possession? The Gemara answers: Rabbi Yehuda derives it from the superfluous conjunction “and” in the term “and you have found it.”

190 The Gemara asks further: And the other tanna, the first tanna, who derives from the phrase “which shall be lost from him” that one need not return a lost item worth less than one peruta, from where do they derive the halakha of Rabbi Yoḥanan that one need not return an item that is lost from him and is not available to be found by every person? The Gemara answers: He derives it from the superfluous term “from him,” in the phrase “which shall be lost from him.” And as for the other tanna, Rabbi Yehuda, he does not learn anything from the term “from him.”

191 Abaye explained that there is no practical difference between the opinion of the first tanna and Rabbi Yehuda. By contrast, Rava said: The practical difference between them is with regard to an item that was worth one peruta when it was lost but that was then devalued and was worth less than one peruta when it was found. According to the one who says that the halakha that one need not return a lost item worth less than one peruta is derived from the phrase “which shall be lost from him,” there is an obligation to return the item, as that verse is referring to the value of the item when it was lost. And according to the one who says that the halakha that one need not return a lost item worth less than one peruta is derived from the phrase: “And you have found it,” there is no obligation to return the item, as that verse is referring to the value of the item when it is found.

192 The Gemara asks: But even according to the one who says that the halakha is derived from the phrase “which shall be lost from him,” do we not require the item to be worth one peruta when it is

found, based on the term “and you have found it”? And in this case, it is not worth one peruta when it is found, so he should agree that it need not be returned.

193 Rather, the practical difference between them is with regard to an item worth less than one peruta when it was lost that appreciated in value and is worth one peruta when it is found. According to the one who says that the halakha that one need not return a lost item worth less than one peruta is derived from the term: “And you have found it,” there is an obligation to return the item, as that verse is referring to its value when it is found. And according to the one who says that the halakha that one need not return a lost item worth less than one peruta is derived from the phrase: “Which shall be lost from him,” there is no obligation to return the item, as that verse is referring to the value of the item when it was lost.

194 The Gemara asks: But even according to the one who says that the halakha is derived from the term “and you have found it,” do we not require the item to be worth one peruta when it is lost, based on the phrase “which shall be lost from him”? And in this case, it is not worth one peruta when it was lost, so he should agree that it need not be returned.

195 Rather, the practical difference between them is with regard to the case of an item worth one peruta when it was lost that appreciated in value and was devalued in the interim and was worth less than one peruta, and then appreciated in value and is worth one peruta when it is found. According to the one who says that the halakha that one need not return a lost item worth less than one peruta is derived from the phrase: “Which shall be lost from him,” there is an obligation to return the item, as the verse is referring to its value only when it was lost and when it is found. And according to the one who says that the halakha that one need not return a lost item worth less than one peruta is derived from: “And you have found it,” there is no obligation to return the item, as we require that there will be the value of one peruta, the requisite measure of a lost item, from the time of its loss and until the time of its finding, as the conjunction “and” connects the time of the finding to the time of the loss.

196 § A dilemma was raised before the Sages: Is identification of an item on the basis of distinguishing marks by Torah law or is it by rabbinic law? The Gemara asks: What difference is there whether it is by Torah law or by rabbinic law?

197 The Gemara answers: The practical difference is with regard to returning the bill of divorce of a woman that was lost by an agent before its delivery, on the basis of distinguishing marks. If you say that the identification of an item on the basis of distinguishing marks is by Torah law, we return the document and allow the agent to transmit it to the woman. But if you say that it is by rabbinic law, we do not return the document, because when the Sages institute an ordinance, it is only with regard to monetary matters they have the authority to declare property ownerless; but with regard to ritual matters, the Sages do not institute an ordinance. They lack the authority to abrogate the prohibitions by Torah law that are associated with a woman’s marital status.

198 The Gemara suggests: Come and hear proof from the mishna: The garment was also included in the generalization that one must return all of these items. And why did it emerge from the generalization that is should be specified? To draw an analogy to it and to say to you: What is notable about a garment? It is notable in that there are distinguishing marks concerning it and it has claimants asserting ownership, and its finder is obligated to proclaim his find. So too with regard to any item concerning which there are distinguishing marks and it has claimants asserting ownership, its finder is obligated to proclaim his find. Clearly, the identification of an item on the basis of distinguishing

marks is by Torah law. The Gemara rejects the proof: Perhaps it was necessary for the tanna to mention only the criterion of claimants, and the tanna cited the criterion of distinguishing marks for no reason, as by Torah law distinguishing marks are not a relevant factor.

199 The Gemara suggests: Come and hear proof from the aforementioned statement: The obligation to return a donkey to its owner on the basis of the distinguishing marks of the saddle is derived based on the mention of the word “donkey” in the verse from Deuteronomy. Clearly, the identification of an item on the basis of distinguishing marks is by Torah law. The Gemara rejects this proof: Emend the baraita and say: There is an obligation to return the donkey only on the basis of witnesses who testify with regard to the identity of the owner based on the fact that the saddle belongs to him, and not on the basis of distinguishing marks.

200 The Gemara suggests: Come and hear proof from a mishna (28b): “And if your brother be not near you, and you know him not, then you shall bring it into your house, and it shall be with you until your brother claims [derosh] it, and you shall return it to him” (Deuteronomy 22:2). Would it enter your mind that he would give the lost item to him before he claims it? How can the finder return it if he does not know the identity of the owner? Rather, the verb derosh is not referring to the claim of the owner; it is referring to the scrutiny performed by the finder. Scrutinize him [darshehu] to determine whether the claimant is a swindler or whether he is not a swindler. Only then may you return the lost item to him.

201 The Gemara states its suggested proof: What, is it not that the one who claims the lost item proves that he is not a swindler on the basis of distinguishing marks that he provides? Apparently, the identification of an item on the basis of distinguishing marks is by Torah law. The Gemara rejects this proof: No, the determination of whether he is a swindler is on the basis of scrutinizing his witnesses.

202 The Gemara suggests: Come and hear proof from a mishna (Yevamot 120a): One testifies that a man died, thereby permitting his wife to remarry, only if he can testify about seeing the countenance [partzuf] of the face with the nose, as this allows one to identify the individual with certainty. Although there are distinguishing marks on his body and on his garments, which appear to indicate his identity, they cannot be used to identify the person.

203 The Gemara states its suggested proof: Conclude from it that the identification of an item on the basis of distinguishing marks is not by Torah law. The Sages say in rejecting that proof: The distinguishing marks on his body mentioned in the mishna are non-specific distinguishing marks, e.g., that he was tall or short, and that is the reason that the distinguishing marks are ineffective in determining his identity. The distinguishing marks on his garments mentioned in the mishna are ineffective in determining his identity, as we are concerned about the possibility of a loan, e.g., perhaps the husband loaned his clothes to the deceased.

204 The Gemara asks: If we are concerned about the possibility of a loan, how do we return a donkey to its owner on the basis of the distinguishing marks of the saddle; perhaps it was borrowed? The Sages say in response: People do not typically borrow a saddle because saddles that are not custom fit wound the donkey.

205 If you wish, say instead: The distinguishing marks on his garments mentioned in the mishna are non-specific distinguishing marks, e.g., where the witness said that they were white or red, and that is the reason that the distinguishing marks are ineffective in determining his identity.

[206] The Gemara questions the previous answer with regard to the concern about the possibility of a loan. But there is that which is taught in a baraita: If the agent found the bill of divorce that he lost bound to his pouch, or his purse, or his signet ring, or if he found it among his garments, even if he found it a long time after he lost it, the distinguishing marks on those items are sufficient in order to identify the bill of divorce as the one that he lost, and it is valid. And if it enters your mind that we are concerned about the possibility of a loan, when he found the bill of divorce bound to his pouch, why is it valid? Let us be concerned about the possibility of a loan and that perhaps the pouch and the bill of divorce belong to someone else.

[207] The Sages say in response: There is no concern in this case, as people do not loan a pouch, a purse, or a signet ring to another person. One does not loan his pouch and his purse to others due to the fact that it portends the loss of his good fortune. And one does not loan his signet ring to others due to the fact that it could be used to forge documents.

[208] The Gemara suggests: Let us say that the dilemma whether the identification of an item on the basis of distinguishing marks is by Torah law or by rabbinic law is the subject of a dispute between tanna'im, as it is taught in a baraita: One does not testify on the basis of a mole on the body of the deceased to determine the identity of a man who died and permit his wife to remarry. And Elazar ben Mahavai says: One testifies to identify the corpse on the basis of a mole. What, is it not with regard to this matter that they disagree; as the first tanna holds that identification of an item on the basis of distinguishing marks is by rabbinic law and therefore, testimony concerning those marks cannot dissolve a marriage by Torah law; and Elazar ben Mahavai holds that identification of an item on the basis of distinguishing marks is by Torah law.

[209] Rava said: That is not necessarily the crux of their dispute, as perhaps everyone agrees that identification of an item on the basis of distinguishing marks is by Torah law, and here, it is with regard to whether one needs to be concerned that a mole is often found on one's contemporary, i.e., one born under the same constellation, rendering it useless as a means of identification, that they disagree. One Sage, the first tanna, holds that a mole is often found on one's contemporary and therefore it is insufficient as a means of identification; and one Sage, Elazar ben Mahavai, holds that a mole is not often found on one's contemporary, and therefore it is sufficient as a means of identification.

[210] If you wish, say instead that everyone agrees that a mole is not often found on one's contemporary, and here it is with regard to whether the appearance of distinguishing marks on the body is apt to change after death that they disagree. One Sage, the first tanna, holds that the appearance of distinguishing marks is apt to change after death, and that consequently they are insufficient as a means of identification; and one Sage, Elazar ben Mahavai, holds that the appearance of distinguishing marks is not apt to change after death, and therefore, they are sufficient as a means of identification.

[211] If you wish, say instead that everyone agrees that a mole is not apt to change after death, and that the identification of an item on the basis of distinguishing marks is by rabbinic law, and here it is with regard to whether a mole is a clear-cut distinguishing mark that they disagree. One Sage, Elazar ben Mahavai, holds that a mole is a clear-cut distinguishing mark that can be relied upon without hesitation even in matters of Torah law, e.g., dissolving a marriage; and one Sage, the first tanna, holds that a mole is not a clear-cut distinguishing mark. Since standard distinguishing marks are

sufficient by rabbinic law, a marriage, which is in effect by Torah law, cannot be dissolved on the basis of a mole.

[212] Rava says: If you say that the identification of an item on the basis of distinguishing marks is not by Torah law, how do we return a lost item to the presumed owner on the basis of distinguishing marks; perhaps it will result in the return of property to one who was in fact not the owner? Rava answers: We return the lost item, as it is satisfactory to the finder of a lost item to return it on the basis of distinguishing marks, rather than exercise his right by Torah law to retain it, so that when an item is lost from him in the future, the finder will return it to him on the basis of distinguishing marks as well.

[213] Rav Safra said to Rava: But can a person perform an act that results in benefit for himself with property that is not his? The lost item belongs not to the finder but to the one who lost it. How can the finder waive the right of the true owner to the lost item so that he may recover his own lost item in the future?

[214] Rather, we return the lost item, as it is satisfactory to the owner of the lost item to be able to provide a description using distinguishing marks and on that basis take possession of the item. He knows that he has no witnesses to testify to his ownership, and he says: No one else knows the clear-cut distinguishing marks that are on the item. And I will provide a description using the clear-cut distinguishing marks, and based on that information I will take possession of the item. Each owner gives his tacit agreement to the return of lost items on the basis of distinguishing marks, based on the belief that he is best able to identify them.

[215] The Gemara asks: But there is that which we learned in a mishna (20a), that Rabban Shimon ben Gamliel says: If one found three promissory notes relating to the loan of one debtor who borrowed money from three creditors, he must return the documents to the debtor. If one found three promissory notes relating to the loans of three debtors who borrowed money from one creditor, he must return the documents to the creditor. If one returns lost items on the basis of distinguishing marks due to the tacit agreement of the owners, is it satisfactory to the debtor to have the documents returned to the creditor, as doing so would enable the creditor to collect payment of the loan?

[216] Rava said to Rav Safra: There, the obligation to return the promissory notes to the creditor is not on the basis of distinguishing marks; rather, it is based on logical reasoning. If one found three promissory notes relating to the loan of one debtor who borrowed money from three creditors, he shall return the documents to the debtor, because a group of several documents indicating that one debtor borrowed money from several creditors is typically found with the debtor and is not typically found with a creditor, as the only element common to all the documents is the debtor. Conclude from it that the group of documents fell from the debtor while they were in his possession. If one found three promissory notes relating to the loans of three debtors who borrowed money from one creditor, he shall return the documents to the creditor, because a group of several documents indicating that multiple debtors borrowed money from a single creditor is typically found with the creditor and is not typically found with a debtor, as the only element common to all the documents is the creditor.

[217] The Gemara asks: But there is that which we learned in that mishna (20a): If one found a roll of documents or a bundle of documents, he shall return the documents to whomever describes the roll and the bundle, which serve as distinguishing marks. Would one say that so too, if one returns lost

items on the basis of distinguishing marks due to the tacit agreement of the owners, it is satisfactory to the debtor to have the documents returned to the creditor?

[218] Rather, Rava said: Identification of an item on the basis of distinguishing marks is by Torah law, as it is written: “And if your brother be not near you, and you know him not, then you shall bring it into your house, and it shall be with you until your brother claims [derosh] it, and you shall return it to him” (Deuteronomy 22:2). Would it enter your mind that he would give the lost item to him before he claims it? How can the finder return it if he does not know the identity of the owner? Rather, the verb derosh is not referring to the claim of the owner; it is referring to the scrutiny performed by the finder. Scrutinize him [darshehu] to determine whether the claimant is a swindler or whether he is not a swindler. Only then may you return the lost item to him. What, is it not that the one who claims the lost item proves that he is not a swindler on the basis of distinguishing marks that he provides? Rava affirms: Conclude from it that identification of an item on the basis of distinguishing marks is by Torah law.

[219] Rava begins his statement and says: If you say that identification of an item on the basis of distinguishing marks is by Torah law. The Gemara interjects: If you say? Didn’t he already resolve the dilemma and conclude that identification of an item on the basis of distinguishing marks is by Torah law? The Gemara answers: Rava phrased his statement conditionally due to the fact that although he holds that identification of an item on the basis of distinguishing marks is by Torah law, one could reject his conclusion and say as we explained previously (27b), that when the mishna states that the finder scrutinizes whether he is a swindler, he does so on the basis of witnesses and not on the basis of distinguishing marks.

[220] The Gemara resumes Rava’s interrupted statement: If you say that identification of an item on the basis of distinguishing marks is by Torah law, then in a case where an item is found and two people claim it as theirs, and one describes distinguishing marks on the item and the other describes distinguishing marks on the item, the finder shall leave it in his possession and not give it to either claimant. In a case where one person describes distinguishing marks on the item and the other brings two witnesses to support his claim of ownership, the item shall be given to the claimant with witnesses. In a case where one person describes distinguishing marks on the item and the other describes distinguishing marks on the item and brings one witness to support his claim of ownership, the one witness is as one who is not there, and the finder shall leave it in his possession. The testimony of a single witness has no legal standing in this case.

[221] In a case where one claimant to a found garment brings witnesses who testify that the garment was woven for him, and the other claimant brings witnesses who testify that the garment had fallen from him, the garment shall be given to the claimant whose witnesses testified that the garment had fallen from him, as we say that perhaps the one for whom it was woven sold the garment and it fell from another person, who is the current owner.

[222] If one claimant provides the measure of length of a lost garment and the other provides the measure of its width, the garment shall be given to the claimant who provided the measure of its length, as one can approximate the measure of its width when its owner dons the garment and stands, but the measure of its length cannot be approximated in that manner. Therefore, it is a more clear-cut distinguishing characteristic.

[223] If one claimant provides the measure of its length and the measure of its width and the other provides the measure of its gamma, its combined length and width, which together form the Greek letter gamma, but does not provide each measure individually, the item shall be given to the claimant who provided the measure of its length and the measure of its width separately.

[224] If one claimant provides the measure of its length and the measure of its width and the other provides the measure of its weight, the item shall be given to the claimant who provided the measure of its weight, which, because it is more difficult to approximate, is a more clear-cut distinguishing characteristic.

[225] Rava continues: In a case where a bill of divorce is found and it is unclear whether it had been delivered to the wife, and the husband, who reconsidered, states the distinguishing marks of the bill of divorce and claims that he did not yet give it to his wife, and the wife, who wants to be divorced, states the distinguishing marks of the bill of divorce and claims that she already received it, the document shall be given to the wife. The Gemara asks: With what distinguishing mark did she describe the bill of divorce? If we say that she described it with the measure of its height and its width, that is not a clear-cut distinguishing mark; perhaps while her husband was holding the bill of divorce, she saw it, although he had not yet given it to her. Rather, it must be that she says that there is a perforation alongside such and such letter in the document, which she could know only if the bill of divorce had been in her hand.

[226] In a case where the husband states the distinguishing marks of the string with which the bill of divorce is bound, and she states the distinguishing marks of the string, the document shall be given to the wife. The Gemara asks: With what distinguishing mark did she describe the string? If we say that she described it by saying that the string is white or by saying that it is red, this cannot be the mark based on which she proves her ownership, as perhaps while her husband was holding the bill of divorce, she saw the string. Rather, it must be that she stated the measure of its length. As the string was wrapped around the document, she would know its length only if the bill of divorce had been in her hand.

[227] In a case where the husband claims that the bill of divorce was not given to the wife and states that it was stored in a case, and the wife claims that she received the bill of divorce and states that it was stored in a case, the document shall be given to the husband. What is the reason? Identification of the document based on its storage cannot prove her ownership, as she knows that he places any valuable item that he has in his possession in the case.

[228] MISHNA: And until when is one who finds a lost item obligated to proclaim his find? He is obligated to do so until the moment that the neighbors will know of its existence; this is the statement of Rabbi Meir. Rabbi Yehuda says: He is obligated to proclaim his find for three pilgrimage Festivals and for seven days after the last of the three pilgrimage Festivals, so that its owner will have time to go to his home, a trip lasting up to three days, and ascertain that he in fact lost the item, and he will return to Jerusalem, a trip lasting up to three days, and proclaim his loss for one day.

[229] GEMARA: The mishna teaches that one must proclaim his find until his neighbors will know of its existence. A tanna taught: One must proclaim his find until the neighbors of the lost item will know of its existence. The Gemara asks: What is the meaning of the expression: Neighbors of the lost item? If we say that the reference is to neighbors of the owner of the lost item, he need not

proclaim his find, as if the finder knows who lost the item, let him go and return it to him. The Gemara answers: Rather, the reference is to the neighbors of the place where the lost item was found.

230 § The mishna teaches that Rabbi Yehuda says: He is obligated to proclaim his find for three pilgrimage Festivals and for seven days after the last of the three pilgrimage Festivals, so that its owner will go to his home, a trip lasting up to three days, will ascertain that he in fact lost the item, and will return to Jerusalem, a trip lasting up to three days, and proclaim his loss for one day.

231 Apropos Rabbi Yehuda's calculation of three days as the duration of a pilgrim's travel from Jerusalem to his home, the Gemara raises a contradiction from a mishna (Ta'anit 10a): On the third of the month of Marḥeshvan one starts to request rain by inserting the phrase: And grant dew and rain, in the blessing of the years, the ninth blessing of the Amida prayer. Rabban Gamliel says: One starts to request rain on the seventh of Marḥeshvan, which is fifteen days after the conclusion of the festival of Sukkot, so that the last of those who are in Eretz Yisrael on the pilgrimage to Jerusalem can reach their homes beyond the Euphrates River before the onset of rain, which would make crossing the river more hazardous. Apparently, it takes fifteen days for those who came for the pilgrimage Festivals to return home, not three days.

232 Rav Yosef says: This is not difficult. Here, in the mishna in tractate Ta'anit, Rabban Gamliel's statement is referring to the duration of the journey during the First Temple period, which took fifteen days; whereas there, Rabbi Yehuda's statement is referring to the duration of the journey during the Second Temple period, which took three days.

233 The Gemara explains the answer: During the First Temple period, when the Jewish people were very numerous, as it is written with regard to them: "Judea and Israel were many, as the sand that is by the sea in multitude, eating and drinking and rejoicing" (I Kings 4:20), we need that much time for them to travel from Jerusalem to the farthest reaches of Eretz Yisrael, due to the wide distribution of the large population. During the Second Temple period, when the Jewish people were not very numerous, as it is written: "The whole congregation together was forty and two thousand three hundred and sixty" (Ezra 2:64), we do not need that much time for them to travel from Jerusalem to the farthest reaches of Eretz Yisrael, due to the limited distribution of the small population.

234 Abaye said to Rav Yosef: But isn't it written: "So the priests, and the Levites, and some of the people, and the singers, and the porters, and the Gibeonites, dwelt in their cities, and all Israel in their cities" (Ezra 2:70). The verse indicates that despite their limited numbers, the Jewish people dwelt in all the cities that they inhabited previously, and the distance to the far reaches of Eretz Yisrael was no shorter during the Second Temple period.

235 Abaye continued: And since that is the reality, the opposite is reasonable. During the First Temple period, when the Jewish people were very numerous and when everyone was structured in groups, and caravans could be found that traveled both during the day and during the night, we do not need that much time to travel from Jerusalem to the farthest reaches of Eretz Yisrael, and three days suffice. By contrast, during the Second Temple period, when the Jewish people were not very numerous and when everyone was not structured in groups, and therefore, caravans could not be found that traveled both during the day and during the night, we need that much time, i.e., fifteen days, to travel from Jerusalem to the farthest reaches of Eretz Yisrael.

236 Rava said: It is no different during the First Temple period and it is no different during the Second Temple period; the requisite travel time to the border was fifteen days, as the opinion of

Rabban Gamliel indicates. Nevertheless, Rabbi Yehuda calculated three days of travel to the border because the Sages did not wish to trouble the finder excessively in returning a lost item by requiring him to wait an extended amount of time.

237 Ravina says: Learn from the calculation of Rabbi Yehuda in the mishna that when a finder proclaims his find he specifies the nature of the item, e.g., he proclaims that he found a cloak. As, if it enters your mind that the finder proclaims that he found a lost item without specifying its nature, we need to increase the period of time afforded the owner to ascertain that he lost an item, and add one day for him to examine all his vessels. Rather, learn from it that the finder proclaims that he found a cloak. The Gemara affirms: Learn from it that the finder specifies the nature of the item.

238 Rava said: Even if you say that the finder proclaims that he found an unspecified lost item, nevertheless, Rabbi Yehuda does not require extending the period afforded the owner, because the Sages did not wish to trouble the finder excessively in returning a lost item by requiring him to wait an extended amount of time.

239 The Sages taught in a baraita: On the first pilgrimage Festival after finding the lost item, the finder proclaims his find and says: This is the first pilgrimage Festival that I am proclaiming this find. On the second pilgrimage Festival after finding the lost item, the finder proclaims his find and says: This is the second pilgrimage Festival that I am proclaiming this find. On the third pilgrimage Festival, the finder proclaims his find and says his proclamation without specification of the number of the Festival.

240 The Gemara asks: And why does he not specify the number of the Festival? Just as he specified the previous two Festivals, let him say that it is the third pilgrimage Festival. The Gemara answers: He does not specify that it is the third pilgrimage Festival, so that one who hears him will not come to confuse it with the second pilgrimage Festival. If the finder were to proclaim that it is the third [shelishi] Festival, it is possible that the owner would mistakenly hear the word second [sheni] and believe that there is time remaining to reclaim his lost item. Since on the second Festival he mentions the number and on the third Festival he does not mention a number, there is no potential for confusion. The Gemara asks: Based on that reasoning, on the second pilgrimage Festival too, the finder should not mention the number of the Festival,

241 because perhaps one who hears him will come to confuse it with the first pilgrimage Festival? The Gemara answers: Confusing the second Festival with the first is not a problem, as in any case, won’t the finder come on the third pilgrimage Festival, thereby giving the owner another opportunity to recover his lost item?

242 § The Sages taught: Initially, anyone who found a lost item would proclaim his find for three pilgrimage Festivals and for seven days after the last of the three pilgrimage Festivals, so that its owner will go to his home, a trip lasting up to three days, and will return to Jerusalem, a trip lasting up to three days, and proclaim his loss for one day. But from the time that the Temple was destroyed, may it be rebuilt speedily in our days, the Sages instituted that those who find lost items shall proclaim their finds in synagogues and study halls. And from the time that the oppressors proliferated, the Sages instituted an ordinance that one who finds a lost item shall inform his neighbors and acquaintances, and that will suffice for him.

243 The Gemara asks: What is the meaning of: From the time that the oppressors proliferated? The Gemara answers: It is from the time that they say: A lost item belongs to the king. The Sages were

concerned that any public proclamation would result in confiscation of the lost item. The Gemara relates: Rabbi Ami found a vessel full of dinars. A certain Roman saw that he was wary and hesitant to take it. The Roman said to him: Go, take it for yourself; as we are not Persians, who say that a lost item belongs to the king.

244 The Sages taught in a baraita: There was a Claimant's Stone in Jerusalem, and anyone who lost an item would be directed there and anyone who found a lost item would be directed there. This finder would stand and proclaim his find and that owner would stand and provide its distinguishing marks and take the item. And that is the place about which we learned in a mishna (Ta'anit 19a): Go and see if the Claimant's Stone has been obscured by the rising water.

245 MISHNA: If a claimant accurately stated what type of item the lost item that was found by another is, but did not state, i.e., describe, its distinguishing marks, the finder shall not give it to him. And in the case of a swindler, even though he stated its distinguishing marks, the finder shall not give the lost item to him, as it is stated: "And if your brother be not near you, and you know him not, then you shall bring it into your house, and it shall be with you until your brother claims [derosh] it [oto], and you shall return it to him" (Deuteronomy 22:2). Would it enter your mind that the finder would give it to him before he claims it? How can the finder return it if he does not know the identity of the owner? Rather, the verb derosh is not referring to the claim of the owner; it is referring to the scrutiny performed by the finder. You shall not return the lost item until you scrutinize [shetidrosh] your brother to determine whether he, the claimant, is a swindler or whether he is not a swindler.

246 GEMARA: It was stated that Rav Yehuda said: One who finds an item proclaims that he found a lost item without specifying its nature. And Rav Naḥman said: He specifies the nature of the item, e.g., he proclaims that he found a cloak.

247 Rav Yehuda said: One who finds an item proclaims that he found a lost item, as if you say that he proclaims that he found a cloak, we are concerned about the possibility that a swindler may attempt to claim the item. Perhaps the swindler learned that another person lost that item, and he will ascertain its distinguishing marks, provide those distinguishing marks, and claim the item.

248 Rav Naḥman said: The finder proclaims that he found a cloak, and we are not concerned about the possibility that a swindler may attempt to claim the item, as if so, there is no end to the matter. Even if the finder does not specify the nature of the item, perhaps a swindler would be able to guess its nature.

249 The Gemara cites proof from that which we learned in the mishna: If a claimant accurately states what type of item the lost item that was found by another is, but did not state its distinguishing marks, the finder shall not give it to him. Granted, if you say the finder proclaims that he found an unspecified lost item, this mishna teaches us that even though the claimant indeed stated that the lost item is a cloak, as long as he did not state its distinguishing marks, we do not return it to him. But if you say that the finder proclaims that he found a cloak, if the finder stated that he found a cloak and the claimant stated that he lost a cloak, does it need to be said that when he did not state its distinguishing marks, we do not return it to him?

250 Rav Safra said: Actually, one could say that the finder proclaims that he found a cloak, and the mishna is referring to a case where the finder stated that he found a cloak, and the claimant stated its distinguishing marks. And what is the meaning of the phrase in the mishna: If he did not state its

distinguishing marks? It means: If he did not state its clear-cut distinguishing marks but rather stated distinguishing marks that are not exclusive to the item. Therefore, he does not prove his ownership.

251 § The mishna teaches: And in the case of a swindler, even though he stated its distinguishing marks, the finder shall not give the lost item to him. The Sages taught: Initially, anyone who lost an item would provide its distinguishing marks and take it. But when the swindlers proliferated, the Sages instituted an ordinance that the finders will say to him: Go and bring witnesses who can testify that you are not a swindler, and take your item.

252 The Gemara relates: This is as in that incident involving the father of Rav Pappa, who lost a donkey and others found it. He came before Rabba bar Rav Huna to reclaim his donkey. Rabba bar Rav Huna said to the father of Rav Pappa: Go and bring witnesses who can testify that you are not a swindler, and you may take your donkey. The father of Rav Pappa went and brought witnesses. Rabba bar Rav Huna said to the witnesses: Do you know about him that he is a swindler? The witnesses said: Yes. Rav Pappa's father said, incredulously, to the witnesses: I am a swindler? The witnesses said to him: We were saying that you are not a swindler. They had thought the question was if he was not a swindler, and therefore responded in the affirmative. Rabba bar Rav Huna said: It is reasonable to conclude that the witnesses actually intended to support Rav Pappa's father, because presumably, a person does not bring condemnation upon himself; Rav Pappa's father would not have volunteered to provide witnesses who would testify against him.

253 MISHNA: If one finds any living being that works and generates enough revenue to cover the costs of the food that it eats, it shall work and eat while in the finder's possession. And any living being that does not work but it does eat shall be sold, as it is stated: "Then you shall bring it into your house, and it shall be with you until your brother claims it, and you shall return it to him" (Deuteronomy 22:2), indicating that the finder must see how best to return it to him. Since the owner must repay the finder for his expenditures, if feeding the animal costs more than its value, the finder's keeping the animal in his possession will prevent the owner from recovering it.

254 What shall be done with the money received from the sale of the animal? Rabbi Tarfon says: The finder may use it; therefore, if the money is lost, he is liable to pay restitution for it. Rabbi Akiva says: He may not use the money; therefore, if it is lost, he is not liable to pay restitution for it.

255 GEMARA: The mishna teaches that an animal that generates enough revenue to cover the costs of the food that it eats shall work and eat while in the finder's possession. The Gemara asks: And must he care for the animal forever? Rav Naḥman says that Shmuel says: He cares for the animal until twelve months pass. This is also taught in a baraita: If one finds any living being that works and generates enough revenue to cover the costs of the food that it eats, e.g., a cow or a donkey, he tends to them until twelve months pass. From that point forward, one assesses their value, sells them, and places the money aside for the owner.

256 If one finds calves and foals, which are young and unfit for labor, he tends to them for three months, as they do not earn their keep. From that point forward, one assesses their value, sells them, and places the money aside for the owner. If one finds geese and roosters, he tends to them for thirty days. From that point forward, one assesses their value, sells them, and places the money aside for the owner.

257 Rav Naḥman bar Yitzḥak says: The legal status of a chicken is like that of a large domesticated animal in that the eggs it lays suffice to cover the cost of its food, and therefore the finder keeps it for

twelve months. This is also taught in a baraita: If one finds a chicken and a large domesticated animal, he tends to them for twelve months. From that point forward, one assesses their value, sells them, and places the money aside for the owner. If one finds calves and foals, he tends to them for thirty days. From that point forward, one assesses their value, sells them, and places the money aside for the owner. If one finds geese and roosters and anything that costs more to tend to than the revenue generated by it, he tends to them for three days. From that point forward, one assesses their value, sells them, and places the money aside for the owner.

[258] The Gemara asks: It is difficult, as there is a contradiction between the ruling in the first baraita that the finder keeps calves and foals for three months and the ruling in the second baraita that the finder keeps calves and foals for thirty days; and there is another contradiction between the ruling in the first baraita that the finder keeps geese and roosters for thirty days, and the ruling in the second baraita that the finder keeps geese and roosters for three days.

[259] The Gemara answers: The contradiction between the ruling in the first baraita with regard to calves and foals and the ruling in the second baraita with regard to calves and foals is not difficult. This ruling in the first baraita that the finder keeps them for three months is referring to calves and foals that graze in the pasture, and that ruling in the second baraita that the finder keeps them for thirty days is referring to calves and foals that need to be fattened and therefore require greater exertion on the part of the one who finds them.

[260] The contradiction between the ruling in the first baraita with regard to geese and roosters and the ruling in the second baraita with regard to geese and roosters is also not difficult. This ruling in the first baraita that the finder keeps them for thirty days is referring to large geese and roosters, which do not require great exertion, and that ruling in the second baraita that the finder keeps them for three days is referring to small geese and roosters, which require great exertion.

[261] The mishna teaches: And any living being that does not work but it does eat shall be sold. The Sages taught in a baraita: The verse states: “And you shall return it to him” (Deuteronomy 22:2), indicating that the finder must see how best to return it to him, meaning that one shall not feed the value of a calf to the lost calves that he is tending, nor the value of a foal to the lost foals that he is tending, nor the value of a goose to the geese that he is tending, nor the value of a rooster to the roosters that he is tending. Were the finder to do so, ultimately, the owner would receive nothing.

[262] § The mishna teaches: What shall be done with the money received from the sale of the animal? Rabbi Tarfon says: The finder may use it; therefore, if the money is lost, he is liable to pay restitution for its loss. Rabbi Akiva says: He may not use the money. Therefore, if it is lost, he is not liable to pay restitution. The Gemara analyzes the tannaitic dispute: Rabbi Tarfon and Rabbi Akiva disagree

[263] only in a case where the finder used the money. But in a case where the finder did not use the money, everyone agrees that if the money is lost, the finder is exempt from paying restitution for its loss.

[264] The Gemara suggests: Let us say that this shall be a conclusive refutation of the statement of Rav Yosef, as it was stated that there is an amoraic dispute with regard to the legal status of a bailee charged with safeguarding a lost item. Rabba said: His legal status is like that of an unpaid bailee, who is liable to compensate the owner of the deposited item only in cases of negligence. Rav Yosef said: His legal status is like that of a paid bailee, who is liable to compensate the owner of the deposited item even in cases of theft or loss. When the mishna teaches that if the finder did not use

the money everyone agrees that he is exempt from paying restitution for its loss, it apparently contradicts the statement of Rav Yosef.

265 The Gemara answers that Rav Yosef could have said to you: In cases of theft or loss, everyone agrees that a bailee charged with safeguarding a lost item is liable to pay restitution for it. When they disagree is in a case of damage caused by circumstances beyond his control, for which it is the obligation of a borrower to pay compensation. The Gemara elaborates: Rabbi Tarfon holds: The Sages permitted him to use the money, and he is therefore a borrower with regard to it, and is liable to compensate the owner even in the event of circumstances beyond his control. And Rabbi Akiva holds: The Sages did not permit him to use the money, and he is therefore not a borrower with regard to it.

266 The Gemara asks: If so, why do I need the statement that Rabbi Akiva said: He may not use the money; therefore, if it is lost, he is not liable to pay restitution for it? Granted, if you say that it is in cases of theft or loss that they disagree, I understand that is the reason that the tanna teaches in the mishna that Rabbi Akiva says: He may not use the money; therefore, if it is lost, he is not liable to pay restitution for it. The Gemara explains: Since it enters your mind to say that the legal status of the finder is like that of a paid bailee, in accordance with the opinion of Rav Yosef, and that in cases of theft and loss the finder is liable to pay restitution, Rabbi Akiva teaches us: Therefore, if it is lost, he is not liable to pay restitution. Now that you said that he may not use the money, he is not a paid bailee and is not liable to pay restitution in cases of theft and loss.

267 But if you say that in cases of theft or loss, everyone agrees that a bailee charged with safeguarding a lost item is liable to pay restitution for it, and when they disagree it is in cases of damage caused by circumstances beyond his control for which it is the obligation of a borrower to pay compensation, what is the meaning of the statement of Rabbi Akiva: Therefore, if it is lost, he is not liable to pay restitution for it? Rather, this is what the mishna should have taught: Rabbi Akiva says: He may not use the money; and I would know that since he may not use the money, he is not considered a borrower, and consequently bears no financial responsibility. Why do I need the statement that Rabbi Akiva said: Therefore, if it is lost, he is not liable to pay restitution for it?

268 The Gemara answers: The explanation appended to the statement of Rabbi Akiva is indeed extraneous. It was added in order to create a parallel between the formulation of the statement of Rabbi Akiva and the formulation of the statement of Rabbi Tarfon. The phrase: Therefore, if the money is lost, he is not liable to pay restitution for it, was appended to the statement of Rabbi Akiva due to the explanation: Therefore, if the money is lost, he is liable to pay restitution for it, stated by Rabbi Tarfon.

269 The Gemara asks: And why do I need the statement that Rabbi Tarfon said: Therefore, if the money is lost, he is liable to pay restitution for it? The Gemara answers: This is what the mishna is saying: Since the Sages permitted him to use the money, his legal status is like that of one who actually used it and therefore, he is liable to pay restitution for it.

270 The Gemara asks: How can Rav Yosef explain that the dispute in the mishna is with regard to damage caused by circumstances beyond his control? But doesn’t the mishna teach: Therefore, if the money is lost? The disagreement between Rabbi Tarfon and Rabbi Akiva is with regard to a case of damage due to loss, and not with regard to a case of damage caused by circumstances beyond one’s control.

[271] The Gemara answers that the statement in the mishna: Therefore, if the money is lost, he is liable to pay restitution for it, can be explained in accordance with the statement of Rabba, as Rabba says concerning another mishna (58a): When the tanna says that they were stolen, the reference is to a case where the item was stolen by armed bandits; when he says that they were lost, the reference is to a case where the agent's ship sank at sea.

[272] Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Tarfon, who said that it is permitted for the finder to use the money. The Gemara relates: There were these dinars that belonged to orphans that were in the possession of Raḥava. Raḥava came before Rav Yosef and said to him: What is the halakha; is it permitted for me to use these dinars? Rav Yosef said to him: This is what Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Tarfon.

[273] Abaye said to Rav Yosef: Wasn't it stated concerning this halakha that Rabbi Ḥelbo says that Rav Huna says: The Sages taught this halakha, that it is permitted to use the money, only in a case of money received from the sale of a lost item that one found and that is no longer financially viable for one to tend to it. This is permitted, since he exerted himself and tended to it. But in the case of lost coins, where he did not exert himself in order to tend to them, it is not permitted for him to use them. And the case of these dinars in Raḥava's possession is similar to a case of lost coins. Rav Yosef accepted Abaye's objection and said to Raḥava: Go; as they did not allow me to permit the use of the dinars for you.

[274] MISHNA: If one found scrolls, he reads them once in thirty days in order to ventilate them and prevent mold. And if he does not know how to read, he rolls and unrolls them in order to ventilate them. But he shall not study passages in them for the first time, as he would leave the scroll exposed to the air for a lengthy period, thereby causing damage. And another person shall not read the scroll with him, as each might pull it closer to improve his vantage point, which could cause the scroll to tear.

[275] If one found a garment, he shakes it once in thirty days, and he spreads it out for its sake, to ventilate it, but he may not use it as a decoration for his own prestige.

[276] If one found silver vessels or copper vessels, he may use them for their own sake to prevent tarnish and rust, but he may not use them to the extent that he will erode them. If he finds gold vessels or glass vessels, which are not ruined by neglect, he may not touch them until Elijah will come and identify the owner.

[277] If a person found a sack or a basket or any other item that it is not his typical manner to take and carry because it is beneath his dignity, he shall not take it, as one need not demean himself in order to return a lost item.

[278] GEMARA: Shmuel says: One who finds phylacteries in the marketplace and is in need of phylacteries assesses their value and immediately places the money aside for the owner.

[279] Ravina raises an objection from the mishna: If one found scrolls, he reads them once in thirty days; and if he does not know how to read, he rolls and unrolls them. Ravina infers: To roll and unroll them, yes, he may do so, but assess their value and place the money aside, no, he may not. Abaye said: There is a difference between phylacteries and scrolls. Phylacteries are available at the

house of bar Ḥavu, where they are produced in large quantities, but scrolls are not available, as Torah scrolls are not easily obtained.

[280] § The Sages taught in a baraita: In the case of one who borrows a Torah scroll from another, that person may not lend it to another, i.e., a third person. He may open it and read it, provided that he does not study passages in it for the first time, lest the scroll be exposed for a lengthy period of time and sustain damage. And another person shall not read the scroll with him, lest the scroll tear.

[281] And likewise, in the case of one who deposits a Torah scroll with another, the bailee rolls it every twelve months, and he may open it and read it. If it is for himself that he opened it, it is prohibited. Sumakhos says: In the case of a new Torah scroll, one rolls it every thirty days because the ink is not yet dry and must be more frequently ventilated. By contrast, in the case of an old Torah scroll, one rolls it every twelve months. Rabbi Eliezer ben Ya'akov says: In the case of both this new Torah scroll, and the case of that old Torah scroll, one rolls it every twelve months.

[282] The Gemara analyzes the baraita: The Master said: In the case of one who borrows a Torah scroll from another, that person may not lend it to another, i.e., a third person. The Gemara asks: Why did the tanna teach this halakha specifically with regard to a Torah scroll? This is the halakha with regard to any item as well, as Rabbi Shimon ben Lakish says: Here in a mishna (Gittin 29a), Rabbi Yehuda HaNasi taught: A borrower is not allowed to lend the item that he borrowed to someone else, and a renter is not allowed to rent out the item that he rented to someone else.

[283] The Gemara answers: It was necessary for the tanna to mention the halakha specifically with regard to a Torah scroll, lest you say that a person is amenable to having a mitzva performed with his property and would consequently not mind if his Torah scroll was lent to another. Therefore, the tanna teaches us that the borrower may not lend even a Torah scroll.

[284] The baraita continues: He may open it and read it. The Gemara asks: Isn't that obvious? And rather, for what purpose did he borrow the Torah scroll from him, if not to read it? The Gemara answers: It was necessary to teach the last clause: Provided that he does not study passages in it for the first time.

[285] The baraita continues: And likewise, in the case of one who deposits a Torah scroll with another, the bailee rolls it every twelve months, and he may open it and read it. The Gemara asks: What is the bailee doing with it? As a paid bailee, he has no right to read it. And furthermore, whereas the tanna teaches: If it is for himself that he opened it, it is prohibited, didn't you say in the previous passage: He may open it and read it? The Gemara answers: This is what the tanna is saying: If, when he is rolling the Torah scroll to ventilate it, he opens it and reads it, it is permitted. If it is for himself that he opened it, it is prohibited.

[286] The baraita continues: Sumakhos says: In the case of a new Torah scroll, one rolls it every thirty days because the ink is not yet dry and must be more frequently ventilated. By contrast, in the case of an old Torah scroll, one rolls it every twelve months. Rabbi Eliezer ben Ya'akov says: In both the case of this new Torah scroll and the case of that old Torah scroll, one rolls it every twelve months. The Gemara asks: What is the dispute here; it appears that the statement of Rabbi Eliezer ben Ya'akov is identical to the statement of the first tanna, who stated without qualification that one rolls a Torah scroll every twelve months. The Gemara answers: Rather say that Rabbi Eliezer ben Ya'akov says: Both in the case of this new Torah scroll and the case of that old Torah scroll, one rolls it every thirty days.

[287] § The Gemara resumes its analysis of the mishna, which teaches with regard to borrowed scrolls: But he shall not study passages in them for the first time and another person shall not read the scroll with him. The Gemara raises a contradiction from a baraita (Tosefta 2:31): If one borrows a scroll, he shall not read a passage and review it, and he shall not read a passage in it and translate the passage, and he shall not open it more than three columns at a time, and three people shall not read in it together from one volume. The Gemara infers: But two people may read it together, contrary to the ruling in the mishna.

[288] Abaye said: It is not difficult. Here, where it is inferred from the baraita that two may read one scroll together, it is referring to a case where they are reading one matter and each is aware of the progress of the other. There, in the mishna, where the ruling is that two may not read one scroll together, it is referring to a case where they are reading two different matters, as each is oblivious to the progress of the other and may pull the scroll closer to improve his vantage point.

[289] § The mishna teaches: If one found a garment, he shakes it once in thirty days. The Gemara asks: Is this to say that shaking a garment is beneficial for it? But doesn't Rabbi Yoḥanan say: Only one who has access to a skilled weaver [gardi] in his house may shake his garment every day, as the weaver can replace the damaged garments with new ones. The Sages say: Shaking a garment every day is harmful to it, but shaking it once in thirty days is beneficial for it.

[290] If you wish, say instead: It is not difficult. In this mishna, where the ruling is that shaking a garment is beneficial, the reference is to a case where one person shakes the garment. And that statement of Rabbi Yoḥanan, who rules that shaking the garment causes damage, is referring to a case where two people shake the garment.

[291] If you wish, say instead: It is not difficult. In this mishna, where the ruling is that shaking a garment is beneficial, the reference is to a case where one shakes the garment by hand. And that statement of Rabbi Yoḥanan, who rules that shaking the garment causes damage, is referring to a case where one shakes the garment with a stick.

[292] If you wish, say instead: It is not difficult. In this mishna, where the ruling is that shaking a garment is beneficial, the reference is to a case where one shakes a garment made of wool. And that statement of Rabbi Yoḥanan, who rules that shaking the garment causes damage, is referring to a case where one shakes a garment made of linen.

[293] The Gemara cites additional statements by Rabbi Yoḥanan providing practical advice. Rabbi Yoḥanan says: It is preferable to drink from a cup of witches and not to drink from a cup of lukewarm water, which is extremely unhealthy. Rabbi Yoḥanan qualifies his statement: We said this only with regard to lukewarm water in metal vessels, but in earthenware vessels we have no problem with it. And even in metal vessels, we said this only in a case where the water had not been boiled, but if the water had been boiled we have no problem with it. And we said that lukewarm water is unhealthy only in a case where one did not cast flavorings into the water, but if he cast flavorings into the water we have no problem with it.

[294] And Rabbi Yoḥanan says: In the case of one whose father bequeathed him a great deal of money and he seeks to lose it, he should wear linen garments, and should use glass vessels, and should hire laborers and not sit with them to supervise. The Gemara elaborates: He should wear linen garments; this is stated with regard to Roman linen, which becomes tattered quickly. He should use glass

vessels; this is stated with regard to expensive white glass. And he should hire laborers and not sit with them; the explanation is

[295] that this applies to laborers who work with oxen, whose potential for causing damage is great if they are not supervised, as they will trample the crops.

[296] § The mishna teaches that one who found a lost garment spreads it for its sake to ventilate it, but may not use it as a decoration for his own prestige. A dilemma was raised before the Sages: If one spreads it both for his sake and for its sake, what is the halakha?

[297] The Gemara suggests: Come and hear proof from the mishna: He spreads it for its sake. The Gemara infers: For its sake, yes, he spreads it, but both for his sake and for its sake, he may not do so. The Gemara rejects the proof: Say the latter clause of the mishna: But not for his own prestige. The Gemara infers: It is for his prestige alone that he may not spread it, but for its sake and for his sake, one may well do so. Rather, no inference is to be learned from this mishna, as there are conflicting inferences from the first clause and the latter clause.

[298] The Gemara suggests: Come and hear a proof from a baraita: If one finds a lost garment, he may not spread it on a bed or on a hanger for his sake, but he may spread it on a bed or on a hanger for its sake. If guests happened to visit, he may not spread it, neither on a bed nor on a hanger and neither for his sake nor for its sake. Apparently, it is prohibited to spread it for both his sake, to enhance his prestige before his guests, and for its sake.

[299] The Gemara rejects this proof: It is different there, as spreading it before his guests is tantamount to burning it, either due to the evil eye that will result, or due to thieves, as once the guests are aware of the valuable item in his possession they may be tempted to steal it.

[300] The Gemara suggests: Come and hear a proof from a baraita: If one introduced a calf into a yoke [lirvaka] so that it would suckle, and it threshed with the cows, it is fit for use in the ritual of the heifer whose neck is broken, because the owner did not intend for it to perform labor. But if the owner introduces it so that it will suckle and it will thresh, it is unfit for use in that ritual because his intent is for the calf to perform labor, and the intentional performance of labor disqualifies it. And here, isn’t the placement of the calf in the yoke for both his sake, threshing, and for its sake, suckling, and the baraita teaches that the calf is unfit? Apparently, it is prohibited for one who found a lost garment to spread it for both his sake and for its sake.

[301] The Gemara rejects this proof by citing a verse written with regard to the heifer whose neck is broken. It is different there, as the verse states: “The Elders of that city shall take a heifer of the herd that has not been worked with and that has not pulled a yoke” (Deuteronomy 21:3), indicating that the heifer is rendered unfit in any case of labor performed. Therefore, no conclusion can be drawn with regard to spreading the garment.

[302] The Gemara asks: If it is so that the calf is rendered unfit by any labor that it performed, then it should be unfit even in the first clause, where the owner did not intend for the calf to perform labor.

[303] The Gemara answers. This is comparable only to this other case, as we learned in a mishna (Para 2:4): If a bird rested upon a red heifer, it remains fit for use in the purification ritual, as supporting the bird on its back is considered neither labor nor comparable to pulling a yoke. If a male animal mounted it for mating, it is unfit for use in the purification ritual. The Gemara asks: What is the reason for the difference between the two cases?

[304] The difference is in accordance with the statement of Rav Pappa, as Rav Pappa says with regard to the verse written concerning the heifer whose neck is broken: “And the Elders of that city shall take a heifer of the herd that has not been worked with and that has not pulled a yoke” (Deuteronomy 21:3). If the word were written with an additional letter vav, which would mean the passive: Has been worked with [ubbad], and we also vocalized the word in the passive voice, ubbad, I would say that even if the heifer performed labor by itself, it is disqualified for use in the ritual. If the word were written without an additional letter vav, which would mean the active: He used it for labor [avad], and we also vocalized the word in the active voice, avad, I would say that indicates that the heifer was fit for use in the ritual until its owner intentionally used it for labor.

[305] Now that the word is written without an additional letter vav as avad and we vocalize the word with an additional letter vav, as ubbad, in order to render the heifer unfit we require the situation described by the word ubbad be similar to the situation described by the word avad. Just as the word avad indicates that the owner is amenable to the performance of that labor, so too, the word ubbad means that the owner is amenable to the performance of that labor. Since the owner is amenable to the heifer mating, the heifer is rendered unfit. So too, in the first clause of the baraita: If one introduced a calf into a yoke so that it may suckle, and it threshed with the cows, it is fit for use in the ritual of the heifer whose neck is broken, because the owner is not amenable to its performing labor.

[306] § The mishna teaches: If one found silver vessels or copper vessels, he may use them for their own sake; and the same halakha applies to other vessels. The Sages taught in a baraita: One who finds wooden vessels uses them, so that they will not deteriorate due to lack of use. If one found copper vessels he uses them with hot water, but not directly on the fire, due to the fact that it erodes them. If one found silver vessels he uses them with cold water, but not with hot water, because it tarnishes them. If one found rakes or axes, he may use them with soft substances but not with hard substances because using them with those substances damages them. If one found gold vessels or glass vessels, which do not deteriorate due to lack of use, he may not touch them until Elijah will come and identify the owner.

[307] The baraita continues: In the manner that the Sages said with regard to a lost item, so they said with regard to a deposit. The Gemara asks: What is the bailee doing with a deposit; i.e., the owner should tend to his own item, why is the bailee using it at all? The Gemara answers: Rav Adda bar Ḥama said that Rav Sheshet said: It is referring to a deposit whose owner went to a country overseas. Therefore, it is incumbent upon the bailee to tend to the deposit until his return.

[308] § The mishna teaches: If a person found a sack or a basket or any other item that it is not his typical manner to take and carry because it is beneath his dignity, he shall not take it. The Gemara asks: From where are these matters derived? It is as the Sages taught in a baraita: It is stated with regard to the return of a lost item: “You shall not see your brother’s ox or his sheep wandering and disregard them; you shall return them to your brother” (Deuteronomy 22:1). The tanna explains that the phrase “and disregard them” means that there are occasions in which you may disregard lost items and there are occasions in which you may not disregard them.

[309] How so; under what circumstances may one disregard a lost item? One may do so in a case where he was a priest and the lost item is in the graveyard (Leviticus 21:1–4), or where he was an elderly person and it is not in keeping with his dignity to tend to the item, or where the value of his

labor was greater than the value of the lost item of the other person, i.e., if the finder was to return the item, reimbursing him for his lost wages would cost more than the value of the item; therefore, it is stated: “And disregard them.”

310 The Gemara asks: For what case was a verse necessary to derive that one may disregard a lost item? If we say that the verse is necessary for the case of a priest and the lost item in the graveyard, it is obvious that he need not return the item, as this obligation to return the lost item is a positive mitzva: “You shall return them to your brother” (Deuteronomy 22:1), and that entry of a priest into a graveyard is prohibited by both a prohibition: “To the dead among his people he shall not defile himself” (Leviticus 21:1), and a positive mitzva: “You shall be holy” (Leviticus 21:6); and there is a principle that a positive mitzva does not override a prohibition and a positive mitzva. And furthermore, we do not override a ritual prohibition in the face of monetary matters.

311 The Gemara suggests: Rather, say that the verse is necessary to derive the exemption from returning the lost item in the case where the value of his labor was greater than the value of the lost item of the other. The Gemara rejects that possibility: That halakha is derived not from the phrase: “And disregard them,” but from that which Rav Yehuda says that Rav says. As Rav Yehuda says that Rav says: It is written: “Only so that

312 there shall be no needy among you” (Deuteronomy 15:4). This verse can be understood as a command, indicating that it is incumbent upon each individual to ensure that he will not become needy. Therefore, your assets take precedence over the assets of any other person.

313 The Gemara concludes: Rather, the verse is necessary to derive the exemption from returning the lost item in the case where he was an elderly person and it is not in keeping with his dignity to tend to the item.

314 Rabba says: If there was a lost animal and the elderly person began the process of returning it, e.g., if he struck it even once to guide it in a certain direction, he is obligated to tend to it and return it. The Gemara relates: Abaye was sitting before Rabba and saw these goats standing nearby. He picked up a clod of dirt and threw it at them, causing them to move. Rabba said to him: You have thereby obligated yourself to return them. Arise and return them to their owner.

315 A dilemma was raised before the Sages: In a case of a person for whom it is his typical manner to return an item of that type in the field, where there are fewer onlookers, but it is not his typical manner to return an item of that type in the city, what is the halakha? Do we say that for one to be obligated to return a lost item we need an unequivocal obligation to return it that applies in all cases, and since it is not his typical manner to return an item of that sort in the city, let him not be obligated to return such an item at all? Or perhaps, he is obligated in any event to return the item in the field, and once he is obligated to return it in the field, he is also obligated in the city. The Gemara concludes: The dilemma shall stand unresolved.

316 Rava says: In any case where he would recover his own item and would consider it to be in keeping with his dignity, he is also obligated to return another’s item. And any case where he unloads and loads his own animal’s burden, he is also obligated to unload and load the burden of another’s animal.

317 The Gemara relates: Rabbi Yishmael, son of Rabbi Yosei, was walking on the road. A certain man encountered him, and that man was carrying a burden that consisted of sticks of wood. He set down

the wood and was resting. The man said to him: Lift them for me and place them upon me. Since it was not in keeping with the dignity of Rabbi Yishmael, son of Rabbi Yosei, to lift the wood, Rabbi Yishmael said to him: How much are they worth? The man said to him: A half-dinar. Rabbi Yishmael, son of Rabbi Yosei, gave him a half-dinar, took possession of the wood, and declared the wood ownerless.

318 The man then reacquired the wood and again requested that Rabbi Yishmael, son of Rabbi Yosei, lift the wood for him. Rabbi Yishmael, son of Rabbi Yosei, again gave him a half-dinar, again took possession of the wood, and again declared the wood ownerless. He then saw that the man desired to reacquire the sticks of wood. Rabbi Yishmael, son of Rabbi Yosei, said to him: I declared the sticks of wood ownerless with regard to everyone else, but I did not declare them ownerless with regard to you.

319 The Gemara asks: But is property rendered ownerless in a case like this? But didn't we learn in a mishna (Pe'a 6:1) that Beit Shammai say: Property declared ownerless for the poor is thereby rendered ownerless. And Beit Hillel say: It is not ownerless, until the property will be ownerless for the poor and for the rich, like produce during the Sabbatical Year, which is available for all. As the halakha is in accordance with the opinion of Beit Hillel, how could Rabbi Yishmael, son of Rabbi Yosei, declare the wood ownerless selectively, excluding the prior owner of the wood?

320 Rather, Rabbi Yishmael, son of Rabbi Yosei, actually declared the wood ownerless to everyone without exception, and it was with a mere statement that he prevented him from reacquiring the wood, i.e., he told the man not to reacquire the wood even though there was no legal impediment to that reacquisition.

321 The Gemara asks: But wasn't Rabbi Yishmael, son of Rabbi Yosei, an elderly person and it was not in keeping with his dignity to tend to the item? Why did he purchase the wood and render it ownerless in order to absolve himself of the obligation to lift the burden if he had no obligation to do so in the first place? The Gemara answers: In the case of Rabbi Yishmael, son of Rabbi Yosei, he conducted himself beyond the letter of the law, and he could have simply refused the request for help.

322 The Gemara cites a source for going beyond the letter of the law in the performance of mitzvot. As Rav Yosef taught in a baraita with regard to the verse: "And you shall teach them the statutes and the laws, and shall show them the path wherein they shall walk and the action that they must perform" (Exodus 18:20). The baraita parses the various directives in the verse. "And you shall teach them," that is referring to the structure of their livelihood, i.e., teach the Jewish people trades so that they may earn a living; "the path," that is referring to acts of kindness; "they shall walk," that is referring to visiting the ill; "wherein," that is referring to burial; "and the action," that is referring to acting in accordance with the letter of the law; "that they must perform," that is referring to acting beyond the letter of the law.

323 The Gemara analyzes the baraita. The Master said: With regard to the phrase "they shall walk," that is referring to visiting the ill. The Gemara asks: That is a detail of acts of kindness; why does the baraita list it separately? The Gemara answers: The reference to visiting the ill is necessary only for the contemporary of the ill person, as the Master said: When one who is a contemporary of an ill person visits him, he takes one-sixtieth of his illness. Since visiting an ill contemporary involves

contracting a bit of his illness, a special derivation is necessary to teach that even so, he is required to go and visit him.

[324] It was taught in the baraita: With regard to the phrase “wherein,” that is referring to burial. The Gemara asks: That is a detail of acts of kindness; why does the baraita list it separately? The Gemara answers: The reference to burial is necessary only to teach the halakha of an elderly person, and it is in a circumstance where it is not in keeping with his dignity to bury the dead. Therefore, a special derivation is necessary to teach that even so, he is required to participate in the burial.

[325] It was taught in the baraita: “That they must perform”; that is referring to acting beyond the letter of the law, as Rabbi Yoḥanan says: Jerusalem was destroyed only for the fact that they adjudicated cases on the basis of Torah law in the city. The Gemara asks: Rather, what else should they have done? Should they rather have adjudicated cases on the basis of arbitrary decisions [demagizeta]? Rather, say: That they established their rulings on the basis of Torah law and did not go beyond the letter of the law.

[326] MISHNA: Which is the item that is considered lost property? If one found a donkey or a cow grazing on the path, that is not lost property, as presumably the owners are nearby and are aware of the animals’ whereabouts. If one found a donkey with its accoutrements overturned, or a cow that ran through the vineyards, that is lost property. In a case where one returned the lost animal and it fled, and he again returned it and it fled, even if this scenario repeats itself four or five times, he is obligated to return it each time, as it is stated: “You shall not see your brother’s ox or his sheep wandering and disregard them; you shall return them to your brother” (Deuteronomy 22:1).

[327] If in the course of tending to and returning the lost item, the finder was idle from labor that would have earned him a sela, he shall not say to the owner of the item: Give me a sela to compensate me for my lost income. Rather, the owner gives him his wage as if he were a laborer, a payment that is considerably smaller. If there are three men there who can convene as a court, he may stipulate before the court that he will undertake to return the item provided that he receives full compensation for lost income. If there is no court there before whom he can stipulate his condition, his financial interests take precedence and he need not return the lost item.

[328] GEMARA: With regard to the question in the mishna: Which is the item that is considered lost property, the Gemara asks: Is that to say that all those other cases that we stated in this chapter are not lost property? Rav Yehuda said that this is what the tanna is saying: What is the principle employed in defining a lost item that one is obligated to return? The mishna cites examples to illustrate the principle: If one found a donkey or a cow grazing on the path, that is not lost property, and he is not obligated to return it. But if one found a donkey with its accoutrements overturned, or a cow that was running through the vineyards, that is lost property, and he is obligated to return it.

[329] With regard to the ruling in the mishna that a donkey and cow grazing on the path are not considered lost property, the Gemara asks: And is that the case even if they graze there untended forever? Rav Yehuda said that Rav said: Until three days pass they are not lost. Thereafter, they are considered lost. The Gemara asks: What are the circumstances? If the animal is found grazing at night, even if it is untended for even one hour it can be presumed to be lost, as an owner never grazes his animals untended at night. If the animal is found grazing during the day, even if it is untended for more than three days, it is also not presumed to be lost.

330 The Gemara answers: No, the measure of three days is necessary only in a case where one saw the animal grazing in the early hours in the morning and in the dark of nightfall. For the first three days, we say: It happened that the animal went out a bit earlier or a bit later than usual, but nevertheless, it was with the owner's knowledge. Once this is observed for more than three days, it is certainly a lost item.

331 This is also taught in a baraita: If one found a cloak or an ax

332 on a main thoroughfare [be'isratiyya], or a cow running through the vineyards, that is lost property. If one found a cloak alongside a fence, an ax alongside a fence, or a cow grazing among the vineyards, that is not lost property. If one sees these items for three consecutive days, that is lost property. If one saw water that is flowing and coming to inundate another's field, he must establish a barrier before the water in order to preserve the field.

333 Rava says that the verse: "And so shall you do with every lost item of your brother" (Deuteronomy 22:3), serves to include an obligation to protect your brother from the loss of his land. Rav Ḥananya said to Rava: There is a baraita that is taught that supports your opinion. If one saw water that is flowing and coming to inundate another's field, he must establish a barrier before the water in order to preserve the field.

334 Rava said to Rav Ḥananya: If you are attempting to bring support for my ruling due to that baraita, do not support my ruling. With what are we dealing here in the baraita? We are dealing with a field in which there are sheaves of grain on the land. The tanna of the baraita is referring to preservation of the sheaves, not of the land itself. The Gemara asks: If the baraita is referring to a field in which there are sheaves of grain, what is the purpose of stating it? Isn't it obvious that one is obligated to preserve the sheaves as he would any other item? No, it is necessary to state the halakha only in a case where there are sheaves that need the land in order to dry. Lest you say: Since they still need the land, their legal status is like that of the land itself and he is not obligated to return them, the baraita teaches us that the sheaves are independent of the land and must be preserved.

335 § The mishna teaches: If one found a donkey or a cow grazing on the path, that is not deemed lost property. The Gemara asks: This itself is difficult. On the one hand you said: If one found a donkey or a cow grazing on the path, that is not lost property, from which it may be inferred that only if it is grazing on the path it is not lost property, but if it was running on the path or grazing among the vineyards, it is a lost item. On the other hand, say the latter clause of the mishna: If one found a donkey with its accoutrements overturned, or a cow that ran through the vineyards, that is lost property. From this wording it may be inferred that only if the animal is running through the vineyards is it lost property, but if it is running on the path or grazing among the vineyards, it is not lost property.

336 Abaye said that the tanna employs the style of: Its counterpart tells about it (see Job 36:33), and the mishna distinguishes between grazing and running. The tanna taught a case of grazing on the path, where the animal is not considered lost property, and the same is true of a case where the animal is grazing among the vineyards. And the tanna taught a case of running through the vineyards, where the animal is considered lost property, and the same is true of a case where the animal is running on the path.

337 Rava said to him: If the tanna employs the style of: Its counterpart tells about it, let him teach the lenient case and all the more so it would apply to the stringent case. The Gemara elaborates: Let the

tanna teach that when the animal is running on the path it is lost property and all the more so it is lost property when it is running through the vineyards. And let the tanna teach that when the animal is grazing among the vineyards it is not lost property, and all the more so it is not lost property when it is grazing on the path.

338 Rather, Rava said: The apparent contradiction between the inference from the first clause with regard to running on the path and the inference from the latter clause with regard to running on the path is not difficult. This inference from the first clause that an animal running on the path is lost property is referring to a case where its face is directed toward the field, and it is running away from the city. That inference from the latter clause that an animal running on the path is not lost property is referring to a case where its face is directed toward the city.

339 Rava continues: The apparent contradiction between the inference from the first clause with regard to grazing among the vineyards and the inference from the latter clause with regard to grazing among the vineyards is also not difficult. Here, the inference from the latter clause that an animal grazing among the vineyards is not lost property is with regard to loss of the animal itself. There, the inference from the first clause that the halakhot of lost property apply in the case of an animal grazing among the vineyards is referring to loss in the sense of damage to the land.

340 The Gemara elaborates: When the tanna teaches that in the case of an animal grazing on the path, the halakhot of lost property do not apply, from which it is inferred: But in the case of an animal grazing among the vineyards the halakhot of lost property do apply, it is referring to preventing loss in the sense of damage to the land caused by the animal. And when the tanna teaches that in the case of an animal running among the vineyards the halakhot of lost property do apply, from which it is inferred: But in the case of an animal grazing among the vineyards the halakhot of lost property do not apply, it is referring to loss of the animal itself, as an animal running among the vineyards is typically wounded with lacerations from the vines, but an animal grazing among the vineyards is not typically wounded.

341 The Gemara asks: And with regard to the inference from the latter clause that in the case of an animal grazing among the vineyards the halakhot of lost property do not apply, although it is not wounded, why not derive that the halakhot of lost property do apply due to loss in the sense of damage to the land caused by the animal? The Gemara answers: It is stated with regard to the land of a gentile, which one is not obligated to return or preserve.

342 The Gemara questions this explanation: But why not derive that one is obligated to return it due to loss of the animal itself, as perhaps the gentiles will kill it? The Gemara answers: It is stated with regard to a place where they forewarn the owner and only then kill the animal. The Gemara challenges: And perhaps they already forewarned the owner with regard to the animal. The Gemara explains: If they already forewarned the owner with regard to the animal and the owner did not heed the warning, this is certainly a case of deliberate loss, where there is no obligation to return it.

343 § The mishna teaches: In a case where one returned the lost animal and it fled, and he again returned it and it fled, even if this scenario repeats itself four or five times, he is obligated to return it each time, as it is stated: “You shall not see your brother’s ox or his sheep wandering and disregard them; you shall return them [hashev teshivem] to your brother” (Deuteronomy 22:1). The Gemara understands that from the use of the compound form of the verb, “hashev teshivem,” the mishna derives that one must return the lost animal multiple times if it flees. The Gemara asks: A certain one

of the Sages said to Rava: Say that from “hashev” one derives the obligation to return the animal once, and from “teshivem” one derives the obligation to return the animal twice, and beyond that there is no obligation.

[344] Rava said to him: “Hashev” indicates that there is an absolute obligation to return the animal, even if it flees one hundred times. “Teshivem” teaches another matter: I have derived only that one may return the animal to the owner’s house. From where is the halakha derived that one may return the animal to his garden or to his building in ruins? The verse states: “Teshivem,” to teach that in any case, wherever one returns the lost animal, he fulfills the mitzva of returning it. The Gemara asks: What are the circumstances? If those areas are protected, it is obvious that one who returns the animal there fulfills his obligation. If they are not protected, why is he considered to have returned the lost animal? It will just flee again.

[345] The Gemara answers: Actually, it is a case where the property is protected. And this teaches us that we do not require the owner’s knowledge in order to return the lost item to him. And this ruling is in accordance with the opinion of Rabbi Elazar, who says: Every instance involving return of an item to its owner, e.g., by a bailee or by a thief, requires the owner’s knowledge that it is being returned, except for the return of a lost item, as the Torah amplified the halakha to permit multiple forms of return by means of the compound verb “hashev teshivem,” among them return without the owner’s knowledge.

[346] The Gemara cites additional mitzvot where the Torah employs the compound verb form, and the Sages derived additional halakhot from the phrasing of the verse. With regard to the mitzva of dispatch of the mother bird from the nest before taking its eggs or fledglings, the verse states: “You shall dispatch [shalle’aḥ teshallaḥ] the mother, but the young take for yourself; that it may be well with you, and that you may prolong your days” (Deuteronomy 22:7). The Gemara understands that from the use of the compound form of the verb, “shalle’aḥ teshallaḥ,” the Sages derive that one must dispatch the mother bird multiple times if it returns. The Gemara asks: Say that from “shalle’aḥ” one derives the obligation to dispatch the mother once, and from “teshallaḥ” one derives the obligation to dispatch the mother twice, and beyond that there is no obligation.

[347] Rava said to him: “Shalle’aḥ” indicates that one must dispatch the mother even one hundred times. “Teshallaḥ” teaches another matter: I have derived only the obligation to dispatch the mother bird in a case where one takes the eggs or the fledglings and wants to take the mother bird for a non-compulsory matter, e.g., to eat it. In a case where one takes the eggs or the fledglings and needs the mother bird for a matter involving a mitzva, e.g., the purification of a leper, from where is the halakha that he must dispatch the mother derived? The verse states: “Teshallaḥ,” to teach that in any case one must dispatch the mother bird.

[348] With regard to the mitzva of rebuke, the verse states: “You shall not hate your brother in your heart; you shall rebuke [hokhe’aḥ tokhiaḥ] your neighbor, and not bear sin because of him” (Leviticus 19:17). The Gemara understands that from the use of the compound form of the verb, “hokhe’aḥ tokhiaḥ,” the Sages derive that one must rebuke another multiple times if necessary. A certain one of the Sages said to Rava: Say that from “hokhe’aḥ” one derives the obligation to rebuke another once, and from “tokhiaḥ” one derives the obligation to rebuke another twice, and beyond that there is no obligation.

[349] Rava said to him: “Hokhe’aḥ” indicates that one must rebuke another even one hundred times. “Tokhiaḥ” teaches another matter: I have derived only the obligation of a teacher to rebuke a student. With regard to the obligation for a student to rebuke a teacher, from where is it derived? The verse states: “Hokhe’aḥ tokhiaḥ” to teach that one is obligated to rebuke another in any case that warrants rebuke.

[350] § The Gemara cites additional derivations from compound verb forms. “If you see the donkey of him that hates you collapsed under its burden, you shall forgo passing him by; you shall release it [azov ta’azov] with him” (Exodus 23:5). I have derived only that one is obligated to help unload the fallen animal in a case where its owner is with it. From where is the obligation to unload it in a case where its owner is not with it derived? The verse states: “Azov ta’azov,” indicating that there is an obligation to unload it in any case.

[351] The verse states: “You shall not see your brother’s donkey or his ox fallen by the wayside, and hide yourself from them; you shall lift them [hakem takim] with him” (Deuteronomy 22:4). I have derived only that one is obligated to help load the animal in a case where its owner is with it. From where is the obligation to load it in a case where its owner is not with it derived? The verse states: “Hakem takim,” to teach that there is an obligation to load it in any case.

[352] The Gemara asks: And why does the Torah need to write the compound verb form to teach the obligation in the owner’s absence with regard to unloading and why does the Torah need to write the compound verb form to teach the obligation in the owner’s absence with regard to loading the animal? The Gemara answers: They are both necessary, as had the Merciful One written this halakha only with regard to unloading, I would say that one is obligated to unload the animal even when the owner is not present, due to the fact that in the failure to unload the animal there is potential suffering of animals and there is potential monetary loss, as the burden might be damaged or the animal might die. But in the case of loading, where there is no potential suffering of animals and there is no potential monetary loss, I would say no, there is no obligation to load the animal when the owner is not present.

[353] The Gemara continues its answer: And had the Torah taught us the obligation in the owner’s absence with regard to loading, I would say that it is due to the fact that his action is rewarded with remuneration, as one is paid for loading an animal. But with regard to unloading, which is performed for free, I would say no, there is no obligation to unload the animal when the owner is not present. Due to the unique element in each, both are necessary.

[354] The Gemara asks: And according to Rabbi Shimon, who says that even loading must be performed for free, what is there to say to explain why it was necessary to repeat the obligation with regard to unloading? The Gemara answers: According to Rabbi Shimon, it is not clearly defined which of the verses is referring to loading and which is referring to unloading. Had the Torah written one verse, it would have been interpreted to be referring to unloading and one might assume that he need not load an animal in the absence of the owner.

[355] The Gemara asks: Why do I need the Torah to write these two mitzvot of unloading and loading, and why do I need the Torah to write the obligation to return a lost item? Write one of them, and derive the other from it, as they are all mitzvot to preserve another’s property. The Gemara answers: Both are necessary, as had the Merciful One written only these two mitzvot of unloading and loading, one would say that it is due to the fact that in those cases there is the suffering of its owner and there

is the suffering of the animal itself. But in the case of a lost item, where there is the suffering of its owner but there is no suffering of the lost item, I might say no, there is no obligation to return the lost item. And had the Torah taught us only the obligation to return a lost item, one would say that is due to the fact that its owner is not with it to care for it;

[356] but in the case of these two mitzvot of unloading and loading, where its owner is with it, I might say no, there is no need to assist him. Therefore, it was necessary for the Torah to write both.

[357] § The Gemara cites additional derivations from compound verb forms. “Or in enmity struck him with his hand, that he died; he that struck him shall be put to death [mot yumat]” (Numbers 35:21). I have derived only that the murderer is executed with the form of death written with regard to him, i.e., decapitation. From where is it derived that if you are unable to execute him with the form of death written with regard to him, it is permitted for you to execute him with any death with which you are able to execute him? The verse states: “Mot yumat,” to teach that you must execute him in any case.

[358] With regard to an idolatrous city, it is written: “You shall strike [hakeh takeh] the inhabitants of that city by sword, destroying it utterly” (Deuteronomy 13:16). I have derived only that the residents of the idolatrous city are executed with the form of death written with regard to them, i.e., decapitation. From where is it derived that if you are unable to execute them with the form of death written with regard to them, it is permitted for you to execute them with any death with which you are able to execute them? The verse states: “Hakeh takeh,” to teach that you must execute him in any case.

[359] With regard to an item that a poor person needs, e.g., a blanket, that a lender took as collateral when lending him money, it is written: “You shall restore [hashev tashiv] to him the pledge when the sun goes down, that he may sleep in his garment, and bless you; and it shall be righteousness for you before the Lord your God” (Deuteronomy 24:13). I have derived only the obligation to return his garment each night in a case where the lender took collateral with the sanction of the court. From where do I derive the obligation to return his garment each night even in a case where the lender took collateral without the sanction of the court? The verse states: “Hashev tashiv,” to teach that he must return it in any case.

[360] The Gemara brings another derivation from a compound verb written with regard to returning collateral: “If you take as collateral [ḥavol taḥbol] your neighbor’s garment, you shall restore it to him until the sun sets” (Exodus 22:25). I have derived only the obligation to return his garment before sunset in a case where the lender took collateral with the sanction of the court. From where do I derive the obligation to return his garment each night even in a case where the lender took collateral without the sanction of the court? The verse states: “Ḥavol taḥbol,” to teach that he must return it in any case.

[361] The Gemara asks: And with regard to these two verses, why do I need both of them to teach the same halakha, that one must return to the debtor any garment that he needs? The Gemara answers: One is referring to a garment worn during the day, and one is referring to a garment worn during the night (see 114b).

[362] With regard to the mitzva of giving charity and granting loans, it is written: “For the poor shall never cease out of the land; therefore I command you, saying: You shall open [patoaḥ tiftaḥ] your hand to your poor and needy brother in your land” (Deuteronomy 15:11). I have derived only the

obligation to give charity to the poor residents of your city. From where is the obligation to give charity to the poor residents of another city derived? The verse states: “Patoaḥ tiftaḥ,” to teach that you must give charity to the poor in any case.

363 With regard to the mitzva of giving charity it is written: “Beware…and your eye is stingy against your needy brother…You shall give [naton titten] him, and your heart shall not be grieved when you give unto him” (Deuteronomy 15:9–10). I have derived only the obligation to give a large gift. From where is the obligation to give even a small gift derived? The verse states: “Naton titten,” to teach that one must give gifts in any case, whether a large gift or a small one.

364 With regard to the release of a Hebrew slave it is written: “You shall furnish [ha’aneik ta’anik] him liberally from your flock, and from your threshing floor, and from your winepress; of that which the Lord your God has blessed you, you shall give unto him” (Deuteronomy 15:14). Based on the conclusion of the verse, I have derived only that when the house is blessed because of him, one furnishes the slave with gifts. From where have I derived the obligation to furnish him with gifts even when the house is not blessed because of him? The verse states: “Ha’aneik ta’anik,” to teach that one must furnish him with gifts in any case.

365 The Gemara asks: And according to Rabbi Elazar ben Azarya, who says: If the house is blessed because of him, one furnishes him with gifts, and if the house is not blessed because of him, one need not furnish him with gifts, why do I need a compound verb, “ha’aneik ta’anik”? The Gemara answers: The Torah speaks in the language of people. The compound verb is a common conversational style, and the Torah employs the same style. Rabbi Elazar ben Azarya holds there is nothing extraordinary about it and therefore, nothing may be derived from it.

366 With regard to the mitzva of lending money to the poor it is written: “But you shall open your hand to him, and you shall lend [ha’avet ta’avitennu] him sufficient for his need that he is lacking” (Deuteronomy 15:8). I have derived only that in a case where one does not have resources and does not want to be supported with charity, the Merciful One states: Provide for him by means of a loan. In a case where he has resources and he does not want to support himself with his resources, from where is the obligation to lend him money derived? The verse states: “Ta’avitennu,” to teach that you must grant him a loan in any case.

367 The Gemara asks: And according to Rabbi Shimon, who says that in a case where he has resources and does not want to support himself with his resources one is not obligated to attend to his needs, why do I need a doubled verb: “Ha’avet ta’avitennu”? The Gemara answers: The Torah speaks in the language of people and nothing may be derived from it.

368 § The mishna teaches: If in the course of tending to and returning the lost item, the finder was idle from labor that would have earned him a sela, he shall not say to the owner of the item: Give me a sela to compensate me for my lost income. Rather, the owner gives him his wage as if he were a laborer. The Gemara cites that we learned in a baraita (Tosefta 4:11): The owner gives him his wage as if he were an idle laborer.

369 The Gemara asks: What is the meaning of: As if he were an idle laborer? In fact, he is not idle, but engaged in return of a lost item. Abaye said: It means that he is paid as a laborer who is idle from that typical labor of his from which he is kept idle. In other words, he must receive the amount of money a person would be willing to accept to refrain from his current occupation and engage in

returning a lost item. This calculation accounts for both the degree of difficulty of his steady employment and the amount of his remuneration.

370 § The mishna teaches: If there are three men there who can convene as a court, he may stipulate before the court that he will undertake to return the item provided that he receives full compensation for lost income. The Gemara relates: Issur and Rav Safra formed a joint venture with each other. Rav Safra went and dissolved their partnership without Issur's knowledge in the presence of two witnesses. Rav Safra came before Rabba bar Rav Huna in order to ratify the dissolution of the partnership. Rabba bar Rav Huna said to him: Go and bring me the court of three before whom you dissolved your partnership. Alternatively, you may bring

371 two of the three of them to testify that you dissolved the partnership before them. Or alternatively, bring two witnesses to testify that you dissolved the partnership before a court of three.

372 Rav Safra said to Rabba bar Rav Huna: From where do you know this halakha, that dissolution of the partnership may be accomplished only before a court? Rabba bar Rav Huna said to him: It is as we learned in the mishna: If there are three men there who can convene as a court, he may stipulate before the court that he will undertake to return the item provided that he receives full compensation for lost income. But if there is no court there, before whom can he stipulate his condition? Rather, in that case, his financial interests take precedence, and he need not return the lost item. Apparently, one stipulates binding conditions with regard to another's property only before a court.

373 Rav Safra said to Rabba bar Rav Huna: Is that case in the mishna comparable to this case? There, where he is removing property from the possession of this person and giving it to that person, we require a court. But here, referring to himself in the third person, he is merely taking his own property, and not the property of any other person. There is no transaction effected here. It is mere disclosure of the matter that he divided the joint property equitably, and two witnesses are sufficient for him to disclose that fact. Rav Safra cites proof. Know that this is so, as we learned in a mishna (Ketubot 97a) that a widow owed sustenance from her husband's estate sells the property of the estate when not before a court. Apparently, one need not involve the court when reclaiming property that belongs to him.

374 Abaye said to him: But wasn't it stated with regard to that mishna that Rav Yosef bar Minyumi says that Rav Naḥman says: The court before which a widow sells the property of the estate need not be a court of experts, but is required to be at least a court of laymen. Therefore, as in the parallel case of the widow, even when disclosing that one took property belonging to him, two witnesses are not sufficient and a court is required.

375 MISHNA: If one found an animal in a stable belonging to its owner, he is not obligated to return it to its owner. If he found it in a public area, he is obligated to return it. And if the animal was lost in a graveyard and a priest found it, he may not become impure to return it. If his father said to him: Become impure; or in a case where one was obligated to return the animal and his father said to him: Do not return it, he may not listen to his father, as one may not violate Torah law to honor his father.

376 If one unloaded a burden from an animal collapsing under its weight and then later loaded it onto the animal, and later unloaded and loaded it again, even if this scenario repeats itself four or five times, he is obligated to continue unloading and loading, as it is stated: "If you see the donkey of him that hates you collapsed under its burden, you shall forgo passing him by; you shall release it [azov

ta’azov] with him” (Exodus 23:5). It is derived from the verse that one is obligated to perform the action as needed, even several times.

377 If the owner went, and sat, and said to a passerby: Since there is a mitzva incumbent upon you to unload the burden, if it is your wish to unload the burden, unload it, in such a case the passerby is exempt, as it is stated: “You shall release it with him,” with the owner of the animal. If the failure of the owner to participate in unloading the burden was due to the fact he was old or infirm, the passerby is obligated to unload the burden alone.

378 There is a mitzva by Torah law to unload a burden, but there is no mitzva to load it. Rabbi Shimon says: There is even a mitzva to load the burden.

379 Rabbi Yosei HaGelili says: If there was a burden upon the animal greater than its typical burden, one need not attend to it, as it is stated: “Under its burden,” i.e., the obligation is with regard to a burden that the animal can bear.

380 GEMARA: The mishna teaches that if one found an animal in a stable, he need not return it to its owner. Rava said: The stable that the Sages mentioned in the mishna is one that neither encourages the animal to stray nor secures the animal so it will not flee. The Gemara explains Rava’s statement. That it does not encourage the animal to stray is learned from the fact that the tanna teaches: He is not obligated in its return. The fact that it does not secure the animal is learned from the fact that it was necessary for the tanna to teach: He is not obligated in its return.

381 The Gemara continues its explanation of Rava’s statement: As, if it enters your mind to say that it is a stable that secures the animal, that ruling would be extraneous. Now that in a case where one found the animal outside a stable he brings it inside a stable of that type and thereby returns the animal to its owner, in a case where he found the animal inside the stable is it necessary to teach that he is not obligated to return it to its owner? Rather, learn from it that the stable mentioned in the mishna does not secure the animal and therefore there is a possibility that one must return it. The Gemara affirms: Indeed, learn from it that it is a stable that neither encourages the animal to stray nor secures the animal.

382 § The mishna teaches: If one found an animal in a stable belonging to its owner, he is not obligated to return it. Rabbi Yitzḥak says: And that is the halakha only in a case where the animal is standing within the city limits. The Gemara concludes by inference that if the animal was found in a public area he is obligated to return it, and even if it was within the city limits, he is also obligated to return it.

383 There are those who teach this statement with regard to the latter clause of the mishna: If he found it in a public area, he is obligated to return it. Rabbi Yitzḥak says: And that is the halakha only in a case where the animal is standing beyond the city limits. The Gemara concludes by inference that in a case where the animal was found in the stable, even if the animal is standing beyond the city limits, he is also not obligated in its return.

384 § The mishna teaches: And if the animal was lost in a graveyard and was found by a priest, he may not become impure to return it. In a case where a priest’s father said to him: Become impure, or in a case where one was obligated to return the animal and his father said to him: Do not return it, he may not listen to his father. The Gemara cites a baraita in which the Sages taught: From where is it derived that if a priest’s father said to him: Become impure, or that if one’s father said to him: Do not

return a lost item that you found; he should not listen to him? It is derived from the verse, as it is stated: “Every man shall fear his mother and his father, and you shall observe My Shabbatot; I am the Lord” (Leviticus 19:3). From the fact that the verse concludes: “I am the Lord,” it is derived that: You are all, parent and child alike, obligated in My honor. Therefore, if a parent commands his child to refrain from observing a mitzva, he must not obey the command.

385 The Gemara infers: The reason that a priest must not obey his father’s command to become impure is because the Merciful One writes: “You shall observe My Shabbatot; I am the Lord”; but if it were not so, I would say that the child must obey him. The Gemara asks: But why? This obligation to obey a parent is a positive mitzva, as it is written: “Honor your father and your mother” (Exodus 20:12), and that obligation of a priest to refrain from becoming impure is both a prohibition: “To the dead among his people he shall not defile himself” (Leviticus 21:1), and a positive mitzva: “You shall be holy” (Leviticus 19:2); and the principle is that a positive mitzva does not come and override a prohibition and a positive mitzva.

386 The Gemara answers that the derivation from “You shall observe My Shabbatot; I am the Lord” was necessary, as it might enter your mind to say: Since honoring one’s father and mother is equated to the honor of the Omnipresent, as it is stated here: “Honor your father and your mother” (Exodus 20:12), and it is stated elsewhere: “Honor the Lord with your wealth” (Proverbs 3:9), therefore, one might have thought that the priest must obey his father’s command to become impure. Therefore the Torah teaches us that the priest is commanded not to listen to him.

387 § The mishna teaches: There is a mitzva by Torah law to unload a burden, but there is no mitzva to load it. The Gemara asks: What is the meaning of the phrase: But there is no mitzva to load it? If we say that it means: But there is no mitzva to load it at all; what is different about unloading, with regard to which it is written: “You shall release it with him” (Exodus 23:5)? With regard to loading as well, isn’t it written: “You shall lift them with him” (Deuteronomy 22:4)?

388 The Gemara answers: Rather, there is a mitzva by Torah law to unload the burden for free, but there is no mitzva to load it for free; rather, the mitzva is performed with remuneration. Rabbi Shimon says: There is also a mitzva to load it for free. The Gemara states: We learn by inference from the mishna that which the Sages taught explicitly in a baraita: Unloading is performed for free, and loading is performed with remuneration. Rabbi Shimon said: Both this and that are performed for free.

389 The Gemara asks: What is the reason for the opinion of the Rabbis that there is a distinction between unloading and loading with regard to remuneration? The reason is that if it enters your mind that the halakha is in accordance with the opinion of Rabbi Shimon, let the Merciful One write only the mitzva of loading, and then He would need not write the mitzva of unloading, and I would say: Just as with regard to loading, where there is no potential suffering of animals and there is no potential monetary loss for the owner, one is obligated to load the burden, with regard to unloading, where there is potential suffering of animals and there is potential monetary loss for the owner, is it not all the more so clear that one is required to unload the burden? Rather, with regard to what halakha did the Merciful One write the mitzva of unloading? It is to tell you: The mitzva of unloading the burden is performed for free, but the mitzva of loading is performed with remuneration.

390 The Gemara asks: And according to Rabbi Shimon, who holds that even loading is performed for free, what is the reason that the Torah writes the mitzva of unloading? The Gemara answers: It is because the verses are not clearly defined, and it is unclear which of the verses refers to loading and which refers to unloading. Had the Torah written one verse, it would have been interpreted with regard to unloading, and there would be no source that one needs to load an animal.

391 And the Rabbis could ask: Why does Rabbi Shimon say that the verses are not clearly defined? Here it is written: “Collapsed under its burden” (Exodus 23:5), clearly referring to the case of a burden that needs unloading, and there it is written: “Fallen down by the way” (Deuteronomy 22:4), indicating that both the animals and their burdens are lying on the way and are in need of loading. And Rabbi Shimon explains that the verses are not defined because the phrase “fallen down by the way” could be understood as indicating that the animals are fallen with their burdens upon them, and referring to unloading.

392 Rava says:

393 From the statements of both of these tanna’im it can be learned that the requirement to prevent suffering to animals is by Torah law. As even Rabbi Shimon says that he disagreed with the opinion of the Rabbis only because the verses are not clearly defined; but had the verses been clearly defined, we would have learned the same a fortiori inference. Due to what factor can that inference be learned? What, is it not due to the matter of suffering of animals, which is a factor in unloading and not a factor in loading, that we would have learned the a fortiori inference?

394 The Gemara rejects that proof. Perhaps the a fortiori inference is due to the fact that there is the factor of monetary loss in unloading but not in loading, and this is what the Rabbis are saying: If in the case of loading, where if one fails to assist the owner there is no potential monetary loss, one is obligated to help load the animal, in the case of unloading, where if one fails to assist the owner there is potential monetary loss, is it not all the more so clear that one is required to unload the burden?

395 The Gemara asks: But is there no potential monetary loss in loading? Are we not also dealing with a case where in the meanwhile, while the owner waits for assistance, he will be prevented from bringing his merchandise to the marketplace in time to sell it; alternatively, thieves might come and take all the merchandise that is there with him? Therefore, no a fortiori inference can be learned on the basis of monetary loss, and the inference must be based on the matter of the suffering of animals.

396 The Gemara cites an additional proof: Know that the requirement to prevent suffering to animals is by Torah law, as it is taught in the latter clause of the mishna: Rabbi Yosei HaGelili says: If there was a burden upon the animal greater than its typical burden, one need not attend to it, as it is stated: “Under its burden” (Exodus 23:5). Rabbi Yosei holds that the obligation to unload an animal is with regard to a burden that the animal can bear; does this not indicate by inference that the first tanna holds that he must attend to it to unload a burden that is greater than its typical burden? What is the reason for this ruling; is it not due to the fact that the requirement to prevent suffering to animals is by Torah law?

397 The Gemara rejects that proof: Perhaps it is with regard to the meaning of the phrase “under its burden” that they disagree, as Rabbi Yosei HaGelili holds that we interpret the phrase “under its burden” to mean: A burden that the animal can bear. And the Rabbis hold that we do not interpret the phrase “under its burden” in this manner.

[398] The Gemara cites an additional proof: Know that the requirement to prevent suffering to animals is not by Torah law, as it is taught in the former clause of the mishna: If the owner went, and sat, and said to a passerby: Since there is a mitzva incumbent upon you to unload the burden, unload it, the passerby is exempt, as it is stated: “You shall release it with him” (Exodus 23:5). And if it enters your mind that the requirement to prevent suffering to animals is by Torah law, what is it to me if its owner is working with the passerby and what is it to me if its owner is not working with the passerby? The animal suffers in both cases.

[399] The Gemara rejects that proof: Actually, one could say that the requirement to prevent suffering to animals is by Torah law. And when the tanna exempts the passerby when the owner does not participate in unloading the burden, do you maintain that exempt means completely exempt? Perhaps it means that the passerby is exempt from unloading the burden for free, but is obligated to do so for remuneration; and this is what the Merciful One said: If its owner is working with the passerby, perform the unloading with him for free; and if its owner is not working with the passerby, perform the unloading for him for remuneration. And actually, the requirement to prevent suffering to animals is by Torah law.

[400] The Gemara presents a mnemonic for a series of proposed proofs cited by the Gemara: Animal of; animal of; friend; enemy; collapser.

[401] Let us say that a baraita supports Rava’s opinion that the requirement to prevent suffering to animals is by Torah law: If one encounters the animal of a gentile collapsed under its burden, he tends to it and unloads its burden, as he would the animal of a Jew. The Gemara reasons: Granted, if you say that the requirement to prevent suffering to animals is by Torah law, it is due to that reason that he tends to it as he would the animal of a Jew. But if you say that the requirement to prevent suffering to animals is not by Torah law, why does he tend to it as he would the animal of a Jew? The Gemara rejects the proof: There one tends to the animal due to enmity that would arise if gentiles see Jews assisting their own people and not gentiles. The obligation is not due to the requirement to prevent suffering of animals.

[402] So too, it is reasonable to explain the baraita in this manner, as it is taught in another baraita: If the animal of a gentile was loaded with wine used for a libation to idolatry, and the animal is collapsed under its burden, a Jew does not attend to it. Granted, if you say that the requirement to prevent suffering of animals is not by Torah law, it is due to that reason that he does not attend to it. But if you say that the obligation is by Torah law, why does he not attend to it; isn’t the animal suffering? The Gemara answers that this is what the tanna is saying: And to load the animal with wine used for a libation to idolatry, he does not attend to it. Loading an animal does not alleviate its suffering. Furthermore, the refusal of the Jew to handle the libation wine will not cause enmity, because he can explain that his religion precludes him from handling these materials.

[403] The Gemara suggests: Come and hear proof from a baraita: If one encounters the animal of a gentile collapsed under the burden of a Jew, he may refuse to unload the burden, as it is written: “If you see the donkey of him that hates you collapsed under its burden, you shall forgo passing him by; you shall release it with him” (Exodus 23:5). By employing the phrase “you shall forgo,” the verse indicates that there are circumstances in which one may forgo unloading the animal. The Gemara reasons: And if you say that the requirement to prevent suffering to animals is by Torah law, why is there the option of: “You shall forgo”? The Torah should have commanded only: “You shall release it

with him.” The Gemara answers: Actually, say that the requirement to prevent suffering to animals is by Torah law, and there the baraita is referring to a case of loading, where suffering of animals is not a factor.

[404] The Gemara asks: If so, say the latter clause of the baraita: With regard to a case involving the animal of a Jew collapsed under the burden of a gentile, it is written: “You shall release it.” And if the baraita is referring to a case of loading, where suffering of animals is not a factor, why does the baraita state: “You shall release it”? The Gemara answers: It is because in that case, there is suffering of the Jew, who is delayed while waiting for the animal to be loaded.

[405] The Gemara asks: If so, then the halakha should be the same even in the first clause. Why is there no requirement to prevent the suffering of the Jewish partner in that case? The Gemara answers: The ruling of the first clause is stated with regard to a gentile donkey driver, and the Jewish owner of the burden is absent. The ruling of the latter clause is stated with regard to a Jewish donkey driver and one is obligated to prevent his suffering. The Gemara asks: On what basis did you arrive at this definitive assertion that the animal of a Jew is driven by that Jew and the animal of a gentile is driven by that gentile? The Gemara answers: The typical state of matters is that a person follows his donkey. The first clause addressed the case of a gentile’s donkey, so presumably its driver is gentile. The latter clause addressed the case of a Jew’s donkey, so presumably its driver is a Jew.

[406] The Gemara questions the explanation that the baraita is referring to cases involving loading. But isn’t it with regard to unloading that the phrases cited in the baraita: “You shall forgo passing him by,” and: “You shall release it,” are written?

[407] The Gemara answers that he said to him: Indeed, the fact that one need not unload the burden from the donkey in the first clause of the baraita indicates that the requirement to prevent suffering to animals is not by Torah law. In accordance with whose opinion is this baraita? It is in accordance with the opinion of Rabbi Yosei HaGelili, who says that the requirement to prevent suffering to animals is not by Torah law. That is the minority opinion, as the Rabbis disagree.

[408] The Gemara suggests: Come and hear proof from a baraita: If one encounters a friend whose animal collapsed and it is necessary to unload its burden, and one also encounters an enemy who needs assistance to load a burden onto his animal, the mitzva is to assist the enemy, in order to subjugate one’s evil inclination. The Gemara reasons: And if it enters your mind that the requirement to prevent suffering to animals is by Torah law, that option, to unload his friend’s animal, is the preferable course of action for him. The Gemara answers: Even if the requirement to prevent suffering to animals is by Torah law, even so, loading his enemy’s animal in order to subjugate his evil inclination is preferable.

[409] The Gemara suggests: Come and hear proof from a baraita. The enemy with regard to which they stated the halakha that one must assist with his animal is a Jewish enemy and not a gentile enemy. The Gemara asks: If you say that the requirement to prevent suffering to animals is by Torah law, what is it to me if it is a Jewish enemy and what is it to me if it is a gentile enemy? In either case, failure to unload the burden will cause the animal suffering.

[410] The Gemara answers: Do you maintain that the reference in the baraita to an enemy applies to the enemy mentioned in the verse: “If you see the donkey of him that hates you collapsed under its burden…you shall release it with him”? It applies to the enemy mentioned in the baraita cited above,

in which the tanna taught that loading a burden onto an enemy’s animal is preferable to unloading a burden from a friend’s animal.

411 The Gemara suggests: Come and hear proof from a baraita:

412 It is written: “If you see the donkey…collapsed under its burden” (Exodus 23:5). The baraita infers that this obligation to unload a burden applies with regard to an animal that is “collapsed,” but not with one that is a habitual collapser; “collapsed,” but not standing; “under its burden,” but not when it is unloaded; and “under its burden,” meaning a burden that is not excessive, that the animal can bear. The Gemara reasons: And if you say that the requirement to prevent suffering to animals is by Torah law, what is it to me if the animal is collapsed; and what is it to me if the animal is a habitual collapser; and what is it to me if the animal is standing? One should be obligated to unload its burden in any case, if the animal is suffering.

413 The Gemara answers: In accordance with whose opinion is this baraita? It is in accordance with the opinion of Rabbi Yosei HaGelili, who says that the requirement to prevent suffering to animals is by rabbinic law, and the ordinance does not apply in these circumstances.

414 The Gemara supports its answer: So too, it is reasonable to explain the baraita in this manner, as it is taught in the baraita cited above: “Under its burden” indicates a burden that the animal can bear. About whom did you hear that he holds that line of reasoning? It is Rabbi Yosei HaGelili. The Gemara affirms: Learn from it that the baraita is in accordance with the opinion of Rabbi Yosei HaGelili.

415 The Gemara asks: And can you establish the baraita in accordance with the opinion of Rabbi Yosei HaGelili? But isn’t it taught in the latter clause of the baraita: “Under its burden,” but not when it is unloaded? What is the meaning of: Not when it is unloaded? If we say that it means that when it is unloaded there is no obligation at all, isn’t it written in that case: “You shall lift them with him” (Deuteronomy 22:4), teaching that there is a mitzva to load an animal? Rather, it is obvious that the meaning is that when it is unloaded, one is not obligated to load it for free; rather, he may do so for remuneration. About whom did you hear that he holds that line of reasoning? It is the Rabbis. Apparently, the baraita is in accordance with the opinion of the Rabbis and not the opinion of Rabbi Yosei HaGelili. The Gemara answers: Actually, the baraita is in accordance with the opinion of Rabbi Yosei HaGelili, and in the matter of loading he holds in accordance with the opinion of the Rabbis.

416 The Sages taught in a baraita: It is written: “If you see the donkey of him that hates you collapsed under its burden…you shall release it with him” (Exodus 23:5). I might have thought one is obligated even if he sees the animal from a distance; therefore the previous verse states: “If you encounter your enemy’s ox or his donkey going astray, you shall return it to him” (Exodus 23:4). If the Torah had written only: “If you encounter,” I might have thought that one is obligated to unload the burden only if there was an actual encounter; therefore, the verse states: “If you see.” And what is seeing in which there is an element of encounter? The Sages calculated it as one of seven and a half portions, i.e., two-fifteenths, of a mil, and that is the measure of a ris.

417 It is taught in a baraita: After loading the burden onto the animal, one walks with it up to one parasang [parsa] to ensure that the burden will not fall again. Rabba bar bar Ḥana says: And he takes remuneration for accompanying the animal, as that is not included in the mitzva.

418 MISHNA: If one finds his lost item and his father’s lost item, tending to his own lost item takes precedence. Similarly, if one finds his lost item and his teacher’s lost item, tending to his own lost item takes precedence.

419 If one finds his father’s lost item and his teacher’s lost item, tending to his teacher’s lost item takes precedence, as his father brought him into this world, and his teacher, who taught him the wisdom of Torah, brings him to life in the World-to-Come. And if his father is a Torah scholar, then his father’s lost item takes precedence.

420 If his father and his teacher were each carrying a burden and he wants to assist them in putting down their burdens, he first places his teacher’s burden down and thereafter places his father’s burden down. If his father and his teacher were in captivity, he first redeems his teacher and thereafter redeems his father. And if his father is a Torah scholar, he first redeems his father and thereafter redeems his teacher.

421 GEMARA: With regard to precedence in the return of lost items, the Gemara asks: From where are these matters derived? Rav Yehuda says that Rav says that the verse states: “Only so that there shall be no needy among you” (Deuteronomy 15:4). This verse can be understood as a command, indicating that it is incumbent upon each individual to ensure that he will not become needy. Therefore, your property takes precedence over the property of any other person.

422 And Rav Yehuda says that Rav says: Although that is the halakha, anyone who fastidiously fulfills this principle with regard to his property at the expense of others’ property ultimately comes to experience that fate. He will become impoverished, and others will prioritize their interests at his expense.

423 § The mishna teaches: If his father and his teacher were each carrying a burden, he first places his teacher’s burden down and thereafter places his father’s burden down. The Sages taught in a baraita (Tosefta 2:30): His teacher, with regard to whom the tanna’im stated in the mishna that his burden takes precedence, is his teacher who taught him wisdom, i.e., the profound analysis of the Torah that constitutes the Talmud, and not his teacher who taught him Bible or Mishna; this is the statement of Rabbi Meir. Rabbi Yehuda says: The reference is to any teacher from whom one learned most of his knowledge, be it Bible, Mishna, or Talmud. Rabbi Yosei says: Even if he enlightened him in the understanding of only one mishna, that is his teacher.

424 Rava said: For example, Rav Seḥora is my teacher with regard to these matters, as he explained to me the meaning of the term in a mishna (Kelim 13:2) zuhama listeron, a utensil with a spoon on one end and a fork on the other. Shmuel rent his garment in mourning over the passing of one of the Sages who explained to him the meaning of a mishna (Tamid 3:6) that describes the two keys that opened the compartment through which the priest would enter the Sanctuary each morning: One is the key with which the priest would open the inside lock. He would insert his arm up to his armpit through a small opening in the door and reach down and open the lock that was at the bottom of the door on the inside, and he would go through that door into a compartment. And the other one is the key with which the priest opened the lock on the inner door of the compartment, through which he entered the Sanctuary, and he opened that lock directly.

425 Ulla says: The Torah scholars who are in Babylonia rise in deference before one another and rend their garments in mourning over one another’s passing. In contrast to Eretz Yisrael, where the preeminent Torah scholars and teachers served at the heads of the Torah academies, in Babylonia

most scholars studied Torah with peers and there was no preeminent teacher. But with regard to returning a lost item in a case where both one's father and one's teacher lost an item, he returns the lost item only to his preeminent teacher before returning that of his father, and not to his peer or to one who taught him the meaning of one mishna or one term.

[426] Rav Ḥisda raised a dilemma before Rav Huna: If there is a student, and his teacher needs him because he serves as his peer and study partner, what is the halakha with regard to precedence in a case where he finds a lost item belonging to his father and one belonging to his teacher? As Rav Ḥisda was Rav Huna's disciple-colleague, Rav Huna assumed that Rav Ḥisda was referring to himself and said to him: Ḥisda, Ḥisda, I do not need you. On the contrary, you need me until you complete forty years of study before me. They grew angry with each other over the perceived insult and the harsh reaction, and each did not enter to visit the other. Rav Ḥisda was contrite and observed forty fasts due to the fact that Rav Huna was offended, although it had not been his intention to offend him. Rav Huna observed forty fasts due to the fact that he had erroneously suspected that Rav Ḥisda was referring to the relationship between them.

[427] It was stated that Rav Yitzḥak bar Yosef says that Rabbi Yoḥanan says: The halakha is in accordance with the opinion of Rabbi Yehuda, who says that returning the teacher's lost item takes precedence only in the case of his preeminent teacher. Rav Aḥa bar Rav Huna says that Rav Sheshet says: The halakha is in accordance with the opinion of Rabbi Yosei, who says that returning the teacher's lost item takes precedence even if the teacher enlightened him with regard to only one mishna.

[428] The Gemara asks: And did Rabbi Yoḥanan say that? But doesn't Rabbi Yoḥanan say: The halakha is always in accordance with the opinion cited in an unattributed mishna; and we learned an unattributed opinion in the mishna that returning the teacher's lost item takes precedence in the case of: His teacher, who taught him the wisdom of Torah. The ruling of the unattributed mishna is in accordance with the opinion of Rabbi Meir. The Gemara answers: What is the meaning of wisdom in this context? It means the majority of his wisdom.

[429] The Sages taught in a baraita: For those who engage in the study of Bible, it is a virtue but not a complete virtue. For those who engage in the study of Mishna, it is a virtue and they receive reward for its study. For those who engage in the study of Talmud, you have no virtue greater than that. And always pursue study of the Mishna more than study of the Talmud.

[430] The Gemara asks: This matter itself is difficult, as the baraita is self-contradictory. You said: For those who engage in the study of Talmud, you have no virtue greater than that. And then you said: And always pursue study of the Mishna more than study of the Talmud. Rabbi Yoḥanan says:

[431] It was during the era of Rabbi Yehuda HaNasi that the beginning of this baraita extolling the study of Talmud was taught. The result was that everyone abandoned study of the Mishna and pursued the study of the Talmud. It was then that Rabbi Yehuda HaNasi taught them: And always pursue study of the Mishna more than study of the Talmud, as without a firm basis in the fundamental halakhot of the Mishna, talmudic discourse is futile.

[432] The Gemara asks: On the basis of what homiletic interpretation did the tanna state that there is no virtue greater than the study of Talmud? It is just as Rabbi Yehuda, son of Rabbi Elai, interpreted homiletically: What is the meaning of that which is written: "Cry aloud, spare not, lift up your voice

like a horn, and declare to My people their transgression and to the house of Jacob their sins” (Isaiah 58:1)?

433 In the phrase “declare to My people their transgression,” these people are the Torah scholars, whose unwitting transgressions become for them tantamount to intentional transgressions. Due to their erudition, they are held to a higher standard. “And to the house of Jacob their sins,” these are the ignoramuses, whose intentional transgressions become for them tantamount to unwitting transgressions. Due to their lack of erudition, they are held to a lower standard. And that is the basis of that which we learned in a mishna (Avot 4:13), that Rabbi Yehuda says: Be careful in the study of the Talmud, as a transgression based on an unwitting misinterpretation of the Talmud is considered an intentional transgression.

434 Rabbi Yehuda, son of Rabbi Elai, interpreted a verse homiletically. What is the meaning of that which is written: “Hear the word of the Lord, you who tremble at His word: Your brothers that hate you, that ostracize you for My name’s sake, have said: Let the Lord be glorified, that we may gaze upon your joy, but they shall be ashamed” (Isaiah 66:5)? “Hear the word of the Lord, you who tremble at His word,” these are Torah scholars; “your brothers…have said,” these are masters of the Bible, who are aware of their shortcomings and treat the Torah scholars with deference; “that hate you,” these are masters of Mishna, who consider themselves the equals of Torah scholars and resent the fact that the Torah scholars do not treat them as equals; “that ostracize you,” these are ignoramuses, who distance themselves with their actions from the Torah scholars.

435 Lest you say, with regard to those groups who are not Torah scholars, that their hope has ceased and their chances are eliminated, the verse states: “That we may gaze upon your joy.” All of the Jewish people, including the groups listed above, will gaze upon the joy of the Torah scholars. Lest you say that the Jewish people will be ashamed, the verse states: “But they shall be ashamed,” meaning that gentiles will be ashamed, but the Jewish people will be joyous.

Chapter 3

1 MISHNA: In the case of one who deposits an animal or vessels with another, who is acting as an unpaid bailee, and they were stolen or they were lost, and the bailee paid the owner the value of the deposit, and did not wish to take an oath that he did not misappropriate the item and that he was not negligent in safeguarding it, that will effect who keeps the deposit if it is found or returned. The bailee may also choose to take the oath, as the Sages said: An unpaid bailee takes an oath, and he is thereby released from the liability to pay the owner.

2 If the thief is later found, the thief pays the double payment. 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? He gives the payment to the one who had the deposit in his possession when it was stolen, i.e., the bailee. When the bailee paid the owner for the stolen item, the owner granted the rights to the item to the bailee. Therefore, the bailee is entitled to any payment the thief presents for the item, be it compensation for the item’s value or a fine.

3 In the case of a bailee who took an oath and did not wish to pay, if the thief is then found and required to pay the double payment, or if he slaughtered or sold the animal and is required to pay the

fourfold or fivefold payment, to whom does the thief pay? He gives the payment to the owner of the deposit, not the bailee.

[4] GEMARA: The Gemara asks: Why does the mishna need to teach the case of one who deposits an animal, and why does the mishna need to teach the case of one who deposits vessels? The mishna could have sufficed with a general halakha about one who deposits any item.

[5] The Gemara explains: Both are necessary, as, if the mishna taught only the case of one who deposits an animal, I would say: It is only with regard to an animal that the owner agrees to transfer rights to the double payment to the bailee when the bailee pays for the stolen item. This is due to the fact that the exertion required to tend to the animal, to bring the animal in and to take it out, is great. Consequently, when it becomes clear that the bailee was not responsible for the theft of the animal but nevertheless compensated the owner, the owner waives his rights to any compensation the thief will pay. But in the case of vessels, where the exertion that is required to tend to the vessels is not great, say that the owner does not transfer to the bailee rights to the double payment.

[6] And had the mishna taught only the case of one who deposits vessels, I would say: It is only with regard to vessels that the owner transfers rights to the double payment to the bailee when the bailee pays for the lost item. This is due to the fact that double payment, in their case, is not substantial, as that is the maximum payment that he could receive. But in the case of an animal, where if the thief slaughtered or sold it, he pays the fourfold or fivefold payment, which is substantial, I would say that the owner does not transfer the rights to the double payment to the bailee. Therefore, both cases are necessary.

[7] Rami bar Ḥama objects to the fundamental reasoning. How can the owner of the deposit transfer rights to the double payment to the bailee? But isn’t there a principle that one cannot transfer to another ownership of an entity that has not yet come into the world? Since the thief was not yet liable to pay the double payment when the bailee paid the owner for the item, there was no way to transfer rights to that payment to another person. And even according to Rabbi Meir, who says that a person can transfer to another ownership of an entity that has not yet come into the world, that statement applies to items such as the fruits of a date palm, which are likely to come into being, as they grow on a regular basis.

[8] But here, where the transfer of rights to the payment is part of the initial agreement between the owner and the bailee, taking effect when the item is deposited,

[9] who could say that the deposit will be stolen? And if you say it will be stolen, who could say that the thief will be found? And even if the thief will be found, who could say that he will pay the double payment? Perhaps he will confess and will be exempted from the double payment. Rava said in response: It is as though the owner said to the bailee at the time that he gave him the deposit: When it will be stolen, and you will wish to refrain from taking an oath, and you will pay me instead, ownership of my cow is hereby transferred to you from this time, and the cow is an entity that already came into the world. Since ownership of the cow is retroactively transferred to the bailee from the time of the deposit, any profits generated by the cow, e.g., the double payment, belong to the bailee.

[10] Rabbi Zeira objects to this: If so, then even the fleece and offspring of the animal that grew while it was in the bailee’s possession should be the property of the bailee. Why, then, is it taught in a baraita that the bailee receives all profits generated by the animal except for its fleece and its

offspring? Rather, Rabbi Zeira says that it is as though the owner said to the bailee: My animal is hereby transferred to you from this time except for its fleece and its offspring.

[11] The Gemara asks: If so, why was this halakha stated in the mishna without qualification? Does every owner necessarily have that condition in mind? The Gemara answers: Typically, profit that comes from elsewhere, e.g., the double payment from a thief, which is difficult to anticipate, a person is apt to transfer to the bailee. But profit that originates from the body of the animal, which can be anticipated, a person is not apt to transfer to the bailee.

[12] Some say that Rava says his response differently. It is as though the owner said to the bailee at the time of the deposit: When it will be stolen, and you will wish to refrain from taking an oath, and you will pay me instead, ownership of my animal is transferred to you adjacent to, i.e., immediately before, its theft. The Gemara asks: What is the difference between the formulations in Rava's two responses?

[13] The Gemara answers: There is a difference between them with regard to the difficulty raised by Rabbi Zeira with regard to fleece and offspring, which is irrelevant according to the second formulation. Alternatively, there is a difference in a case where the animal is standing in a marsh [ba'agam] at the time of its theft. Since the animal was not on the bailee's property at that time, he could not acquire it.

[14] § The mishna teaches that if the bailee paid the owner and did not wish to take an oath, the thief pays the double payment to the bailee. Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: When the mishna says: If the bailee paid, it does not mean that he actually paid. Rather, once the bailee said: I hereby choose to pay, even if he did not yet actually pay, he acquired the double payment and all other profits.

[15] The Gemara raises an objection from that which we learned in the mishna: If the bailee paid the owner and did not wish to take an oath, the thief pays the double payment to the bailee. The Gemara infers: If the bailee paid, yes, he acquires these rights; if the bailee did not pay, he does not. The Gemara answers: Say the latter clause of the mishna: In the case of a bailee who took an oath and did not wish to pay, the thief pays the double payment to the owner. The Gemara infers: The reason that the thief pays the owner is that the bailee did not wish to pay. But if the bailee wished to pay, although he did not actually pay, he acquires the rights to the double payment. Rather, because the inference from the first clause and the inference from the latter clause are contradictory, no inference is to be learned from this mishna.

[16] The Gemara notes: It is taught in a baraita in accordance with the opinion of Rabbi Yoḥanan: In the case of one who rents a cow from another, and it was stolen, and the other party, the renter, said: I hereby choose to pay and I will not take an oath, and the thief was located thereafter, the thief pays the double payment to the renter. Apparently, once the renter chooses to pay, he acquires the rights to the double payment.

[17] Rav Pappa says: In the case of an unpaid bailee, once he stated: I was negligent, thereby rendering himself liable to compensate the owner, the owner transfers rights to the double payment to him, as, if the unpaid bailee wishes, he can exempt himself from that liability with the claim of theft. Admitting negligence is tantamount to agreeing to pay rather than taking an oath. Likewise, in the case of a paid bailee, once he stated: It was stolen, the owner transfers rights to the double payment

to him, as, if the paid bailee wishes, he can exempt himself from that liability with the claim that the animal was maimed or died due to circumstances beyond his control.

[18] By contrast, in the case of a borrower who says: I hereby choose to pay, the owner does not transfer the rights to the double payment to him. The borrower's statement that he chooses to pay is ineffectual, as he is liable to pay even without it. Because the statement is ineffectual, it does not confer any rights. With what claim would a borrower be able to exempt himself from payment? It is only with the claim that the animal died due to ordinary labor. A case of an animal that died due to ordinary labor is uncommon, and this claim is therefore accepted only with corroborating proof.

[19] Some say that Rav Pappa said: In the case of a borrower, once he stated: I hereby choose to pay, the owner transfers rights to the double payment to him, as, if a borrower wishes, he can exempt himself from that liability with the claim that the animal died due to ordinary labor. Rav Zevid said to him that this is what Abaye said: A borrower acquires the rights to the double payment only when he actually pays for the item. What is the reason for this? Since all of the benefit accrues to the borrower, as he enjoys the use of the item without payment, the owner does not transfer the rights to the double payment to the borrower due to his statement that he chooses to pay.

[20] The Gemara notes: It is taught in a baraita in accordance with the opinion of Rav Zevid: In the case of one who borrows a cow from another, and it was stolen, and the borrower went ahead and paid, and the thief was located thereafter, the thief pays the double payment to the borrower. This indicates that the borrower receives the double payment only if he actually paid the owner for the item.

[21] The Gemara comments: According to the first version of the statement of Rav Pappa, that the owner transfers rights to the double payment to the borrower only if he actually pays the owner, this baraita certainly is not a conclusive refutation [teyuvta] of the opinion of Rav Pappa, as the baraita corresponds to his opinion. According to the latter version of Rav Pappa's statement, that the owner transfers rights to the double payment to the borrower even if the borrower merely says that he chooses to pay, shall we say that this baraita would be a conclusive refutation of the opinion of Rav Pappa?

[22] The Gemara answers: Rav Pappa could have said to you: Is the baraita stronger than the mishna, which teaches that the bailee receives the double payment if he already paid the owner, and nevertheless, we established that the mishna is referring to one who states his intent to pay but has not yet paid? Here, too, establish the baraita as referring to one who states his intent to pay but has not yet paid.

[23] The Gemara questions this: Are these cases comparable? There, in the mishna, it is not taught that he went ahead and paid. Here, in the baraita, it is taught that he went ahead and paid, which indicates that he actually paid and not merely that he agreed to pay. The Gemara responds: What is the meaning of went ahead? It means that he went ahead and stated his intent to pay, although he did not yet actually pay.

[24] The Gemara asks: But from the fact that the tanna teaches the halakha in the baraita cited earlier with regard to a renter with the formulation: And he said that he would pay, and in the baraita with regard to a borrower the tanna uses the formulation: Went ahead, conclude from it that the baraita concerning a borrower is teaching specifically that he actually paid. The Gemara rejects this proof:

Are these two baraitot taught together so that one can draw a conclusion based on a discrepancy in their formulation? Perhaps the baraitot are unrelated and are simply formulated in different styles.

[25] The Gemara comments: The Sages asked the tanna’im of the school of Rabbi Ḥiyya and Rabbi Oshaya, experts in mishnayot and baraitot, if these baraitot were formulated together. And they said that the baraitot were taught together as one long baraita, and therefore one can draw a conclusion based on a discrepancy in their formulation.

[26] § The Gemara comments that it is obvious that if the bailee initially said: I will not pay, and then said: I hereby choose to pay rather than taking an oath, he is entitled to the double payment, as didn’t he ultimately say: I hereby choose to pay? The Gemara raises a dilemma: But if he initially said: I hereby choose to pay,

[27] and then said: I will not pay, what is the halakha? Do we say he is retracting his intention to pay and therefore has no right to the double payment? Or, perhaps he stands committed to his initial statement and is merely postponing payment to a later date, in which case he maintains rights to the double payment.

[28] The Gemara raises another dilemma. If the bailee said: I hereby choose to pay, and then he died before paying, and his sons said: We are not paying, what is the halakha? Do we say they are retracting their father’s decision to pay, or perhaps they stand committed to fulfilling their father’s statement and are merely postponing payment to a later date when they will be able to pay?

[29] The Gemara raises another dilemma. If the father died before he declared his willingness to pay and the sons paid, what is the halakha? Can the owner say to them: When I transferred rights to the double payment, I transferred them to your father, who pleased me, but to you, I did not transfer those rights? Or perhaps this case is no different, and the owner transfers rights to the double payment provided that he receives payment, and it does not matter whether it was the bailee or his sons who paid him.

[30] If the owner of the deposit died and the bailee paid the payment to the owner’s sons, what is the halakha? Can the sons say to the bailee: When our father transferred rights to the double payment to you, it was because you pleased him, but as far as we are concerned, you did not please us? Or perhaps it is no different, and the bailee receives the double payment. Likewise, if both the owner and the bailee died, and sons of the bailee paid the sons of the owner, what is the halakha?

[31] The Gemara raises additional dilemmas: If the bailee paid half the value of the deposit before the thief was discovered, what is the halakha? If one borrowed two cows, and they were stolen, and he paid the value of one of them, what is the halakha? If one borrowed an item from partners, and he paid one of them, what is the halakha? In the case of partners who borrowed an item and one of them paid, what is the halakha? If one borrowed an item from a woman and paid her husband, what is the halakha? In the case of a woman who borrowed an item, and her husband paid, what is the halakha? The Gemara concludes: All of these dilemmas shall stand unresolved [teiku].

[32] § Rav Huna says: Even if the bailee declares his intention to pay for the deposit, the court administers an oath to him that the item was actually stolen or lost and is not in his possession. What is the reason for this oath? We are concerned that perhaps he coveted that item.

[33] The Gemara raises an objection from a mishna (Shevuot 43a): In the case of one who lends money to another on the basis of collateral, and the collateral was lost, and the creditor says to the debtor: I

loaned you a sela on the basis of that collateral and that collateral was worth a shekel, i.e., a half-sela. Therefore you owe me a shekel. And the other individual, the debtor, says in response to that claim: That is not the case. Rather, you loaned me a sela on the basis of that collateral, and the collateral was worth a sela; I owe you nothing. In this case, the debtor is exempt from payment.

[34] The mishna continues: If the creditor claimed: I loaned you a sela on the basis of that collateral and it was worth a shekel. And the other individual, the debtor, says: That is not the case; rather, you loaned me a sela on the basis of that collateral and the collateral was worth three dinars, i.e., three-quarters of a sela. In this case, the debtor is obligated to take an oath, due to the fact that he responded to the claim of the creditor with a partial admission.

[35] The mishna continues: If the debtor said: You loaned me a sela on the basis of that collateral and the collateral was worth two sela, so now you owe me a sela. And the other party, i.e., the creditor, said: That is not the case; rather, I loaned you a sela on the basis of that collateral and the collateral was worth a sela. Here, the creditor is exempt.

[36] If the debtor said: You loaned me a sela on the basis of that collateral and the collateral was worth two sela. And the other party, i.e., the creditor, said: That is not the case; rather, I loaned you a sela on the basis of that collateral and the collateral was worth five dinars. Here, the creditor is obligated to take an oath due to the fact that he responded to the claim of the debtor with a partial admission.

[37] The mishna concludes: Who takes the oath? The one in whose possession the deposit was located, i.e., the creditor, who took collateral from the debtor. The Sages instituted this provision lest this party, i.e., the debtor, take an oath and the other party, i.e., the creditor, produce the deposit and prove the oath false.

[38] The Gemara seeks to clarify the mishna: To which case in the mishna is this halakha referring? If we say it is referring to the latter clause of the mishna, where the debtor claims that the creditor owes him money, the mishna's explanation is unnecessary: Derive that the obligation to take the oath is incumbent upon the creditor due to the fact that he admits to part of the debtor's claim, which renders one obligated to take an oath by Torah law. Rather, Shmuel says: This halakha is referring to the first clause of the mishna.

[39] The Gemara clarifies further: What is the meaning of Shmuel's statement that this halakha is referring to the first clause of the mishna? It is referring to the latter part of the first clause: The creditor says: I loaned you a sela on the basis of that collateral and it was worth a shekel. And the other individual, the debtor, says: That is not the case; rather, you loaned me a sela on the basis of that collateral and the collateral was worth three dinars. Here, the halakha is that the debtor is obligated to take an oath. Fundamentally, the obligation to take the oath is that of the borrower, as he is the one who responds to the creditor's claim with a partial admission. But the Sages said: Let the creditor take the oath to bolster his claim, lest this party, the debtor, take an oath and the other party, the creditor, produce the deposit.

[40] After explaining this mishna from tractate Shevuot, the Gemara analyzes its connection to the statement of Rav Huna: But if

[41] the statement of Rav Huna is so, once the creditor takes an oath that the collateral is not in his possession, how can he produce it thereafter? Rava said: The mishna is referring to a case where

there are witnesses that the collateral was burned. Therefore, the creditor need not take an oath that it is not in his possession.

42 The Gemara asks: If so, the question remains: Why is the obligation to take the oath transferred from the debtor to the creditor? There is no concern that the creditor will produce the collateral. From where will he bring it if it was burned? Rather, Rav Yosef said: The mishna is referring to a case where there are witnesses that the collateral was stolen. The Gemara asks: Ultimately, in that case too, from where will the creditor bring the collateral if it was stolen? The Gemara answers: Although the collateral had been stolen, it is possible the creditor will exert himself to locate the thief and bring the collateral, thereby proving that the debtor took a false oath.

43 The Gemara asks: If so, in a case where the creditor takes an oath as well, let the debtor exert himself and bring the collateral, thereby proving that the creditor took a false oath. The Gemara answers: This is unlikely. Granted, there is concern that the creditor will recover the stolen collateral, as he knows who enters and exits his house, so he may have some inkling of the identity of the thief. And therefore, he goes and exerts himself and brings the collateral. But with regard to the debtor, does he know who enters and exits the creditor's house? He has no inkling who the thief might be.

44 Abaye says: Although the creditor takes an oath that the collateral is not in his possession, the obligation to take an oath for partial admission is transferred from the debtor to the creditor, as the Sages issued a decree lest the debtor take the oath for his partial admission and the creditor claim and say to him: I found the collateral after you took the oath. Rav Ashi says: This party, the creditor, takes an oath and that party, the debtor, takes an oath. This party, the creditor, takes an oath that the collateral is not in his possession. And that party, the debtor, takes an oath as to how much the collateral was worth. And this is what the mishna is saying: Who takes an oath first? The creditor takes an oath first that the collateral is not in his possession, lest this party, i.e., the debtor, take an oath and the other party, i.e., the creditor, produce the deposit.

45 Rav Huna bar Taḥlisa said in the name of Rava: The first part of the latter clause of the mishna is a conclusive refutation of the opinion of Rav Huna, who said that the creditor is obligated to take an oath that the collateral is not in his possession. In that clause, the debtor said: You loaned me a sela on the basis of that collateral, and the collateral was worth two sela, so now you owe me a sela. And the other party, i.e., the creditor, said: That is not the case, rather, I loaned you a sela on the basis of that collateral and the collateral was worth a sela. In this case, the creditor is exempt. And if the statement of Rav Huna is so, once the creditor takes an oath that the collateral is not in his possession, let him also take an oath by means of extension of an oath as to how much the collateral was worth, as one obligated to take an oath can be forced to take other oaths as well.

46 Rav Ashi said: I stated this halakha before Rav Kahana, and he said to me: Let the halakha in the mishna be understood with regard to a case where the debtor trusts the creditor that the collateral is no longer in his possession. The Gemara challenges: But if so, let the debtor trust the creditor with regard to this matter of how much the collateral was worth. The Gemara explains: The creditor is not certain about the value of the collateral, as the item did not belong to him, which is why the debtor does not rely upon him to take an oath concerning its value. The Gemara challenges: But let the creditor trust the debtor, as the debtor is certain about the value of the collateral, as it is his. The Gemara answers: The creditor does not trust the debtor.

47 The Gemara asks: And what is different so that the debtor trusts the creditor that the collateral is not in his possession, and what is different that the creditor does not trust the debtor to accurately assess the value of the collateral? The Gemara answers: The debtor sees in the creditor fulfillment of the verse: “The integrity of the upright shall guide them” (Proverbs 11:3). He believes that God blesses the creditor with wealth to lend because he is an upright person. The creditor sees in the debtor fulfillment of the end of that verse: “But the perverseness of the faithless shall destroy them” (Proverbs 11:3). The creditor believes that God made the debtor poor because he is a deceitful person.

48 § The Gemara relates: A certain man deposited jewels [keifei] with another. When the period of the deposit was complete, the owner of the jewels said to the bailee: Give me the jewels. The bailee said to him in response: I do not know where I placed them. The matter came before Rav Naḥman, who said to the bailee: Every circumstance where a bailee claims: I do not know where I placed them, is in and of itself negligence. Go pay him for the jewels. The bailee did not pay. Rav Naḥman went and gave instructions to repossess his palace and sell it to pay for the jewels. Ultimately, not only were the jewels found, but they had also increased in value. Rav Naḥman said: The jewels return to their initial owner, and the palace returns to its owner, and the bailee does not profit from the increase in the value of the jewels.

49 Rava said: I was sitting at that time studying before Rav Naḥman, and our chapter of study was this chapter: One who deposits, which is relevant to this case. And I said to Rav Naḥman: Isn’t this the case of a bailee who paid the owner and did not wish to take an oath? And it is the bailee who receives the double payment, ostensibly because once he paid, the owner transfers ownership of the item to him. And Rav Naḥman did not answer me, and he did well that he did not answer me, as the question was not worthy of an answer.

50 Rava continues: What is the reason he did not answer me? The reason is that the cases cannot be compared. There, in the case of the mishna, the bailee paid at his own initiative. He did not inconvenience the owner by compelling him to go to court. Therefore, the owner transfers ownership of the deposit to the bailee. Here, in the case involving the jewels, the bailee inconvenienced the owner and compelled him to go to court. Consequently, the owner does not transfer ownership of the deposit to the bailee.

51 The Gemara asks: Is this to say that Rav Naḥman holds that after property is repossessed in order to pay an unpaid debt based on the court’s appraisal of the article’s value, it is returned if the debtor pays the debt? The Gemara rejects that conclusion: In general, the item is not returned. But it is different there, in the case of the jewels, as it was an erroneous appraisal, in that the jewels were in the possession of the bailee from the outset and he was merely unable to locate them.

52 With regard to the reversal of an appraisal, the Sages of Neharde’a say: After property is repossessed in order to pay an unpaid debt based on the court’s appraisal of the article’s value, it is returned to the debtor, provided he repays the debt from the time of the appraisal until the twelve months of the year have passed. And Ameimar said: I am from Neharde’a, and nevertheless, I hold that repossession based on an appraisal of an article’s value can always be returned. If the debtor pays his debt, he can reclaim his property at any point. The Gemara rules: And the halakha is that repossession based on an appraisal can always be returned, due to the fact that it is stated: “And you shall do that which is right and good” (Deuteronomy 6:18). The owner of property appreciates his

property more than another person would. Therefore, once the debtor repays his debt to the creditor, legal formalism should not prevent return of the debtor’s property.

[53] § The Gemara clarifies related matters. It is obvious that if the court appraised property to repay a debt to a creditor, and this creditor went and had the property appraised and repaid his debt to his creditor, we say to the second creditor: Your rights are not superior to those of the man through whom you came to possess the property. Just as the first debtor can repay the debt and reclaim his property from his creditor, he can also reclaim the property from the creditor of his creditor. If a creditor who received appraised land sold it or bequeathed it to his heirs or gave it as a gift, the debtor cannot reclaim the land from those who acquired their land. It is certain that from the outset, when those people acquired the land, it was with the intent to acquire the land itself that they descended to it, and it was not with the intent to receive money that they descended to the land.

[54] If the court appraised property to repay a debt to a woman and she then married, or if the court appraised property from a woman to repay her debt and she then married and died, since the legal status of a husband with regard to his wife’s property is that of a buyer, he does not return property that was appraised and repossessed to pay his wife’s debt. And we do not return to him property that was repossessed from his wife if he pays her debt.

[55] This is as Rabbi Yosei bar Ḥanina said: In Usha the Sages instituted that in the case of a woman who sold part of her usufruct property during the life of her husband and she died, the husband repossesses the property from the purchasers. The property belongs to the wife, while the profits accrued after marriage belong to the husband. Therefore, the woman does not have the right to sell the property as long as they are married. If she sold the property and died, and her husband is her heir, the Sages instituted that his legal status is that of a buyer and not an heir. His rights to the land precede those of the subsequent buyers. He repossesses the land and reimburses them the sale price of the property.

[56] With regard to a case where the debtor, not the court, authorized his creditor to repossess the land for his debt, and now he seeks to pay his debt and reclaim it, Rav Aḥa and Ravina disagree. One says: If he pays the debt, the repossession based on the appraisal is reversed and he reclaims the land. And one says: The repossession based on the appraisal is not reversed.

[57] The Gemara elaborates: The one who says that the repossession based on the appraisal is not reversed holds that this is a full-fledged sale, as he authorized the repossession at his own initiative. Consequently, he cannot retract it. And the one who says that the repossession based on the appraisal is reversed holds that it is not a full-fledged sale. And the fact that he authorized the repossession at his initiative and did not wait to come to court for a ruling that his land be repossessed does not make it a full-fledged sale. It was only due to his desire to avoid embarrassment that he authorized the repossession.

[58] The Gemara clarifies the halakhot of repossession: And when a creditor repossesses the debtor’s land, from when does he consume the produce of that land? Rabba said: He consumes the produce from the time when the document of authorization reaches his possession. This is a document that authorizes him to repossess the property of the debtor in payment of the debt wherever that property is located. Abaye said: He need not wait until he receives that document. Rather, the document’s witnesses, with their signatures, acquire the debtor’s land on his behalf. From the moment they sign the document, the land is his.

[59] Rava said: He consumes the produce from the time when the days of proclamation conclude. After property belonging to the debtor is located, the court proclaims that the property will be auctioned to raise funds to repay the debt. Therefore, even after the document of authorization reaches him, the creditor is not entitled to the produce, as someone else may purchase it. If the creditor enters the highest bid, he is entitled to the produce.

[60] MISHNA: In the case of one who rents a cow from another, and this renter then lends it to another person, and the cow dies in its typical manner, i.e., of natural causes, in the possession of the borrower, the renter takes an oath to the owner of the cow that the cow died in its typical manner, and the borrower pays the renter for the cow that he borrowed. A renter is exempt in a case of damage due to circumstances beyond his control, including death, but a borrower is liable to compensate the owner even for damage due to circumstances beyond his control. Rabbi Yosei said: How does the other party, i.e., the renter, do business with and profit from another's cow? Rather, the value of the cow should be returned to the owner. The renter need not take an oath, but the borrower must compensate the owner of the cow.

[61] GEMARA: Rav Idi bar Avin said to Abaye: After all, with regard to the renter, with what does he acquire this cow to the extent that one who borrows the cow from him is liable to compensate him if it dies? He acquires it with an oath that he took to the owner of the cow that the cow died of natural causes.

[62] The Gemara asks: But since the acquisition is effected by the renter's oath, let the one who rented his animal for hire say to the renter: Remove yourself and remove your oath. I do not want to deal with you at all in this case, and I will litigate with the borrower to recover my cow. Abaye said to Rav Idi bar Avin: Do you hold that it is with an oath that the renter acquires the cow? That is not so, as from the moment of the cow's death, the renter acquires the cow. From the moment the cow dies in the possession of the borrower, the renter has the right to receive another cow in exchange. And this oath that the renter takes to the owner of the cow is not required by the halakha. Rather, he takes the oath to alleviate the concerns of the owner, so that the owner will not suspect him of negligence. Consequently, the owner of the cow cannot litigate with the borrower, and even if he waives his right to demand an oath from the renter, he is unable to receive a cow from the borrower.

[63] Rabbi Zeira says: According to the halakha in the mishna, there are times when the owner pays several cows to the renter. What are the circumstances? In a case where the renter rented a cow from him for one hundred days, and the owner of the cow then borrowed that cow from the renter for ninety days, and the renter then rented that cow from the owner for eighty days, and the latter then borrowed that cow from the renter for seventy days, and that cow died within the seventy-day period of its borrowing, then for each and every occasion of borrowing of the cow, the owner, who then became the borrower, owes one cow. Since there were two discrete acts of borrowing and two discrete acts of rental, the owner owes him four cows, two outright as compensation for the borrowed cows that died, and two cows for the renter to use for the duration of his rental periods.

[64] Rav Aḥa of Difti said to Ravina concerning this halakha: After all, it is one cow, and he introduced it into one legal status and removed it from another legal status. He removed it from the status of rental and he introduced it into the status of borrowing; he removed it from the status of borrowing and introduced it into the status of rental. How then does the owner pay multiple cows for one cow? Ravina said to Rav Aḥa: And is the cow intact so that the owner could say this to the renter: Here is

your cow? Since the borrower cannot return the cow to the creditor, he is liable to return that which he committed to return, and he committed to return two cows, not one.

[65] Mar bar Rav Ashi said a third opinion: The renter has against the owner only a claim of two cows, one for the borrowing done by the owner, and one for fulfillment of his rental agreement. This is because the category of borrowing is one and the category of rental is one. As for the cow that is repayment for the borrowing, the renter acquires it completely. And as for the one for the rental, he works with it for the duration of its rental period and then he returns it to its owner.

[66] Apropos the situations described in the mishna, Rabbi Yirmeya says: If the renter and the borrower each took a false oath and are liable to bring offerings for their false oaths, there are times that both are liable to bring a sin-offering;

[67] there are times that both are liable to bring a guilt-offering; there are times that the renter is liable to bring a sin-offering and the borrower is liable to bring a guilt-offering; there are times that the renter is liable to bring a guilt-offering and the borrower is liable to bring a sin-offering.

[68] The Gemara elaborates: How so? One who takes a false oath that involves the denial of a monetary matter is liable to bring a guilt-offering. One who takes a false oath on an utterance of the lips that involves no denial of a monetary debt is liable to bring a sin-offering.

[69] The Gemara elaborates: There are times that both are liable to bring a sin-offering. This is in a case where the cow died in its typical manner and the renter and the borrower both said that it died due to circumstances beyond his control. A renter, who in any case is exempt from paying whether it died of natural causes or due to circumstances beyond his control, is liable to bring a sin-offering if he took a false oath. A borrower, who in any case is liable to pay regardless of the circumstances of its death, is liable to bring a sin-offering if he took a false oath. In both cases, the oath involved no denial of monetary debt.

[70] There are times that both are liable to bring a guilt-offering. This is in a case where the cow was stolen from a borrower, and the renter and the borrower both said that it died due to ordinary labor. That is a case where both denied a monetary matter, as they are both liable to pay in a case of theft, and both take an oath on a claim with which they seek to exempt themselves.

[71] There are times when a renter is liable to bring a sin-offering and a borrower is liable to bring a guilt-offering. This is in a case where the cow died in its typical manner and the renter and the borrower both said that it died due to ordinary labor. A renter, who in any case is exempt, as he is exempt from paying in cases where the ox was damaged or died due to circumstances beyond his control, is liable to bring a sin-offering, as the false oath involved no denial of monetary debt. A borrower, who is liable to pay when the cow died in its typical manner and attempted to exempt himself with the claim that it died due to ordinary labor, is liable to bring a guilt-offering.

[72] There are times when a renter is liable to bring a guilt-offering and a borrower is liable to bring a sin-offering. This is in a case where the cow was stolen from the borrower, and the renter and the borrower both said that it died in its typical manner. The renter, who is liable to pay in cases of theft and loss and attempted to exempt himself with the claim that it died in its typical manner, is liable to bring a guilt-offering. A borrower, who in any case is liable to pay, is liable to bring a sin-offering.

[73] The Gemara asks: What is Rabbi Yirmeya teaching us with this systematic presentation of these cases? They are merely details based on established halakhic principles. The Gemara answers: His

statement serves to exclude the opinion of Rabbi Ami, who says: With regard to any oath that the judges administer, one is not liable to bring a sin-offering for taking a false oath on an utterance, as it is stated in the passage concerning the obligation to bring an offering for taking a false oath: “Or if a soul takes an oath clearly to utter with lips” (Leviticus 5:4). The Gemara infers: The liability to bring an offering for taking a false oath applies only to one who takes an oath on his own initiative, but not when the oath is administered by others. Rabbi Yirmeya teaches us that the halakha is not in accordance with the opinion of Rabbi Ami, as one is liable to bring a sin-offering for taking a false oath on an utterance even if it was administered by another.

74 It was stated that there is an amoraic dispute with regard to a bailee who conveyed to another bailee the deposit with which he was entrusted. Rav says: He is exempt from payment in the same cases in which he is exempt when the deposit is in his possession. And Rabbi Yoḥanan said: He is liable to pay even in cases of damage due to circumstances beyond his control.

75 Abaye says: According to Rav’s line of reasoning, it is not necessary to state his ruling in a case where he was initially an unpaid bailee who conveyed the deposit for safeguarding to a paid bailee, as in that case the unpaid bailee enhanced the level of his safeguarding, since a paid bailee is liable to pay in instances where an unpaid bailee is exempt. But even in the case of a paid bailee who conveyed the deposit for safeguarding to an unpaid bailee, where the paid bailee diminished the level of his safeguarding, he is exempt. What is the reason? He is exempt because he conveyed the deposit to a mentally competent person, thereby effectively safeguarded the deposit.

76 According to Rabbi Yoḥanan’s line of reasoning, it is not necessary to state his ruling in a case where he was initially a paid bailee who conveyed the deposit for safeguarding to an unpaid bailee, as the paid bailee diminished the level of his safeguarding, since an unpaid bailee is exempt in instances where a paid bailee is liable to pay. But even in the case of an unpaid bailee who conveyed the deposit for safeguarding to a paid bailee, where the unpaid bailee enhanced the level of his safeguarding, he is liable to pay. What is the reason? He is liable because the owner of the deposit said to him: It is not my desire that my deposit be in the possession of another bailee.

77 Rav Ḥisda said: This statement that is attributed to Rav was not stated explicitly. Rather, it was inferred from another statement of his, as it is related: There were these gardeners who each day would deposit their spades with a certain old woman. One day they deposited their spades with one of gardeners. He heard noise from a wedding hall and set out and went there. He deposited the spades with that old woman. In the time that he went and came back from the wedding, their spades were stolen.

78 The case came before Rav, and Rav exempted the gardener who deposited the spades with the old woman. One who observed Rav’s ruling thought that Rav issued that ruling due to the fact that a bailee who conveyed a deposit to another bailee is exempt. But that is not so. There, in the case of the spades, it is different, as the gardeners themselves would deposit their spades with that old woman. Since the gardeners cannot claim that it is not their desire for their deposit to be in the possession of this old woman, the gardener who did so is exempt.

79 The Gemara relates: Rabbi Ami sat and stated this halakha. Rabbi Abba bar Memel raised an objection to Rabbi Ami from the mishna: In the case of one who rents a cow from another, and this renter lends it to another person, and the cow dies in its typical manner in the possession of the borrower, the halakha is that the renter takes an oath to the owner of the cow that the cow died in its

typical manner, and the borrower pays the renter for the cow that he borrowed. And if the statement of Rabbi Yoḥanan is so, let the owner say to the renter: It is not my desire that my deposit be in the possession of another bailee, and the renter should be liable to pay because he violated the owner's wishes. Rabbi Ami said to him: With what are we dealing here? It is a case where the owner gave the renter permission to lend the deposit to another.

[80] The Gemara asks: If so, the borrower should be required to pay the owner, as the owner sanctioned the borrowing. Rabbi Abba bar Memel answers: The case in the mishna is one where the owner said to the renter: Lend this deposit to another at your discretion. Therefore, it is not considered as if the owner lent it to the borrower.

[81] Rami bar Ḥama raises an objection from a mishna (42a): In the case of one who deposited coins with another, and that bailee bound it in a cloth and slung it behind him, or conveyed them to his minor son or daughter for safeguarding, or locked the door before the coins in an inappropriate, i.e., insufficient, manner to secure them, the bailee is liable to pay for the coins, as he did not safeguard the coins in the manner typical of bailees.

[82] The Gemara infers: The reason he is liable to pay is that he conveyed the coins to his minor children, but if he conveyed them to his adult son or daughter he is exempt. Why? Let the owner say to him as Rabbi Yoḥanan said: It is not my desire that my deposit be in the possession of another bailee, and therefore even if the children are adults the bailee should be liable to pay.

[83] Rava said: No proof can be cited, as it is clear that in the case of anyone who deposits an item with another,

[84] it is with the awareness that at times the bailee's wife and his children will safeguard the item that he deposits it, as the bailee cannot be with the deposit at all times.

[85] The Sages of Neharde'a say: The language of the mishna is also precise, as it teaches: Or if he conveyed the coins to his minor son or daughter for safeguarding, he is liable to pay. But if he conveyed them to his adult son and daughter, he is exempt. By inference, one can conclude that with regard to others, it is no different if they are adults and it is no different if they are minors. Either way, the bailee is liable to pay, as, if there were a difference, let the tanna teach: If he conveyed the coins to minors, without qualification. The Gemara concludes: Since the tanna specifically addressed the case of one's minor children, learn from the wording of the mishna that the difference between minors and adults exists only with regard to one's children.

[86] Rava says: The halakha is: A bailee who conveyed a deposit to another bailee is liable to pay. It is not necessary to say that this is the halakha if he was a paid bailee who conveyed the deposit to an unpaid bailee, as in that case the first bailee diminished the level of his safeguarding, as an unpaid bailee is exempt from paying in instances where a paid bailee is obligated to do so. But even if it was initially an unpaid bailee who conveyed the deposit for safeguarding to a paid bailee, the first bailee is liable to pay. What is the reason that he is liable in that case? He is liable, as the owner of the deposit can say to him: You are trustworthy to me when you take an oath that the item was stolen or lost. That person is not trustworthy to me when he takes an oath.

[87] It was stated that there is an amoraic dispute: In the case of one who was negligent in safeguarding an animal, and it went into a marsh, where it was susceptible to thieves and predatory animals, but it died in its typical manner despite this negligence, i.e., it was neither stolen nor devoured, Abaye says

in the name of Rabba: The bailee is liable to pay. Rava says in the name of Rabba: The bailee is exempt from doing so.

88 The Gemara elaborates. Abaye said in the name of Rabba: He is liable to pay, and any judge who does not rule in accordance with this halakha is not a judge. It is not necessary to say that the bailee is liable in this case, according to the one who says: In a case where the incident was initially through negligence and ultimately by accident, one is liable to pay. According to this opinion, it is obvious that the bailee is liable to pay. But even according to the one who says: If the incident was initially through negligence and ultimately by accident one is exempt, here the bailee is still liable to pay. What is the reason that he is liable? It is because we say: The air of the marsh killed the animal. The negligence led to the death of the animal, and it was not due to circumstances beyond his control.

89 Rava says in the name of Rabba: He is exempt, and any judge who does not rule in accordance with this halakha is not a judge. It is not necessary to say that the bailee is exempt in this case, according to the one who says: In a case where the incident was initially through negligence and ultimately by accident, one is exempt from payment. According to this opinion, it is obvious that the bailee is exempt. But even according to the one who says: In a case where the incident was initially through negligence and ultimately by accident, one is liable to pay, here the bailee is still exempt from payment. What is the reason that he is exempt? It is because we say with regard to the Angel of Death, who causes death by natural causes: What difference is there to me if the animal was here, and what difference is there to me if the animal was there? The cause of the animal's death was natural, and there is no relevance given to the location of the death. Consequently, the bailee is exempt.

90 The Gemara notes: And Abaye concedes that if the animal returned from the marsh to its owner's house and died there that the bailee is exempt. What is the reason that he is exempt? He is exempt due to the fact that the animal returned, and since it was able to return there is no justification to say that the air of the marsh killed it. And Rava concedes that anytime the animal was stolen from the marsh and then dies in its typical manner in the house of the thief that the bailee is liable to pay. What is the reason that he is liable to pay? He is liable because even if the Angel of Death spared the life of the animal, it would be standing in the house of the thief due to the negligence of the bailee.

91 Abaye said to Rava: According to you, who said with regard to the Angel of Death: What difference is there to me if the animal was here and what difference is there to me if the animal was there? How will you explain the exchange between Rabbi Abba bar Memel and Rabbi Ami? As there is that objection that was raised by Rabbi Abba bar Memel to Rabbi Ami from the mishna with regard to one who rents a cow from another, and then lends it to another person, and Rabbi Ami answered him: It is a case where the owner gave the renter permission to lend the deposit. Abaye states his challenge: But according to your explanation, let Rabbi Ami say to him that the bailee is exempt because with regard to the Angel of Death, what difference is there to me if the animal was here, and what difference is there to me if the animal was there. If the death would have happened regardless of the location of the animal, it makes no difference whether it was in the possession of the first renter or in the possession of the one he lent it to.

92 Rava said to Abaye: According to you, that you teach that a bailee who conveyed a deposit to another bailee is liable to pay because the owner can claim: It is not my desire that my deposit be in the possession of another bailee, there is room to raise that objection. But according to me, as I say

that a bailee who conveyed a deposit to another bailee is liable to pay because the owner can claim: You are trustworthy to me when you take an oath that the item was stolen or lost; that person is not trustworthy to me when he takes an oath, there is no room to raise that objection at all.

[93] Rami bar Ḥama raises an objection to the opinion of Abaye from a mishna (93b): If one brought the animal to the edge of a cliff and it fell, that is not considered an accident, and he is liable to pay. One may infer that if he brought it to the edge of the cliff and it died in its typical manner, that is considered an accident and he is exempt. But why? Let the owner of the animal say to the bailee: It is the air of the mountain that killed it, or: The exhaustion from climbing the mountain killed it.

[94] The Gemara rejects this: With what are we dealing here? It is with a case where the bailee took the animal to a bountiful and high-quality pasture. Since shepherds typically herd their flocks there, taking the animal there is not negligent. The Gemara asks: If so, then the bailee should be exempt even if the animal fell. The Gemara answers: He is liable to pay because he should have subdued the animal to prevent it from falling, and he did not subdue it.

[95] The Gemara asks: If so, say the first clause of the mishna: If the animal climbed to the top of a cliff and fell, it is a circumstance beyond his control and he is exempt. Shouldn't he be liable, since he was required to subdue it and prevent it from falling? The Gemara answers: No, it is necessary for the tanna to say that the bailee is exempt only in a case where the animal overpowered him and ascended and the animal overpowered him and descended. Although he attempted to prevent the animal from falling, it overpowered the bailee and fell.

[96] § The mishna teaches that Rabbi Yosei said: How does the other party do business with and profit from another's cow? Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Yosei. Rav Shmuel bar Yehuda said to Rav Yehuda: You told us in the name of Shmuel that Rabbi Yosei was in disagreement with the first tanna

[97] even in the first mishna in this chapter, and Rabbi Yosei holds that even when a bailee pays for the deposit and chooses not to take an oath, the thief pays the double payment to the owner. Is the halakha in accordance with his opinion even in that case, or is the halakha not in accordance with his opinion? Rav Yehuda said to him: Rabbi Yosei was in disagreement even in the first mishna in this chapter, and the halakha is in accordance with his opinion even in the first mishna.

[98] It was also stated that the amora'im in Eretz Yisrael disagreed about this matter. Rabbi Elazar says: Rabbi Yosei was in disagreement even in the first mishna and the halakha is in accordance with his opinion even in the first mishna. And Rabbi Yoḥanan says: Rabbi Yosei conceded in the first mishna because the bailee already paid and acquired the animal.

[99] The Gemara questions the formulation of Rabbi Yoḥanan's statement: If he paid, yes, the thief pays the double payment to him; if he did not pay, no? But doesn't Rabbi Ḥiyya bar Abba say that Rabbi Yoḥanan himself says: When the mishna says: If the bailee paid, it does not mean that he actually paid; rather, once the bailee said: I hereby choose to pay, even if he did not yet actually pay, he acquired the double payment? The Gemara answers: Emend the statement of Rabbi Yoḥanan and say: Rabbi Yosei conceded in the first mishna because the bailee already said: I hereby choose to pay.

[100] MISHNA: If one said to two people: I robbed one of you of one hundred dinars, but I do not know from which of you I took the money, or if one said to two people: The father of one of you deposited one hundred dinars with me, but I do not know the father of which of you he is, then he

gives one hundred dinars to this person and one hundred dinars to that person. This is because there is no way to determine which of them is entitled to the money, and he admitted his obligation at his own initiative.

[101] In the case of two people who deposited money with one person, and this one deposited one hundred dinars and that one deposited two hundred dinars, and when they come to collect their deposit, this one says: My deposit was two hundred dinars, and that one says: My deposit was two hundred dinars, the bailee gives one hundred dinars to this one and one hundred dinars to that one. And the rest of the money, i.e., the contested one hundred dinars, will be placed in a safe place until Elijah comes and prophetically determines the truth.

[102] Rabbi Yosei said: If so, what did the swindler lose? He lost nothing by claiming the one hundred dinars that belongs to another, and he has no incentive to admit the truth. Rather, the entire deposit will be placed in a safe place until Elijah comes. As his fraud will cause him to lose even the one hundred dinars that he deposited, perhaps he will be discouraged from making a fraudulent claim.

[103] And likewise, if two people deposited two vessels, one worth one hundred dinars and one worth one thousand dinars, and this one says: The expensive vessel is mine, and that one says: The expensive vessel is mine, the bailee gives the small vessel to one of them, and from the proceeds of the sale of the large vessel he gives the value of the small vessel to the other, and the rest of the money is placed in a safe place until Elijah comes. Rabbi Yosei said: If so, what did the swindler lose? Rather, the entire deposit, i.e., both vessels, are placed in a safe place until Elijah comes or one of them admits his deceit.

[104] GEMARA: From the fact that the mishna teaches that if the bailee does not know whom he robbed, he gives one hundred dinars to this one and one hundred dinars to that one, apparently, in cases of uncertainty, we expropriate property and return it to those claiming it. And we do not say: Establish the money in the possession of its owner. In this case, the bailee is currently the owner of the money, but the money is not left in his possession.

[105] And raise a contradiction from the continuation of the mishna: In the case of two people who deposited money with one person, and this one deposited one hundred dinars and that one deposited two hundred dinars, and when they come to collect their deposit, this one says: My deposit was two hundred dinars, and that one says: My deposit was two hundred dinars, the bailee gives one hundred dinars to this one and one hundred dinars to that one. And the rest of the money will be placed in a safe place until Elijah comes and prophetically determines the truth.

[106] The Sages said to the one who raised the contradiction: Are you raising a contradiction between the halakha stated in the case of a deposit and the halakha stated in the case of a robbery? In the case of robbery, where one transgressed a prohibition, the Sages penalized him and ruled that he must pay both possible robbery victims. In the case of a deposit, where he did not transgress a prohibition, the Sages did not penalize him.

[107] And they raised a contradiction between the halakha stated in the case of a deposit and the halakha stated in the case of a deposit, and they raised a contradiction between the halakha stated in the case of a robbery and the halakha stated in the case of a robbery. There is a contradiction between the halakha stated in the case of a deposit and the halakha stated in the case of a deposit, as it is taught in the first clause of the mishna: Or, if one said to two people: The father of one of you deposited one hundred dinars with me, but I do not know the father of which of you he is, he gives

one hundred dinars to this person and one hundred dinars to that person. The Gemara raises a contradiction from the continuation of the mishna cited above: In the case of two people who deposited money with one person, the contested sum is placed in a safe place until Elijah comes.

[108] Rava said: In the first clause of the mishna, in the case where the bailee receives money from the father of one person, he becomes like one with whom they deposited sums of money in two separate bundles, as the bailee should have been discerning with regard to who gave him the money. His failure to do so constitutes negligence, and therefore he pays the sum to both claimants. In the latter clause of the mishna, in the case where he receives money from two people, he becomes like one with whom they deposited sums of money in one bundle, as there is no expectation that he should have been discerning. It is a case where they both deposited their money together at one time, as the bailee says to them: If you yourselves were not suspicious of each other, should I be suspicious? Therefore, he is required to pay them only the sum that they can prove is theirs.

[109] And they raised a contradiction between the halakha stated in the case of a robbery and the halakha stated in the case of a robbery. It is taught here: If one said to two people: I robbed one of you of one hundred dinars, but I do not know from which of you I took the money, or if one said to two people: The father of one of you deposited one hundred dinars with me, but I do not know the father of which of you he is, then he gives one hundred dinars to this person and one hundred dinars to that person.

[110] The Gemara raises a contradiction from a mishna (Yevamot 118b): If one robbed one of five people and he does not know which of them he robbed, and this one says: He robbed me, and that one says: He robbed me, the robber places the stolen item between them and withdraws from them; this is the statement of Rabbi Tarfon. Apparently, contrary to the mishna, we do not expropriate property due to an uncertainty and return it to those claiming it, and instead we say: Establish the money in the possession of its owner.

[111] The Gemara asks: And from where is it known that the mishna here is in accordance with the opinion of Rabbi Tarfon? Perhaps the mishna is in accordance with the opinion of Rabbi Akiva, who holds the robber must pay each of the five possible victims, and there is no contradiction at all. The Gemara answers: It is known that the mishna here is in accordance with the opinion of Rabbi Tarfon, as it is taught in a baraita concerning the halakha taught in that mishna, in tractate Yevamot: Rabbi Tarfon concedes that in a case where a robber says to two people: I robbed one of you of one hundred dinars, but I do not know which of you it was, he gives one hundred dinars to this person and one hundred dinars to that person, as he has already admitted his obligation on his own. There is an apparent contradiction between the two statements of Rabbi Tarfon.

[112] The Gemara answers: There, in the mishna where one robbed one of five people of money, it is referring to a case where the claimants demand payment from him. He is required to pay them only one hundred dinars, as the burden of proof rests upon the claimant. By contrast, here, i.e., in this mishna and the statement of Rabbi Tarfon in the baraita, it is referring to a case where the robber comes to fulfill his obligation to Heaven. Only by returning the money to the person he robbed can he atone for his transgression. Therefore, he goes beyond the halakhic requirement and pays both claimants. The Gemara notes: The language of this mishna is also precise, as the tanna teaches: Because he admitted his obligation at his own initiative. The Gemara affirms: Learn from the wording of the mishna that this is the explanation of the mishna.

[113] With regard to returning stolen money, the Master said: There, it is referring to a case where the claimants demand payment from him. The Gemara asks: And the other person, the thief, what does he claim in response? Rav Yehuda says that Rav says: The other person is silent, as he does not know to whom he owes the money. Rav Mattana says that Rav says: The other person

[114] screams and says to each of the claimants: I do not recognize you and I find no basis for your claim. The Gemara comments: The one who says that the other screams holds that he need not return the money to each of them if he is screaming that he does not accept their claims. But a reaction of silence is tantamount to admission that the demands of the claimants are legitimate. And the one who says that the other is silent holds that the silence here is not tantamount to admission, as the robber could say to him: The fact that I was silent to each and every one of the claimants is because I said: Perhaps this is he, the robbery victim, but I do not admit that I owe money to more than one person.

[115] The Master said: The robber places the stolen item between them and withdraws from them. The Gemara challenges: And all of them take it and go, possibly resulting in the robbery victim losing his property. But doesn't Rabbi Abba bar Zavda say that Rav says concerning found items: In any case of uncertainty whether the placement of a found item was deliberate, the finder may not take the item ab initio, and if he took it, he should not return it to one who claims ownership without conclusive proof? Here too, the robber should keep the money until one of the claimants provides conclusive proof that the money is his. Rav Safra says: The baraita means: And the robber should place it in his possession or before the court.

[116] Abaye said to Rava: In disputing Rabbi Tarfon's opinion with regard to one who robbed money from one of five people, did Rabbi Akiva say: 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? Apparently, in his opinion, in cases of uncertainty, we expropriate property and return it to those claiming it, and we do not say: Establish the money in the possession of its owner.

[117] The Gemara raises a contradiction from a mishna (Bava Batra 158b): A house collapsed on a person and on his mother, and it is unclear which of them died first. The son's heirs say: The mother died first and her property was inherited by her son, who then died, and therefore the heirs of the son inherit the property of both. And the mother's heirs say: The son died first, and therefore the mother's heirs should inherit all of her property. In this case, both these tanna'im, Beit Shammai, and those tanna'im, Beit Hillel, agree that they should divide the disputed property, although they disagree in similar cases. And Rabbi Akiva said: I concede in this case that the property retains its previous ownership status. Apparently, Rabbi Akiva himself holds that property is not removed from one's possession in cases of uncertainty.

[118] Rava said to Abaye: There, in the case where the house collapsed, it is where there is an uncertain claim and an uncertain claim, as neither party knows what transpired. By contrast, in a case where one robbed money from one of five people, it is a case where there is a certain claim and an uncertain claim, as the robber does not know from whom he robbed the money, but the victims' claims are based on certainty. The Gemara challenges: But in the mishna here, where one said to two people: I robbed one of you of one hundred dinars, but I do not know from which of you I took the money, it is a case where there is an uncertain claim and an uncertain claim, and it is taught: He gives one hundred dinars to this person and one hundred dinars to that person.

[119] The Gemara asks: And from where is it known that the mishna here is in accordance with the opinion of Rabbi Akiva? The Gemara answers: This is known, as it is taught in a baraita concerning the halakha taught in that mishna: Rabbi Tarfon concedes that in a case where one says to two people: I robbed one of the two of you of one hundred dinars and I do not know from which of you I robbed the money, the robber gives one hundred dinars to each of them. To whom does Rabbi Tarfon concede? Is it not to Rabbi Akiva, who is his usual disputant?

[120] The Gemara asks: And from where is it known that in the mishna it is a case where there is an uncertain claim and an uncertain claim? Perhaps the victims are certain that they were robbed. The Gemara answers: This is unlikely for several reasons. One, it is not taught in the mishna that they demand payment from him. And furthermore, didn't Rabbi Ḥiyya teach in a baraita that the mishna is referring to a case where this party says: I do not know, and that party says: I do not know, indicating that these are uncertain claims?

[121] The Gemara resolves the contradiction between the statements of Rabbi Akiva: Didn't we establish the mishna as referring to a case in which the robber is coming to fulfill his obligation to Heaven? Therefore, the robber gives one hundred dinars to each, although he has no legal obligation to do so, as they made uncertain claims.

[122] Ravina said to Rav Ashi: And did Rava say that in every case where the deposits are given in two separate bundles that the bailee should have been discerning with regard to the identity of the ones giving him the deposits? But didn't Rava say, and some say that it was Rav Pappa who said: Everyone concedes in the case of two people who deposited animals with a shepherd, that if each claims that his deposit included a greater number of animals than that of the other, the shepherd places the animals among them and leaves? Rav Ashi said to Ravina: There, it is referring to a case where the shepherds deposited animals in the shepherd's flock without his knowledge. Clearly there is no expectation that the shepherd will discern how many animals belong to each party.

[123] The mishna teaches: And likewise, in the case of two people who deposited two vessels, one worth one hundred dinars and one worth one thousand dinars, and each of the claimants claims that the expensive vessel is his, the bailee gives the small vessel to one of them, and from the proceeds of the sale of the large vessel he gives the value of the small vessel to the other, and the rest of the money is placed in a safe place until Elijah comes. The Gemara comments: And it is necessary for the tanna to cite both the case of money and the case of vessels.

[124] The reason is that if the tanna had taught us this first case with regard to money alone, one would conclude that it is in this case that the Rabbis say that each party receives one hundred dinars, and one hundred dinars is kept in a safe place, because in this case there is no loss. But in that case of the vessels, where there is a loss of the large vessel, as it must be broken or sold in order to pay the value of the small vessel to the other party, say that they concede to Rabbi Yosei that both vessels are kept in a safe place. And had the dispute been stated only in that case of vessels, one would conclude that it is in that case that Rabbi Yosei said that both vessels are kept in a safe place. But in this case of money, say that he concedes to the Rabbis. Therefore, it is necessary to cite both cases.

[125] The Gemara asks: But isn't the reason for the opinion of Rabbi Yosei as he stated in the mishna: Due to the loss of the fraud? It is not due to the fact that the vessel will not remain intact. Consequently, there is no reason to believe that Rabbi Yosei would concede to the Rabbis in the instance where money was deposited. Rather, both of the cases are necessary according to the

Rabbis. And although the first case could have been inferred from the second case, the tanna teaches the mishna employing the style of: Not only this but also that, i.e., the mishna began with an obvious example and continued with a more novel one.

126 MISHNA: In the case of one who deposits produce with another, even if it is lost due to spoilage or vermin, the bailee may not touch it, as it is not his. Rabban Shimon ben Gamliel says: He sells it before the court, as by doing so he is like one returning a lost item to the owner, since through its sale he prevents the owner from losing the value of his produce.

127 GEMARA: What is the reason that the first tanna said that the bailee should not touch the produce? Rav Kahana says that it is based on the principle: A person prefers a kav of his own produce to nine kav of another's produce. Consequently, despite the spoilage, the owner prefers that the bailee not touch the produce. Rav Naḥman bar Yitzḥak says: We are concerned that perhaps the one who deposited the produce rendered it teruma and tithe for produce in another place, resulting in the buyer consuming produce that is teruma and tithe inappropriately.

128 The Gemara raises an objection from a baraita: In the case of one who deposits produce with another, the bailee may not touch it, and therefore the owner may render it teruma or tithe for produce in another place. Granted, according to Rav Kahana, this is the reason that the tanna teaches: And therefore the owner renders them teruma. The concern that the owner may render the produce teruma and tithe is not the reason why the bailee may not sell it, and the halakha that the owner may render the produce teruma and tithe results from the halakha that the bailee may not sell it.

129 But according to Rav Naḥman bar Yitzḥak, what is the meaning of the term therefore? According to his explanation, the fact that the owner may render the produce teruma and tithe is the very reason why the bailee may not sell the produce. The Gemara explains: This is what the tanna is saying: Now that the Sages said that the bailee may not sell the produce due to the fact that we are concerned that perhaps the owner had rendered it teruma, the owner can be confident that the produce is still in the possession of the bailee. Therefore, the owner may render it teruma and tithe for produce in another place even ab initio.

130 § Rabba bar bar Ḥana says that Rabbi Yoḥanan says: The dispute in the mishna is in a case where the produce deteriorates at its standard rate of deterioration. But if the produce deteriorates at a rate greater than its standard rate of deterioration, everyone agrees that the bailee sells it before the court.

131 The Gemara comments: Rabbi Yoḥanan certainly disagrees with the opinion of Rav Naḥman bar Yitzḥak, as the concern that the owner might have rendered the produce teruma or tithe applies regardless of the rate of deterioration. The Gemara asks: Shall we say that Rabbi Yoḥanan disagrees with the opinion of Rav Kahana? The Gemara answers: When Rav Kahana says that one prefers his own produce, it was in a case where the produce deteriorates at its standard rate of deterioration that he says it. When the rate of deterioration is accelerated, he would agree that the bailee sells the produce.

132 The Gemara asks: But didn't Rav Kahana say: A person prefers a kav of his own produce to nine kav of another's produce? This indicates that even if the rate of deterioration was accelerated, one prefers his own produce, as in the case he describes eight-ninths of the produce is lost. The Gemara answers: This expression is merely an exaggeration, and actually one prefers his own produce only when its rate of deterioration is standard.

[133] The Gemara raises an objection from a baraita: Therefore, the owner renders it teruma or tithe for produce in another place. And let the owner be concerned that perhaps the produce deteriorated at a rate greater than its standard rate of deterioration, and the bailee sold it, in which case the owner would be eating untithed produce. The Gemara answers: Deterioration at a rate greater than its standard rate of deterioration is uncommon, and the Sages do not issue decrees for uncommon cases.

[134] The Gemara asks: And if it is found that more of the produce is missing than would be lost according to the standard rate of deterioration, what should be done? According to the opinion of Rabbi Yoḥanan, do we sell it? But let us be concerned that perhaps the owner already rendered this produce teruma and tithe for produce in another place. The Gemara answers: Even when we sell the produce, it is to priests at the price of teruma that we sell it. Consequently, even if the owner rendered it teruma, it is consumed by priests and therefore there is no concern.

[135] The Gemara asks: And according to Rav Naḥman bar Yitzḥak as well, since the concern is that perhaps the owner rendered the produce teruma, let the bailee sell the produce to priests at the price of teruma. The Gemara answers: It is with regard to this that they disagree, as Rabba bar bar Ḥana holds: Deterioration at a rate greater than its standard rate of deterioration is not common at all. And when it occurs that the produce deteriorates at the greater rate, it is only from now on that it is assumed that it became deteriorated at a rate greater than its standard rate of deterioration. Therefore, if the owner had rendered the produce teruma and tithe for produce in another place, it is assumed that it was before it deteriorated at a rate greater than its standard rate of deterioration that he did it. Therefore, when the produce deteriorated at a rate greater than its standard rate of deterioration, the bailee should sell the produce to priests at the price of teruma, as it may be teruma.

[136] And Rav Naḥman bar Yitzḥak holds: Deterioration at a rate greater than its standard rate of deterioration is common. And when the produce became deteriorated at a rate greater than its standard rate of deterioration, it may be immediately that it became deteriorated to that extent. And if you say: Let us sell it, the concern is that at times the bailee will sell it early. And when the owner renders the produce teruma and tithe for produce in another place, he does not know that the bailee already sold the produce, and the owner eats untithed produce.

[137] The Gemara raises an objection from a baraita: In the case of one who deposits produce with another and it rotted, wine and it fermented, oil and it putrefied, honey and it spoiled, the bailee may not touch them; this is the statement of Rabbi Meir. And the Rabbis say: He effects a remedy for these items and sells them in court. The baraita adds: And when he sells them, he sells them to others and does not sell them to himself, even for the same price, so no one will suspect that he bought it at a discount.

[138] On a similar note, with regard to charity collectors, when they do not have poor people to whom to distribute charity, they change copper perutot that they collected for more valuable silver coins only for other people, but they do not change the coins for themselves, to avoid suspicion. If collectors for the charity plate collected ready-made food for the poor, at a time where there are no poor people to whom to distribute the food, they sell the food only to others but do not sell the food to themselves.

[139] In any event, it is taught: Produce and it rotted. What, is it not referring even to a case where they all rotted at a rate greater than its standard rate of deterioration? The Gemara rejects this: No; it is referring to a case where they deteriorated at their standard rate of deterioration. The Gemara asks:

But aren’t the cases of wine and it fermented, oil and it putrefied, and honey and it spoiled cases where these items deteriorated at a rate greater than their standard rate of deterioration, as there is a significant difference in the price of wine before and after fermentation, and in the price of oil before and after putrefaction? The Gemara rejects that proof: Those cases are different. Once they become spoiled, they remain spoiled but do not continue to deteriorate. Therefore, although their deterioration was significant, there is nothing gained by selling it.

140 On a related note, the Gemara asks: Concerning the cases of oil and it putrefied, honey and it spoiled,

141 for what use are they fit? According to the Rabbis, one sells them in court. Apparently, they must have some value. The Gemara answers: Oil is fit for tanners who would coat the hides with oil even if it had a foul odor. Honey it fit as a salve for a wound on the back of camels.

142 It is taught in the baraita: And the Rabbis say that the bailee effects a remedy for the spoiled products and sells them in court. The Gemara asks: What remedy does he effect for those products? Rav Ashi said: It is a remedy for the casks. Although the contents of the barrel are irreversibly spoiled, leaving it in the barrels will ruin the barrels.

143 The Gemara asks: Since Rabbi Meir agrees that when there is deterioration at a rate greater than its standard rate of deterioration, the bailee should sell the deposit, with regard to what issue do Rabbi Meir and the Rabbis disagree? The Gemara answers: The dispute is that one Sage, Rabbi Meir, holds: The Sages were concerned for a significant loss, but the Sages were not concerned for an insignificant loss, like damage to the barrels. And one Sage, the Rabbis, holds: The Sages were concerned even for an insignificant loss.

144 § The mishna teaches that Rabban Shimon ben Gamliel says: He sells it before the court, due to the fact that in doing so he is like one returning a lost item to the owner. It was stated that Rabbi Abba, son of Rabbi Ya’akov, says that Rabbi Yoḥanan says: The halakha is in accordance with the opinion of Rabban Shimon ben Gamliel. And Rava says that Rav Naḥman says: The halakha is in accordance with the statement of the Rabbis.

145 The Gemara asks: But why is it necessary for Rabbi Yoḥanan to issue that ruling specifically in this case? Didn’t Rabbi Yoḥanan already say one other time that in general the halakha is in accordance with the opinion of Rabban Shimon ben Gamliel? As Rabba bar bar Ḥana says that Rabbi Yoḥanan said: Every place where Rabban Shimon ben Gamliel taught a ruling in our mishna, the halakha is in accordance with his opinion, except for the following three cases: The responsibility of the guarantor (Bava Batra 173b), and the incident that occurred in the city of Tzaidan (Gittin 74a), and the dispute with regard to evidence in the final disagreement (Sanhedrin 31a). By inference, in all other cases, Rabbi Yoḥanan holds that the halakha is in accordance with his opinion.

146 The Gemara answers: Rabbi Abba and Rabba bar bar Ḥana are amora’im and disagree with regard to the opinion of Rabbi Yoḥanan. Rabbi Abba holds that there was no general ruling, and therefore a ruling was necessary in this case. Rabba bar bar Ḥana holds that Rabbi Yoḥanan issued a general ruling.

147 The Gemara notes: From the statement of Rabban Shimon ben Gamliel, it is learned that the court authorizes a relative, who is the heir apparent, to descend and manage the property of a captive. A bailee who sells rotting produce is like one returning a lost item to the owner; one who manages

the property of a captive who is unable to do so himself should have the same status. From the statement of the Rabbis, who say that the bailee may not touch the rotting produce, it is learned that the court does not authorize a relative to descend and manage the property of a captive.

148 The Gemara rejects this parallel: And from where do you draw that conclusion? Perhaps Rabban Shimon ben Gamliel states his opinion here only due to the fact that the principal, i.e., the rotting produce, is destroyed. But there, indeed, the court does not authorize a relative to descend and manage the property of a captive, because if the land lies fallow, the land will remain intact, even if the captive will not profit. And perhaps the Rabbis state their opinion only here based either on the reason of Rav Kahana, that a person prefers his own produce, or on the reason of Rav Naḥman bar Yitzḥak, that there is concern that perhaps the owner designated the produce as teruma or tithe. But there, with regard to the captive's property, those reasons do not apply, and indeed the court authorizes the relative to manage it.

149 The Gemara asks: Is this to say that they are two independent reasons for these two halakhot? But doesn't Rav Yehuda say that Shmuel says: The halakha is in accordance with the opinion of Rabban Shimon ben Gamliel, and Shmuel says: The court authorizes a relative to descend and manage the property of a captive? Is it not due to the fact that there is one common reason for both halakhot? The Gemara rejects that reasoning: No, they are based upon two unrelated reasons, and Shmuel ruled the halakha in each case independently.

150 The Gemara comments: So too, it is reasonable to say that the two halakhot are unrelated, as Rava says that Rav Naḥman says: The halakha is in accordance with the opinion of the Rabbis, and Rav Naḥman says: The court authorizes a relative to descend and manage the property of a captive. Rather, learn from it that they are based upon two unrelated reasons. The Gemara affirms: Learn from it that they are unrelated.

151 The Gemara notes that it was stated that there is an amoraic dispute with regard to one who was taken captive. Rav says: The court does not authorize a relative to descend and manage the property of a captive. Shmuel says: The court authorizes a relative to descend and manage the property of a captive.

152 The Gemara limits the scope of the dispute: In a case where they heard that the captive died, everyone agrees that the court authorizes a relative to descend and manage the property of a captive. The relative is the prospective heir and will tend to the land as if it were his own. If the captive returns, he will compensate the relative for his expenditures.

153 When they disagree, it is in a case where they did not hear that the captive died and presumably he will return. Rav says: The court does not authorize a relative to descend and manage the property of a captive, lest he devalue the property. Since presumably the owner of the property is alive, the relative assumes that he will eventually be required to return the property to the owner. Therefore, he does not tend to the land as if it were his own but will farm the land to increase its short-term yield, at the expense of its long-term condition. And Shmuel says: The court authorizes a relative to descend and manage the property of a captive. Since the Master said: In any case where one works a field that is not his, we appraise his work as if he were a sharecropper, the relative will not devalue the property. It is in his best interest to tend to the land to ensure that he will receive his payment.

154 The Gemara raises an objection from a baraita. Rabbi Eliezer says: By inference, from that which is stated: "My wrath shall wax hot, and I will kill you" (Exodus 22:23), I know that their wives shall

be widows and their children orphans. Rather, what is the meaning when the verse states: “And your wives shall be widows and your children orphans” (Exodus 22:23)? Why is this clause in the verse necessary?

155 The verse teaches an additional punishment, that the men will be killed with no witnesses. Their wives will seek to marry, and the courts will not allow them to do so without witnesses to their husbands’ deaths. And their children will wish to descend to their father’s property, to inherit it, and the courts will not allow them to do so. Apparently, the court does not authorize a relative to descend and manage the property of a captive. Rava said: We learned in the baraita that the courts do not allow them to descend and to sell the land, but the court does authorize a relative to descend and manage the land.

156 The Gemara relates: There was a similar incident in Neharde’a, and Rav Sheshet resolved the matter from this baraita and ruled that the court does not authorize a relative to descend to the property of a captive. Rav Amram said to him: Perhaps we learned in the baraita that the courts do not allow a relative to descend and to sell the land? Rav Sheshet said mockingly to him, employing a similar style: Perhaps you are from Pumbedita, where people pass an elephant through the eye of a needle, i.e., they engage in specious reasoning. But doesn’t the juxtaposition between their wives and their children in the verse teach that the meaning is similar in both cases? Just as there, with regard to the wives, it means that they may not remarry at all, so too here, with regard to the sons, it means that they may not descend to the property at all.

157 The Gemara comments: And the matter of whether the court authorizes a relative to descend and manage the property of a captive is a dispute between tanna’im, as it is taught in a baraita: In the case of one who descends to the property of a captive and works his field, the court does not confiscate it from his possession. And furthermore, even if he heard that the owners are approaching and arriving, and the one who descended to the field preceded their arrival and uprooted and consumed produce that grew that year, that person is deemed diligent and he profits, as he received a return on the work that he invested. And these are the cases where there is captives’ property: Cases where one’s father, or brother, or one of those relatives who bequeaths him an inheritance went to a country overseas, and those in his locale heard that the relative died.

158 In the case of one who descends to abandoned property, the court removes it from the possession of the one managing it. And these are the cases where there is abandoned property: Cases where one’s father, or brother, or one of those relatives who bequeaths him an inheritance went to a country overseas, and those in his locale did not hear that the relative died. And Rabban Shimon ben Gamliel said: I heard that the legal status of abandoned property is like that of the property of captives, and it is not confiscated from the possession of the one managing it. The dispute between the first tanna and Rabban Shimon ben Gamliel parallels the dispute between Rav and Shmuel.

159 With regard to one who descends to forsaken property, the court removes it from his possession. And these are the cases where there is forsaken property: Cases where one’s father, or brother, or one of those relatives who bequeaths him an inheritance was here, and the relative does not know where they went. Everyone agrees that in these instances the court does not authorize a relative to descend to the property.

160 The Gemara asks: What is different about one property, that it is called abandoned property? And what is different about the other property, that it is called forsaken property?

[161] The Gemara explains: Abandoned property [netushim]; this is referring to property that the owners vacated perforce. When it is written: “But the seventh year you shall let it rest and lie fallow [untashtah]” (Exodus 23:11), that is expropriation by edict of the King of the Universe. Forsaken property [retushim]; this is referring to property that the owners vacated of their own volition, as it is written: “A mother was forsaken [rutasha] with her sons” (Hosea 10:14), indicating that the mother was left with the sons, as all the men left.

[162] A Sage taught with regard to the baraita discussing the case of one who descends to the property of another: And for all of them, the court appraises their work as one would appraise the work of a sharecropper. The Gemara asks: To which property in the baraita is this ruling stated? If we say it is stated with regard to captives’ property, now that the tanna stated that he is diligent and he profits, as he may take as much produce as he wishes, is it necessary to say that he can take a share of what he did to enhance the field? Rather, say that it is stated with regard to forsaken property. But isn’t it taught: The court removes it from his possession? The legal status of the one who labored in the field is not at all similar to that of a sharecropper.

[163] Rather, say that it is stated with regard to abandoned property. The Gemara asks: In accordance with whose opinion? If we say it is in accordance with the opinion of the Rabbis, don’t they say: The court removes it from his possession? And if it is in accordance with the opinion of Rabban Shimon ben Gamliel, doesn’t he say: I heard that the legal status of abandoned property is like that of captives’ property, and the rights of the one who labored in the field are superior to those of a sharecropper.

[164] The Gemara answers: According to the opinion of Rabban Shimon ben Gamliel, the legal status of that property is in some ways like that of captives’ property but in other ways not like that of captives’ property. It is like that of captives’ property in that the court does not remove it from his possession. But it is not like that of captives’ property, as there, in the case of captives’ property, the one working the field is diligent and he profits from the produce he takes, while here, one appraises their work as one would appraise the work of a sharecropper.

[165] The Gemara asks: And what is different in this case from that which we learned in a mishna (79b): In the case of one who outlays expenditures to enhance his wife’s usufruct property, which belongs to his wife but whose profits are his for the duration of their marriage, if the marriage ends in divorce or his death and she reclaims the property, whether he spent much to enhance the property and consumed little and did not derive benefit commensurate with his investment, or whether he spent little and consumed much, the principle is: What he spent, he spent, and what he consumed, he consumed. His labor is not appraised like that of a sharecropper.

[166] The Gemara answers: This case is comparable only to that which we learned in a statement that Rabbi Ya’akov said that Rav Ḥisda said: The legal status of one who outlays expenditures to enhance the usufruct property of his minor wife, whose father died and whose brother and mother married her off, is like that of one who outlays expenditures to enhance the property of another, as this is a marriage by rabbinic law and she can void the marriage by performing refusal. If the husband spent much to enhance the property and consumed little, his work is assessed like that of a sharecropper. Apparently, since he does not rely on the fact that her property will remain his, the Sages instituted on his behalf that he be reimbursed for his expenditures so that he will not devalue the property. Here

too, the Sages instituted on behalf of the one who labored in the field that he be reimbursed for his labor, so that he will not devalue the property.

[167] The Gemara asks with regard to the phrase written in the baraita: And for all of them, the court appraises their work as one would appraise the work of a sharecropper, what additional case does it serve to include, as apparently it applies only to property of those who abandoned it, in accordance with the opinion of Rabban Shimon ben Gamliel?

[168] The Gemara answers: It comes to include that which Rav Naḥman says that Shmuel says: For a captive who was taken captive, the court authorizes a relative to descend and manage his property. If he left of his own volition, the court does not authorize a relative to descend and manage his property. And Rav Naḥman says his own statement: The legal status of one who flees is like that of a captive. The Gemara asks: One who flees for what reason? If we say that he flees due to a tax [karga] that he attempts to evade, that is the case of one who left of his own volition. Rather, the reference is to one who flees due to an allegation that he committed murder [meradin], and he flees to avoid execution. Therefore, his legal status is that of a captive.

[169] Rav Yehuda says that Shmuel says: In the case of a captive who was taken captive and left in his field standing grain to be reaped, or grapes to be harvested, or dates to be cut, or olives to be picked, and the owner of the produce will incur significant loss if they are not harvested, the court descends to his property and appoints a steward to manage his property. And he reaps, and harvests, and cuts, and picks, and thereafter the court authorizes a relative to descend and manage his property. The Gemara asks: If that is an option, let the court always appoint a steward to manage the captive's field. The Gemara answers: We do not appoint a steward [apoteropa] for the bearded, i.e., adults. A steward is appointed only for orphans.

[170] Rav Huna says: The court does not authorize a minor, even if he is an heir, to descend to the property of a captive. And the court does not authorize a relative who is an heir to descend to the property of a minor that has no one to tend to it. And the court does not authorize a relative due to a relative to descend to the property of a minor.

[171] The Gemara elaborates: The court does not authorize a minor to descend to the property of a captive, lest he devalue the property. And the court does not authorize a relative due to a relative to descend to the property of a minor. The Gemara explains: It is a case where the minor has a paternal half-brother and that brother has a maternal half-brother. The concern is that the latter, who is not at all related to the minor who owns the field, will claim that he inherited the field from his brother. And the court does not authorize a relative to descend to the property of a minor. The concern is that since the minor does not protest at the appropriate time and assert that the property does not belong to his relative, that relative will come to assume presumptive ownership of the field.

[172] Rava said: Learn from the statement of Rav Huna that one cannot assume presumptive ownership of the property of a minor. Even if one took possession of and used the property of a minor for three years, this does not indicate that he has presumptive ownership of the property. Rav Huna restricted the descent specifically of relatives to the property of a minor, indicating that those are not concerns when it is a non-relative who descends to manage the field. Apparently, the reason that there is no concern is that one cannot assume presumptive ownership of the property of a minor.

[173] And even if one continues to occupy the field after the minor reached majority, he does not assume presumptive ownership, as perhaps the minor was unaware that he is the field's owner.

[174] The Gemara comments: And we said only in the case of paternal brothers that the court does not authorize a relative to descend and manage the property of a minor, as they are potential heirs. But in the case of maternal brothers we have no problem with it, as they are not potential heirs. And in the case of paternal brothers, we said that the court does not authorize a relative only with regard to land. But in the case of houses we have no problem with it, as there are neighbors who can testify that the house does not belong to those brothers. And with regard to land too, we said that it is only in a case where the minor's father did not draft a document of division of the property that the court does not authorize a relative. But in a case where the minor's father drafted a document of division, it generates publicity, and everyone knows which portion belongs to each of the brothers.

[175] The Gemara concludes: But this is not so, as there is no difference whether they are paternal brothers and there is no difference whether they are maternal brothers; it is no different whether it is land, and it is no different whether it is houses; and it is no different whether he drafted a document of division, and it is no different whether he did not draft a document of division. We do not authorize a relative to descend and manage the property of a minor, to avoid that relative being regarded as the owner of the property.

[176] § The Gemara relates: There was a certain old woman who had three daughters. She and one daughter were taken captive. Of the other two daughters, one died and left behind a minor son. Abaye said: What should we do in this case with the property of the old woman? If one suggests: Let us establish the property in the possession of the surviving sister, that is problematic. There is a concern that perhaps the old woman died in captivity, and if the old woman died, the minor inherits one-third of her property, and the court does not authorize a relative to descend and manage the property of a minor. If one suggests: Let us establish the property in the possession of the minor, that is also problematic. There is concern that perhaps the old woman did not die, and the court does not authorize a minor to descend and manage the property of a captive.

[177] Abaye said: Consequently, half of the property is given to the surviving sister. If the captives died, she is the inheritor of half the property; if the captives are alive, this is a case where the court authorizes a relative to descend and manage the property of a captive. And for the other half of the property, we establish a steward on behalf of the minor, as it is conceivable that he inherited the property. Rava said: Once we appoint a steward for half of the property, we appoint a steward for the other half of the property, and it remains under his stewardship until the state of the captives becomes known.

[178] Ultimately, they heard that that old woman died, and they did not hear the fate of the captive daughter. Abaye said: We give one-third of the property to the surviving daughter. And we give one-third of the property to the minor, as he inherits it from his grandmother by virtue of his deceased mother. And of the other one-third of the property, which belongs to the captive sister whose fate is unknown, we give one-sixth [danka] to the surviving sister, and for the other one-sixth, we appoint a steward on behalf of the minor, as perhaps the sister died and the property is his. Rava said: Once we appoint a steward for one-sixth of the property, we also appoint a steward for the other one-sixth of the property, until the fate of the captive sister is known.

[179] § The Gemara relates: Mari bar Isak, who was a wealthy and powerful man, had a brother whom he did not previously know, come to him from Bei Ḥozai, which was distant from central Babylonia.

His brother said to him: Divide the property that you inherited from our father and give half to me, as I am your brother. Mari said to him: I do not know who you are.

180 The case came before Rav Ḥisda. He said to the brother: Mari bar Isak spoke well to you, as it is stated: “And Joseph knew his brothers and they knew him not” (Genesis 42:8). This teaches that Joseph left Eretz Yisrael without the trace of a beard, and he came with the trace of a beard. This proves that it is possible for brothers not to recognize each other. Mari bar Isak may be telling the truth when he claims he does not recognize you. Rav Ḥisda said to the brother: Go bring witnesses that you are his brother. The brother said to him: I have witnesses, but they fear Mari bar Isak because he is a violent man. Rav Ḥisda said to Mari bar Isak: You go bring witnesses that he is not your brother.

181 Mar bar Isak said to him: Is this the halakha? Isn’t there a principle in these cases that the burden of proof rests upon the claimant? Rav Ḥisda said to him: This is the way I judge you and all of your fellow violent people. Mari bar Isak said to him: Ultimately, if that is your concern, witnesses will come, and they will not testify in his favor. They will lie and testify in my favor. Rav Ḥisda said to him: They will not perform two wrongs; they will not refrain from telling the truth and also testify falsely.

182 Ultimately, witnesses came and testified that the person from Bei Ḥozai was his brother. At that point, the brother said to Mari bar Isak: Divide and give me half of the orchards and the gardens that you planted since the death of our father as well. Rav Ḥisda said to Mari bar Isak: He spoke well to you, as we learned in a mishna (Bava Batra 143b): If one died and left adult and minor sons, and the adult sons enhanced the property, they enhanced the property, and the profit goes to the middle, i.e., it is divided between the adult sons and the minor sons.

183 And likewise, Rabba says: They enhanced the property, and the profit goes to the middle. Abaye said to him: Are these matters comparable? There, in the case that the adult and minor brothers were together, the adults are aware that the minors exist and forgo payment for their effort on behalf of their younger brothers. Here, in the case of Mari bar Isak, was the older brother aware of the existence of the younger brother so that he could forgo payment for his labor?

184 The matter continued to develop and came before Rabbi Ami. He said to those who reported Rav Ḥisda’s ruling: The Sages stated a more far-reaching halakha than that: In the case of relatives who tend to the property of a captive, the court appraises their work as one would appraise the work of a sharecropper. Although the property they tended did not belong to them at all, they receive wages for their labor. Why, then, is the ruling now, in the case of Mari bar Isak, that payment for labor on property that is his, we do not give him? Mari bar Isak should be reimbursed for his expenditures.

185 They returned and related this matter before Rav Ḥisda. Rav Ḥisda said to them: Are these matters comparable? There, in the case of the captive’s property, it was with authorization from the court that the relative descended to tend to the property. Here, it was without authorization that Mari bar Isak descended to tend to the property of his brother. And furthermore, Mari bar Isak’s brother was a minor when Mari inherited the property, and the court does not authorize a relative to descend and manage the property of a minor.

186 They returned and related this response before Rabbi Ami. Rabbi Ami said to them: They did not complete conveying all the details of the case before me, and I was unaware that Mari’s brother was a minor. Rav Ḥisda is correct.

187 MISHNA: In the case of one who deposits produce with another, and the bailee provides him with different produce in return, that bailee deducts from the produce that he returns an amount equal to the standard decrease of the produce. The decrease is calculated according to this formula: For wheat and for rice, he deducts nine half-kav per kor, which is 180 kav; for barley and millet, he deducts nine kav per kor; for spelt and flaxseed, he deducts three se'a, which total eighteen kav, per kor. The entire calculation is according to the measure, and the entire calculation is according to the time elapsed. This is the amount of produce that the bailee deducts per one kor of produce over the course of one year.

188 Rabbi Yoḥanan ben Nuri said: And what do the mice care how much produce the bailee is safeguarding? Don't they eat the same amount whether it is from much produce and whether it is from little produce? Rather, he deducts an amount equal to the standard decrease of just one kor of produce. Rabbi Yehuda says: If the deposit was a large measure, the bailee does not deduct the decrease from it, due to the fact that for different reasons it increases. Therefore, he returns the measure of produce that was deposited with him, because the increase offsets the decrease.

189 GEMARA: The Gemara challenges: After decrease, rice is lacking a greater amount than what is recorded in the mishna. Rabba bar bar Ḥana says that Rabbi Yoḥanan says: It is with regard to shelled rice that the tanna'im taught the mishna. The mishna teaches: For spelt and flaxseed, he deducts three se'a per kor. Rabbi Yoḥanan says that Rabbi Ḥiyya says: It is with regard to flaxseed on its stalks that the tanna'im taught the mishna, and that is why the rate of decrease is so great. The Gemara comments: That is also taught in a baraita: For spelt and for flaxseed on its stalks and for unshelled rice, he deducts three se'a per kor.

190 The mishna teaches: The entire calculation is according to the measure, and the entire calculation is according to the time elapsed. It is taught in a baraita: That is the measure of decrease for each and every kor, and that is the measure of decrease for each and every year.

191 The mishna teaches: Rabbi Yoḥanan ben Nuri said: And what do the mice care how much produce the bailee is safeguarding? It is taught in a baraita that the Sages said to Rabbi Yoḥanan: The reduction is due not only to mice eating the produce. Much of the produce is lost, and much of the produce is scattered.

192 It is taught: In what cases is this statement said, that the bailee deducts these measures for the decrease? It is in a case where the bailee mixed the produce that he is safeguarding with his own produce, and he is unable to distinguish between them. But if he designated a corner for the produce that he is safeguarding, the bailee says to the owner of the produce: That which is yours is before you, and he does not calculate the decrease.

193 The Gemara asks: And when he mixed the produce that he is safeguarding with his own produce, what of it? Why must he calculate the decrease? Let him see how much his produce was, add the amount that was deposited with him, and calculate how much the produce diminished over time. He can then divide the loss proportionately between his produce and the deposited produce. The Gemara answers: The baraita is referring to a case where the bailee took supplies from that produce, and therefore it is impossible to ascertain the rate of decrease.

194 The Gemara asks: And let him see how much produce he took as supplies and include this in his calculation. The Gemara answers: The baraita is referring to a case where the bailee does not know

with how much he took as supplies, and therefore he must calculate the decrease based on the measures enumerated in the mishna.

195 The mishna teaches that Rabbi Yehuda says: If the deposit was a large measure, the bailee does not deduct the decrease from it. The Gemara asks: How much is a large measure? Rabba bar bar Ḥana says that Rabbi Yoḥanan says: It is ten kor. This is also taught in a baraita: How much is a large measure? It is ten kor.

196 The tanna who recited mishnayot and baraitot taught before Rav Naḥman: In what case is this statement said, that the bailee deducts the decrease from the produce he returns? It is in a case where the owner of the produce measured the produce for the bailee from his own threshing floor, and the bailee returned the produce to him from his own threshing floor. The measures used in all threshing floors were equal, and tended to err on the side of increasing the amount measured. But in a case where the owner measured the produce for the bailee from his own threshing floor and the bailee returned the produce to him as measured by a measure from his own house, which were more precise than those used on the threshing floor, he does not deduct the decrease when returning the produce. This is because the produce the owner deposited was measured with the increased measure of the threshing floor, and that offsets the decrease.

197 Rav Naḥman said to him: And are we dealing with fools, who give the deposit with a large measure and take the produce back with a small measure? Clearly, the same measure was used in both cases. Perhaps you are stating a ruling about the season of the threshing floor, and this is what it means: In what case is this statement said? It is said in a case where he measured the produce for the bailee during the season of the threshing floor and the bailee returned the produce to him during the season of the threshing floor, i.e., in the same period. But in a case where he measured the produce for the bailee during the season of the threshing floor and the bailee returned the produce to him during the rainy season, he does not deduct the decrease when returning the produce, because the produce that he received absorbed moisture and expanded, so that he ultimately returns the same measure.

198 Rav Pappa said to Abaye: If so, if the volume of the grain expands during the rainy season, the jug in which the grain is placed should burst due to that expansion. The Gemara relates: There was an incident and the jug burst. If you wish, say instead that the volume contracted due to compression. When the produce was deposited it was loose and had greater volume. When the bailee returned it, the produce was tightly packed in the jug, resulting in lesser volume.

199 MISHNA: When the bailee returns liquids that were deposited with him, he deducts one-sixth of the amount for wine, to offset the decrease in volume due to absorption into the cask and evaporation. Rabbi Yehuda says: He deducts one-fifth. He deducts three log of oil for one hundred log: A log and a half for sediment that sinks to the bottom of the cask, and a log and a half for absorption into the cask. If it was refined oil, he does not deduct any of the oil for sediment because it was filtered. If the oil was stored in old casks that are already saturated, he does not deduct any of the oil for absorption. Rabbi Yehuda says: Even in a case of one who sells refined oil to another all the days of the year, this buyer accepts upon himself that the seller will deduct a log and a half of sediment for one hundred log, as that is the standard measure of sediment.

200 GEMARA: The Gemara comments: And the first tanna and Rabbi Yehuda do not disagree with regard to the halakha. Rather, this Sage ruled in accordance with the custom of his locale, and this

Sage ruled in accordance with the custom of his locale. In the place of one Sage, i.e., the first tanna, they coat the casks with wax [bekira] and it does not absorb much. In the place of the other Sage, i.e., Rabbi Yehuda, they coat the casks with pitch and it absorbs much. If you wish, say instead that it is due to the quality of earth [gargishta] from which they make the casks. Barrels made from this earth absorb much, and barrels made from that earth do not absorb much.

[201] The Gemara relates: In Rav Yehuda's place they would place the contents of forty-eight pitchers of wine into a barrel, as that was the standard size of barrels there. The barrel went for six dinars, and Rav Yehuda divided the oil and sold it at six pitchersful for one dinar.

[202] The Gemara now analyzes Rav Yehuda's calculation: Subtract thirty-six pitchersful that were sold for six dinars each, with which he recoups the purchase price of the barrel. Twelve pitchersful remained for him. Subtract eight pitchers full, which is one-sixth of the total amount, as that is the measure absorbed in the barrels. Four pitchersful remained as profit for Rav Yehuda.

[203] The Gemara asks: But doesn't Shmuel say that one who profits from the sale of matters related to one's existence may not profit more than one-sixth? One can infer that it is permitted for one to profit up to one-sixth. But according to the calculation, Rav Yehuda's profit was much lower. Why did he not sell the oil at a higher price?

[204] The Gemara answers: There are the barrel and the sediment to account for. These remain in his possession, as he purchased the barrel and all its contents for six dinars, and they supplement the profit. The Gemara challenges: If so, once the barrel and sediment are taken into account, the profit is greater than one-sixth. How did Rav Yehuda profit beyond the permitted amount? The Gemara answers: There is the payment for his exertion, as he sold the oil, and there is the payment for tapping, as a craftsman is needed to install a tap in the barrel. When those payments are included in the calculation, the profit is precisely one-sixth.

[205] § The mishna teaches: If it was refined oil, he does not deduct any of the oil for sediment. If they were stored in old casks that are already saturated, he does not deduct any of the oil for absorption. The Gemara asks: But isn't it impossible that the cask did not absorb any oil at all, even if it was saturated? Rav Naḥman says: It is with regard to casks coated with pitch that the tanna'im taught the mishna, and if the cask is old and coated with pitch it does not absorb anything. Abaye said: Even if you say that the mishna is not referring to casks coated with pitch, once they are saturated they are saturated, and no more oil is absorbed.

[206] The mishna teaches that Rabbi Yehuda says: Even in the case of one who sells refined oil to another all the days of the year, this buyer accepts upon himself that the seller will deduct a log and a half of sediment for one hundred log, as that is the standard measure of sediment. Abaye said: When you analyze the matter, you will find it necessary to say that according to the statement of Rabbi Yehuda, it is permitted to mix sediment that settled at the bottom of the barrel with the clear oil and sell the mixture. And according to the statement of the Rabbis, it is prohibited to mix sediment with the clear oil.

[207] The Gemara elaborates. According to the statement of Rabbi Yehuda, it is permitted to mix sediment, and that is the reason that the buyer accepts upon himself that the seller will deduct a log and a half of sediment for one hundred log, as the seller says to him: If I wished to mix sediment and sell it to you, couldn't I mix it and sell it to you? Now too, accept upon yourself the deduction due to sediment.

[208] The Gemara asks: And let the buyer say to him: If you had mixed sediment into the oil, it could have been sold for me to another. Now what will I do with it? The sediment cannot be sold on its own, and I will suffer a loss. The Gemara answers: We are dealing with a buyer who is a homeowner, not a merchant. He needs oil for his own use, and filtered oil is preferable for him, as his use of the oil is facilitated by removal of the sediment. The Gemara asks: And let the buyer say to him: From the fact that you did not mix the sediment with the oil for me, it is an indication that you renounced your rights to it to me.

[209] The Gemara answers: Rabbi Yehuda conforms to his standard line of reasoning, as he is not of the opinion that one can presume renunciation, and therefore the buyer cannot presume that the seller renounced his right to receive the standard price, as we learned in a mishna (Bava Batra 77b): If one sold the yoke [tzemed] to another, he did not sell the cattle to him. Literally, tzemed means the yoke that holds the animals together [tzamud] while plowing. It can be understood as referring to the two animals held together by the yoke. If one sold the cattle to another, he did not sell the yoke to him. The sale is limited to the literal meaning of what he said.

[210] The mishna continues: Rabbi Yehuda says: The money informs the scope of the sale. Based on the price, one can determine what is included in the sale. How so? If the buyer said to the seller: Sell me your tzemed for two hundred dinars, the matter is well-known that a yoke does not cost two hundred dinars, and he certainly meant the cattle. And the Rabbis say: The money is not a proof, as it is possible that one of the parties renounced part of the sale price.

[211] The Gemara concludes its elaboration of the statement of Abaye: According to the statement of the Rabbis, it is prohibited to mix sediment, and this is the reason that the buyer does not accept that the seller deduct a log and a half of sediment for one hundred log, as the buyer says to him: If you wished to mix sediment and sell it, would it be permitted for you to do so? Now too, I do not accept that deduction.

[212] Rav Pappa said to Abaye: On the contrary, the opposite is reasonable. According to the statement of the Rabbis, it is permitted to mix sediment. And this is the reason that the buyer does not accept the deduction, as the buyer said to the seller: From the fact that you did not mix the sediment for me, apparently you renounced that sum to me. According to the statement of Rabbi Yehuda, it is prohibited to mix sediment. And this is the reason that the buyer accepts the deduction, as the seller says to him: If I wished to mix sediment, it is prohibited for me to mix it for you, and if you do not accept the deduction, I earn nothing from this sale. That is unacceptable according to the maxim: One who buys and sells at the same price, is he called a merchant?

[213] It is taught: The legal status of both one who buys and one who deposits oil with regard to residue [piktim], e.g., olive pits floating on the oil, is the same. The Gemara asks: What is the meaning of: With regard to residue? If we say that this is teaching: Just as the buyer does not accept upon himself a deduction in the quantity of oil to account for the residue, so too, the one who deposits the oil does not accept upon himself a deduction in the quantity of oil to account for the residue when he returns the oil and is required to return the full amount deposited with him, this is difficult. But let the bailee say to the owner: What shall I do with your residue?

[214] Rather, it is teaching: Just as the one who deposits the oil accepts the residue when his oil is returned to him, so too, the buyer accepts the residue with the oil he purchases. The Gemara asks: And does the buyer accept upon himself a deduction for residue? But isn’t it taught in a baraita that

Rabbi Yehuda says: The Sages stated that the loss for murky oil is only for the seller, as the buyer accepts upon himself a deduction for a log and a half of sediment without residue?

215 The Gemara answers: This is not difficult, as this baraita, in which it is taught that the buyer accepts residue, is referring to a case where the buyer gave the seller money in Tishrei, when olives are harvested, and he takes the oil from him in Nisan according to the measure of Tishrei. In Tishrei, due to the substantial supply, the price is lower, and immediately after the harvest the oil is murky. That baraita, in which it is taught that the loss for murky oil is only for the seller, is referring to a case where the buyer gave the seller money in Nisan, and he takes the oil from him in Nisan according to the measure of Nisan, as in Nisan both the buyer and the seller assume that the oil is refined.

216 MISHNA: In the case of one who deposits a barrel with another, and the owners did not designate a specific place for the barrel to be stored in the bailee's house, and the bailee moved it and it broke, if it broke while still in his hand, there is a distinction: If he moved the barrel for his purposes, he is liable to pay for the damage. If he moved the barrel for its own purposes, to prevent it from being damaged, he is exempt. If, after he replaced the barrel it broke, whether he initially moved it for his purposes or whether he moved it for its own purposes, he is exempt. But if the owners designated a specific place for the barrel, and the bailee moved it and it broke, whether it broke while still in his hand or whether it broke after he replaced the barrel, if he moved it for his purposes he is liable to pay, and if he moved it for its own purposes, he is exempt.

217 GEMARA: In accordance with whose opinion is this mishna? It is in accordance with the opinion of Rabbi Yishmael, who says: When a thief returns an item that he stole, we do not require the knowledge of the owner for the item to be considered returned, as it is taught in a baraita: In a case of one who steals a lamb from the flock or a sela from the purse, he should return it to the place from which he stole it, and it is unnecessary to inform the owner; this is the statement of Rabbi Yishmael. Rabbi Akiva says:

218 One requires the knowledge of the owner for the item to be considered returned.

219 The Gemara asks: If the baraita is in accordance with the opinion of Rabbi Yishmael, why did the tanna in the first clause of the mishna establish the case specifically where the owner did not designate a specific place for the barrel to be stored in the bailee's house? Even in a case where the owner designated a place for the barrel, the bailee should be exempt because he replaced the barrel.

220 The Gemara answers: The tanna is speaking utilizing the style: It is not necessary. It is not necessary to state the halakha in a case where the owners designated a place for the barrel, as after the bailee replaced the barrel, that is its place. But even in a case where the owner did not designate a place for the barrel, and after the bailee replaces the barrel that is not its place, we do not require the knowledge of the owners. In both cases, once he replaces the barrel, he is exempt from payment.

221 The Gemara asks: Say the latter clause of the mishna: If the owners designated a specific place for the barrel, and the bailee moved it and it broke, whether it broke while still in his hand or whether it broke after he replaced the barrel, if he moved it for his purposes he is liable to pay, and if he moved it for its own purposes, he is exempt. We arrive at the opinion of Rabbi Akiva, who says: We require the knowledge of the owners. Since the bailee moved the barrel from its place for his own purposes, he is a robber and is responsible for damages.

[222] The Gemara asks: If the baraita is in accordance with the opinion of Rabbi Akiva, why did the tanna in the latter clause of the mishna establish the case specifically where the owner designated a particular place for the barrel to be stored in the bailee's house? Even in a case where the owner did not designate a place for the barrel, the bailee should be liable to pay, because the barrel is not considered to have been returned.

[223] The Gemara answers: The tanna is speaking utilizing the style: It is not necessary. It is not necessary to state the halakha in a case where the owners did not designate a place for the barrel, as the place that the bailee placed the barrel is not its place. But even in a case where the owner designated a place for the barrel, where the place that the bailee placed the barrel is its place, we require the knowledge of the owners for it to be considered as if the bailee returned the barrel.

[224] The Gemara asks: The result of that explanation is that the first clause of the mishna is in accordance with the opinion of Rabbi Yishmael and the latter clause is in accordance with the opinion of Rabbi Akiva. The Gemara answers: Indeed, it is as Rabbi Yoḥanan says: Anyone who explains to me both clauses of the mishna with regard to a barrel according to the opinion of one tanna I will honor, and carry his garments after him to the bathhouse, and treat him as a servant treats his master.

[225] The Gemara relates that Rabbi Ya'akov bar Abba interpreted the mishna before Rav: The mishna is referring to a case where the bailee took the barrel in order to rob the owner of it, and that is the meaning of the term: For his purposes. Since he intended to rob the owner of the barrel, he must return it to its place. In the first clause of the mishna, where the owner of the barrel did not designate a place for it, anywhere that he places it constitutes a return to its place. In the latter clause of the mishna, where the owner designated a place for the barrel, since the bailee did not return the barrel to that place, it is not considered to have been returned.

[226] Rabbi Natan bar Abba interpreted the mishna before Rav: The mishna is referring to a case where the bailee took the barrel in order to misappropriate it, as one who misappropriates the property of another is responsible for any subsequent damage to it.

[227] The Gemara asks: With regard to what do Rabbi Ya'akov and Rabbi Natan disagree? The Gemara answers: It is with regard to whether misappropriation requires loss: Is one liable for misappropriation only if it results in depreciation of the deposit, or is one liable for misappropriation even if he only intended to damage the deposit but there was no depreciation? The one who says that the bailee took the barrel in order to rob the owner of it holds that misappropriation requires loss. And the one who says that the bailee took the barrel in order to misappropriate it holds that misappropriation does not require loss.

[228] Rav Sheshet objects to that explanation: Does the tanna teach that the bailee took it? It is taught in the mishna: The bailee moved it, indicating that he sought neither to misappropriate it nor to rob the owner of it. Rather, Rav Sheshet said: With what are we dealing here? We are dealing with a case where the bailee moved the barrel to stand upon it and bring fledglings from a nest in a tree. The bailee did not attempt to use its contents. He merely climbed on the barrel. And the tanna of the mishna holds: The legal status of one who borrows without the knowledge of the owners is that of a robber in terms of responsibility. And the entire mishna is in accordance with the opinion of Rabbi Yishmael. And the latter clause is referring to a case where the bailee is responsible because he placed the barrel in a place that is not its designated place.

229 The Gemara asks: And why doesn’t Rabbi Yoḥanan, who claimed that it is not possible to establish both clauses of the mishna in accordance with the opinion of the same tanna, explain the mishna in that manner? He holds that the term: He placed it, indicates that he replaced it in its designated place. Therefore, the latter clause cannot be explained in accordance with the opinion of Rabbi Yishmael, and the contradiction remains.

230 § It was stated that there is an amoraic dispute between Rav and Levi. One says: Misappropriation requires loss. And one says: Misappropriation does not require loss. The Gemara comments: It may be concluded that it is Rav who says: Misappropriation does not require loss, as it is taught in a baraita: In the case of a shepherd who was herding his flock, which included the animals of others, and he abandoned his flock and went to the city, and a wolf came and devoured an animal, and a lion came and clawed an animal, the shepherd is exempt, as in any case, the attacks occurred through circumstances beyond his control. If he placed his staff and his satchel on the animal that was later attacked, he is liable to pay for the animal. Since he utilized the animal, it is as if he misappropriated it, and therefore he is liable to pay even in a case involving circumstances beyond his control.

231 And we discussed this baraita: Due to the fact that he placed his staff and his satchel on the animal, is he liable to pay? Didn’t he already remove them? Even if he improperly used the animal, he already removed his staff and satchel, and it is tantamount to returning it to the owners.

232 And Rav Naḥman says that Rabba bar Avuh said that Rav said: The tanna is referring to a case where the wolf devoured the animal when the staff and satchel were still on the animal. Since the bailee is still using the animal, it is considered his in terms of liability to pay for the damage caused. The Gemara asks: And if the staff and satchel are still on the animal, what of it? But he did not pull the animal and therefore did not acquire it.

233 And Rav Shmuel bar Yitzḥak says that Rav says: The tanna is referring to a case where the shepherd struck the animal with a staff and it ran before him, which is a form of pulling. The Gemara asks: But by causing the animal to run, he did not cause a loss to the animal. Why is he liable to pay? Rather, must one not conclude from it that Rav holds: Misappropriation does not require loss?

234 The Gemara rejects that proof: Say that he weakened the animal with a staff, and that is the only reason that he is liable to pay. The Gemara comments: Rav’s language is also precise, as he teaches: Where the shepherd struck the animal with a staff. The reason that he explains that he struck the animal with a staff, as opposed to his hand, is to indicate that the animal was weakened. The Gemara affirms: Learn from it that Rav holds that misappropriation requires loss.

235 The Gemara comments: And from the fact that Rav holds that misappropriation requires loss, it may be inferred that Levi holds that misappropriation does not require loss. The Gemara asks: What is the reason for the opinion of Levi? Rabbi Yoḥanan says in the name of Rabbi Yosei ben Nehorai: Misappropriation that is stated with regard to a paid bailee is different from misappropriation that is stated with regard to an unpaid bailee. There is no need for the Torah to state the halakha of misappropriation twice. If an unpaid bailee is liable to pay for misappropriation, all the more so is a paid bailee liable to pay. The reason that the Torah repeated this halakha is to teach that a paid bailee is liable to pay for misappropriation even if there is no loss.

236 Rabbi Yoḥanan continues: And I say that misappropriation by a paid bailee is not different.

[237] The Gemara elaborates: And what is meant by: Misappropriation that is stated with regard to a paid bailee is different from misappropriation that is stated with regard to an unpaid bailee? As one could claim: Let misappropriation not be stated with regard to a paid bailee, and derive it from misappropriation with regard to an unpaid bailee by means of an a fortiori inference: And if an unpaid bailee, who is exempt in cases where he claims theft and loss, misappropriated the deposit, he is liable to pay, then a paid bailee, who is liable in cases where he claims theft and loss, all the more so is it not clear that he is liable if he misappropriated the deposit? With regard to what halakha did the Merciful One write misappropriation in the case of a paid bailee? It is to say to you: Misappropriation does not require loss; intent to misappropriate is enough to render him liable to pay.

[238] Rabbi Yoḥanan stated: And I say that it is not different, in accordance with the opinion of Rabbi Elazar, who says: This case and that case are one. The Gemara elaborates: What is the meaning of: This and that are one? It means that it was necessary to teach misappropriation in both cases due to the fact that it can be refuted by an a fortiori inference: What is notable about an unpaid bailee? He is notable in that he pays the double payment when he falsely states the claim that a thief stole the deposit. A paid bailee reimburses the owner only for the cost of the deposit in that case. The legal status of the paid bailee is not consistently more stringent than that of an unpaid bailee, and therefore no a fortiori inference is possible.

[239] The Gemara comments: And the one who does not refute the a fortiori inference holds: The absolute requirement to pay the principal even without having taken a false oath is more stringent than the requirement to pay the double payment that is effected only with the bailee taking a false oath. In his opinion, the legal status of the paid bailee is consistently more stringent than that of an unpaid bailee, and therefore an a fortiori inference is possible.

[240] Rava says: The verse should not state misappropriation, neither with regard to an unpaid bailee nor with regard to a paid bailee, and one can derive it by means of an a fortiori inference from misappropriation with regard to a borrower: And if a borrower, who utilizes the deposit with the knowledge of the owner, misappropriated the deposit, he is liable to pay, then with regard to an unpaid bailee and a paid bailee, who may not utilize the deposit at all, all the more so is it not clear that they are liable to pay if they misappropriate the deposit?

[241] Why, then, is the halakha of misappropriation stated in the cases of the unpaid and paid bailees? One mention is to say to you: Misappropriation does not require loss. And the other mention is so that you will not say: With regard to this a fortiori inference, there is a principle: It is sufficient for the conclusion inferred from an a fortiori inference to be like the source of the inference, and thereby conclude: Just as a borrower who is in partnership with the owner is exempt, so too, an unpaid bailee and a paid bailee who are in partnership with the owner are exempt. Consequently, it was necessary for the verse to mention the halakha of misappropriation with regard to both the paid and unpaid bailee.

[242] The Gemara asks: And according to the one who says: Misappropriation requires a loss, why do I need these two mentions of misappropriation? The Gemara explains: One mention is so that you will not say with regard to this a fortiori inference the principle: It is sufficient for the conclusion that emerges from an a fortiori inference to be like its source.

[243] And the other mention is for that which is taught in a baraita. It is written: “And the master of the house shall approach the judges to determine whether he misappropriated his neighbor’s goods”

(Exodus 22:7). This is stated with regard to an oath. Do you say that it is stated with regard to an oath, or is it stated only with regard to judgment? Misappropriation is stated below, in a later verse in the chapter: “Whether he misappropriated his neighbor’s goods” (Exodus 22:10), and misappropriation is stated above, in an earlier verse in the chapter: “Whether he misappropriated his neighbor’s goods” (Exodus 22:7). Just as below it is stated explicitly with regard to an oath: “The oath of the Lord shall be between them both to determine whether he misappropriated his neighbor’s goods” (Exodus 22:10), so too here, it is stated with regard to an oath and not merely for judgment.

244 MISHNA: In the case of one who deposited coins with another, and that bailee bound it in a cloth and slung it behind him, or conveyed them to his minor son or daughter for safeguarding, or locked the door before them in an inappropriate, i.e., insufficient, manner to secure them, the bailee is liable to pay for the coins, as he did not safeguard the coins in the manner typical of bailees. But if he safeguarded the money in the manner that bailees safeguard items and it was nevertheless stolen, he is exempt.

245 GEMARA: Granted, for all the other cases, the bailee is liable to pay, as he did not safeguard the money in the manner that bailees safeguard items. But if the bailee bound it in a cloth and slung it behind him, what more was he to do? Rava says that Rabbi Yitzḥak said: The verse states: “And you shall bind up the money in your hand” (Deuteronomy 14:25), from which it is derived: Although it is bound, in order to safeguard the money, it must be in your hand.

246 And apropos that verse, Rabbi Yitzḥak says: A person’s money should always be found in his possession. He should not invest all of his money, leaving him with no money available for expenditures, as it is stated: “And you shall bind up the money in your hand.” And Rabbi Yitzḥak says: A person should always divide his money into three; he should bury one-third in the ground, and invest one-third in business [bifrakmatya], and keep one-third in his possession.

247 And Rabbi Yitzḥak says: Blessing is found only in a matter concealed from the eye, as it is stated: “The Lord will command blessing with you in your storehouses” (Deuteronomy 28:8), where the grain is concealed. The school of Rabbi Yishmael taught: Blessing is found only in a matter over which the eye has no dominion, as it is stated: “The Lord will command blessing with you in your storehouses.”

248 The Sages taught: One who goes to measure the grain on his threshing floor recites: May it be Your will, O Lord, our God, that You send blessing upon the product of our hands. If one began to measure the grain he says: Blessed is He Who sends blessing upon this pile of grain. If one measured and afterward recited this blessing, this is a prayer made in vain, because blessing is found neither in a matter that is weighed, nor in a matter that is measured, nor in a matter that is counted. Rather, it is found in a matter concealed from the eye, as it is stated: “The Lord will command blessing with you in your storehouses.”

249 § Shmuel says: There is safeguarding for money only in the ground. Rava said: And Shmuel concedes if one received a deposit on Shabbat eve at twilight, that the Rabbis did not impose upon him to bury it in the ground immediately. And if, at the conclusion of Shabbat, he delayed and did not bury the money within the period of time needed to bury it, he is liable to pay the owner if it is stolen. And if the one who deposited the money is a Torah scholar and the bailee thought: Perhaps he requires money for havdala, and that is the reason that he did not bury the money immediately, then he may delay burying the money a bit longer.

250 The Gemara comments: And now that rummagers, who dig to find and steal buried property, are commonplace, there is safeguarding for money only in the beams of the roof of a house. The Gemara comments: And now that dismantlers, who attempt to find and steal property hidden in beams, are commonplace, there is safeguarding for money only between the bricks of a wall. Rava said: And Shmuel concedes that money can be safeguarded in the wall or, alternatively, between the corners of the house. And now that tappers, who tap on walls to find and steal property hidden there, are commonplace, there is safeguarding for money only in the handbreadth of the wall adjacent to the ground or in the handbreadth of the wall adjacent to the ceiling, as tapping on the wall will not reveal their existence.

251 Rav Aḥa, son of Rav Yosef, said to Rav Ashi: We learned in a mishna there (Pesaḥim 31b): The legal status of leavened bread upon which a rockslide fell is like that of leavened bread that was eliminated, as it will remain there forever. Rabban Shimon ben Gamliel says: This ruling applies in any case where the leavened bread is covered to the extent that a dog is unable to detect it. And it is taught: How much is the measure of detection of a dog? It is three handbreadths. The question is: Here, what is the halakha? Do we require the money to be buried at a depth of three handbreadths or not?

252 Rav Ashi said to Rav Aḥa: There, with regard to bread, it is due to the scent that we require three handbreadths to obscure it from the dog. Here, with regard to money, it is because it must be obscured from the eye that we bury it. Scent is not relevant, and therefore we do not need three handbreadths. The Gemara asks: And how deep must the money be buried? Rafram from Sikhera said: One handbreadth.

253 The Gemara relates: There was a certain man who deposited money with another, and the bailee placed it in a willow hut from which the money was stolen. Rav Yosef said: Although with regard to thieves, placing the money in the hut is effective safeguarding, with regard to fire it is negligence, as it is likely to burn. Therefore, it is a case where the incident was initially through negligence and ultimately by accident, and the bailee is liable to pay. And some say: Although with regard to fire it is negligence, with regard to thieves it is effective safeguarding. Therefore, it is a case where the beginning of the incident was negligence and ultimately the damage was caused by accident, and the bailee is exempt. The Gemara concludes: And the halakha is: In a case where the incident was initially through negligence and ultimately by accident, the bailee is liable to pay.

254 The Gemara relates: There was a certain man who deposited money with another. Eventually, the owner of the money said to the bailee: Give me my money. The bailee said to him: I do not know where I placed it. The matter came before Rava, who said to the bailee: Every circumstance where a bailee claims: I do not know, is in and of itself negligence; go pay.

255 The Gemara relates: There was a certain man who deposited money with another. The bailee gave the money to his mother, and she placed the money in a chest [bekartalita], and it was stolen. Rava said: How should judges rule in this case?

256 Let us say to the bailee: Go pay. But he can say: There is a principle:

257 With regard to anyone who deposits an item with another, it is with the awareness that at times, the bailee’s wife and his children will safeguard the item that he deposits it. Therefore, I was within my rights to give the deposit to my mother.

[258] Let us say to his mother: Go and pay. She can say: My son did not tell me that the money is not his so that I should bury it, which is the optimal method to safeguard money.

[259] Let us say to the bailee: Why did you not say to her that the money is not yours? He can say: All the more so that my omission of this information was preferable, as when I say to her that the money is mine, she is even more careful with it.

[260] Rather, Rava said: The bailee takes an oath that he gave the money to his mother, and his mother takes an oath that she placed the money in the chest and it was stolen, and the bailee is exempt from payment.

[261] The Gemara relates: There was a certain steward who acted on behalf of orphans, who purchased an ox for the orphans and passed it to the cowherd. This ox did not have molars and other teeth with which to eat, and the ox died because it was unable to eat the standard food of oxen. Rami bar Ḥama said: How should judges rule in this case?

[262] Let them say to the steward: Go pay for the dead ox. But he can say: I gave it to the cowherd with the expectation that he would care for it.

[263] Let us say to the cowherd: Go pay for the dead ox. He can say: I placed the ox with other oxen and I threw food before it. We did not know that it did not eat.

[264] The Gemara asks: After all, the cowherd is a paid bailee of the orphans. Therefore, he was required to examine the situation and ascertain if the ox was eating. The Gemara answers: If there was loss for the orphans, indeed, the cowherd would be liable to pay. And with what are we dealing here? It is a case where there is no loss incurred by the orphans, as they found the previous owner of the ox, who sold it to them, and the orphans took their money back from him after discovering that the ox had this deficiency.

[265] The Gemara asks: Rather, who then claims compensation from the cowherd? The previous owner of the ox claims compensation from the steward: He should have informed us that the ox was not eating. The Gemara answers: What would we inform the previous owner? He knows that it is a mistaken transaction, as he would be aware that the ox had no teeth. The Gemara explains: This is a case with regard to a trader who buys from here and sells to there and does not know the condition of the ox. Therefore, the trader takes an oath that he did not know about the ox's defect, and the cowherd pays the value of the meat of the ox based on the cheapest price available in the market.

[266] The Gemara relates: There was a certain man who deposited hops, used in the production of beer, with another. The bailee himself had a pile of hops. The bailee said to his brewer: Cast hops in the beer from this pile. The brewer went and cast from the other pile, the pile of the one who deposited the hops, into the beer. Rav Amram said: How should judges rule in this case?

[267] Let us say to the bailee: Go pay. But he can say: I said to him, i.e., the brewer: Cast hops from this pile, and I am not at fault.

[268] Let us say to the brewer: Go pay. He can say: The bailee did not say to me: Cast hops from this pile and do not cast hops from that pile. I thought he was merely giving advice, and I did not know that he was insistent that I refrain from using the other hops.

[269] The Gemara comments: And if the hops of the bailee were closer to where he and the brewer were located than those that were deposited with him, the bailee should be liable. As, if the brewer delayed bringing the hops for the period of time that it would take to bring the bailee hops from his

own pile and he did not yet bring them to him, it is assumed that the bailee understood that the brewer had gone to bring the more distant, deposited, hops. By not objecting, the bailee revealed that he was amenable to brewing the beer from the deposited hops. The Gemara answers: This is a case where he did not delay bringing the hops, or alternatively, the two piles were equidistant from him.

[270] The Gemara asks: Ultimately, what loss is there? But doesn't the bailee profit in this case? Let the bailee give the owner beer equal to the value of the hops that he took from the deposit and no one loses. Rav Sama, son of Rava, said: The Gemara is referring to a case where the beer ferments and becomes vinegar. Therefore, it is impossible to take the value of the hops from the beer. Rav Ashi said: It is referring to a case where the hops were mixed with thorns and did not enhance the beer.

[271] And he pays him the value of the hops mixed with thorns according to his profit.

[272] MISHNA: In the case of one who deposits money with a money changer, if the money is bound, the money changer may not use it. Therefore, if it is lost he does not bear responsibility for it. If the money was unbound, the money changer may use it. Therefore, if it is lost he bears responsibility for it. If he deposited money with a homeowner, whether it is bound or whether it is unbound, the homeowner may not use it, as it never entered the mind of the depositor that the homeowner might use the money. Therefore, if the homeowner lost the money, he does not bear responsibility for it. If the bailee is a storekeeper, his status is like that of a homeowner; this is the statement of Rabbi Meir. Rabbi Yehuda says: If the bailee is a storekeeper, his status is like that of a money changer.

[273] GEMARA: The Gemara asks: Why is it that due to the fact that the money is bound the money changer may not use it? Don't people typically bind their money? Binding is no indication that the intent of the one who deposited the money is that it not be used. Rav Asi said that Rav Yehuda said: It is in a case where the money is bound and sealed, a clear indication that he does not want the bundle to be opened, that the mishna is taught. Rav Mari says: It is in a case where the money is bound with an atypical knot, also indicating that he does not want the bundle to be opened. There are those who say that there is a variant reading: Rav Mari raises a dilemma: What is the legal status of money bound with an atypical knot? Is it like that of money that is sealed or not? The Gemara concludes: The dilemma shall stand unresolved.

[274] § The mishna teaches that if the money is unbound the money changer may use it, and therefore he bears responsibility if it is lost. Rav Huna says: And even if it was taken from him under circumstances beyond his control he is liable to pay. The Gemara asks: But isn't it taught in the mishna: It is lost, from which it may be inferred that only if the money was lost does he bear responsibility, but not if it was taken by force? The Gemara answers: This must be understood in accordance with that which Rabba stated in a different context, as Rabba says: They were stolen; this is referring to a case where the items were stolen by force by armed bandits. They were lost; this is referring to a case where his ship sunk at sea.

[275] And Rav Naḥman says: If it was taken from him under circumstances beyond his control, he is not liable to pay. Rava said to Rav Naḥman: According to your opinion, that you said if it was taken from him due to circumstances beyond his control, he is not liable to pay; apparently, the money changer is not considered a borrower with regard to the money. If he is not a borrower, he is not a paid bailee either. Why, then, does he bear responsibility for the money if it is lost? His status should be that of an unpaid bailee, and he should be exempt. Rav Naḥman said to him: In this case, I concede that he is a paid bailee, since he benefits from the money. It is with the benefit the money

changer derives, based on the fact that if a profitable purchase would happen to present itself to him he can purchase it with the deposited money, that he is considered a paid bailee with regard to the money.

276 Rav Naḥman raised an objection to the opinion of Rav Huna from a mishna (Me’ila 21b): With regard to the Temple treasurer who deposits money with a money changer, if the money is bound, the money changer may not use it. Therefore, if he spent the money, the Temple treasurer is not liable for misuse of Temple property because the money changer is liable. If the money was unbound, the money changer may use it. Therefore, if the money changer spent the money, the Temple treasurer is liable for misuse of Temple property, as the money changer serves as an agent for the treasurer.

277 Rav Naḥman explains his objection: And if you say that even if the money was taken from the money changer under circumstances beyond his control, he bears responsibility for the money, why did the tanna specifically teach that the Temple treasurer bears responsibility if the money changer spent the money? Even if he did not spend the money the treasurer should bear responsibility. Since the Temple treasurer gave him unbound money, it is tantamount to a loan. The treasurer should be liable for misappropriation at the moment that he gave unbound money to the money changer.

278 Rav Huna said to him: The same is true even if he did not spend the money, and the treasurer is liable the moment he gives the money to the money changer. And since the tanna taught in the first clause of the mishna that the money changer is liable if he spent the money, the tanna taught in the latter clause of the mishna as well that the treasurer is liable if he spent the money, although he is liable even if he did not spend the money.

279 MISHNA: With regard to one who misappropriates a deposit, Beit Shammai say: He is penalized for its decrease and its increase. If the value of the deposit decreases, the bailee is liable to pay in accordance with its value at the time of the misappropriation. If it increases in value, he is liable to pay in accordance with its value at the time of repayment. And Beit Hillel say: He pays in accordance with its value at the time of removal. Rabbi Akiva says: He pays in accordance with its value at the time of the claim.

280 GEMARA: Rabba says: In a case of this one who robbed another of a barrel of wine, where initially it was worth one dinar and now it is worth four dinars; if the robber broke the barrel or drank the wine, he pays four dinars. If it broke by itself, he pays one dinar.

281 The Gemara elaborates: What is the reason for the difference? Since if the barrel were intact, it would return to its owner in its original state and there would be no need to calculate its price, that moment that he drank it or that he broke it is the moment that he stole from the owner of the wine. And we learned in a mishna (Bava Kamma 93b): All robbers pay in accordance with the value of the stolen item at the moment of the robbery. Here, that is four dinars. If the barrel broke by itself, the robber pays one dinar. What is the reason for this? He did not do anything to the barrel now. Why do you deem him liable to pay? Because of that moment that he robbed the other of it. At that moment, it was worth only one dinar.

282 We learned in the mishna that Beit Hillel say: One who misappropriates a deposit pays in accordance with its value at the time of removal. The Gemara asks: What is the meaning of: In accordance with its value at the time of removal? If we say it means in accordance with its value at the time of its removal from the world, when he drank the wine or broke the barrel, that is difficult.

[283] The Gemara clarifies the difficulty: And with regard to what case is this referring? If it is with regard to a case where there was a decrease in value before its removal, is there anyone who says that the bailee pays the lower price? But didn't we learn in a mishna: All robbers pay in accordance with the value of the stolen item at the moment of the robbery, and no less than that? And if it is with regard to a case where there was an increase in value before its removal, that is the opinion of Beit Shammai, as the one who misappropriates a deposit always pays the higher value, not the opinion of Beit Hillel.

[284] Rather, it is obvious that Beit Hillel hold that the bailee pays in accordance with its value at the time of its removal from the owner's house, i.e., at the time of the misappropriation. The Gemara asks: If so, shall we say that Rabba stated his opinion in accordance with the opinion of Beit Shammai and not the opinion of Beit Hillel? The Gemara rejects this: Rabba could have said to you: With regard to a subsequent increase in the value of the misappropriated deposit, everyone, Beit Shammai and Beit Hillel, agrees that the bailee pays in accordance with its value when the deposit was destroyed. When they disagree, it is in the case of a subsequent decrease in the value of the misappropriated deposit.

[285] Rabba clarifies: Beit Shammai hold that misappropriation does not require loss, and even if the deposit remains intact, his legal status is that of a robber from the moment of misappropriation. And therefore, when the value of the misappropriated deposit decreases, it decreases in his possession. Therefore, he pays in accordance with its value at the time of misappropriation. And Beit Hillel hold that misappropriation requires loss, and only when the deposit decreases in value after the misappropriation is the bailee liable to pay. And therefore, when the value of the misappropriated deposit decreases, it decreases in the possession of its owner. Therefore, he pays in accordance with its value at the time that it was damaged.

[286] The Gemara asks: But according to that explanation, concerning this halakha that Rava says: Misappropriation does not require loss, shall we say that the opinion that Rava stated is in accordance with the opinion of Beit Shammai? Rather, with what are we dealing here? It is with a case where the bailee moved the barrel to stand upon it and bring fledglings from a nest in a tree. And they disagree with regard to one who borrows an item without the knowledge of the owner.

[287] Beit Shammai hold: The legal status of one who borrows an item without the knowledge of the owner is that of a robber in terms of responsibility. He is accorded that legal status the moment he moves the barrel. And therefore, when the value of the misappropriated deposit decreases, it decreases in his possession. Consequently, he pays in accordance with its value at the time that he borrowed the barrel. And Beit Hillel hold: The legal status of one who borrows without the knowledge of the owners is that of a borrower, and only when the barrel is broken is the bailee rendered liable to pay. And therefore, when the value of the barrel decreases, it decreases in the possession of its owner. Consequently, he pays in accordance with the barrel's value at the time that it was damaged.

[288] The Gemara asks: But according to that explanation, concerning this halakha that Rava says: The legal status of one who borrows an item without the knowledge of the owner, according to the opinion of the Rabbis, is that of a robber in terms of responsibility, shall we say that the opinion that Rava stated is in accordance with the opinion of Beit Shammai? Rather, contrary to the previous explanations, the terms decrease and increase are not referring to changes in market value. They are

referring to the decrease in the value of the animal when its wool is sheared and the increase in its value due to the birth of offspring. And here, it is with regard to the enhancement of stolen property that they disagree. Beit Shammai hold: The enhancement of stolen property belongs to the one who was robbed. And Beit Hillel hold: The enhancement of stolen property belongs to the robber.

[289] And it is with regard to the issue that is the subject of the dispute between these tanna'im that they disagree, as it is taught in a baraita: With regard to one who robs another of a ewe, if he sheared it or if it gave birth, the robber pays the owner for it and for its fleece or for its offspring; this is the statement of Rabbi Meir. Rabbi Yehuda says: The stolen property returns to the owner in its current state.

[290] The Gemara comments: The language of the mishna is also precise, as it is taught that Beit Shammai say: He is penalized for its decrease and its increase. And Beit Hillel say: He pays in accordance with the time of removal. When recording the opinion of Beit Shammai, the mishna does not state: He is penalized for its rise and fall in value. The Gemara affirms: Learn from the wording of the mishna that they disagree with regard to fleece and offspring.

[291] § The mishna teaches that Rabbi Akiva says: He pays in accordance with its value at the time of the claim. Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Akiva. And Rabbi Akiva concedes in a case where there are witnesses to the misappropriation, as in that case the payment is calculated in accordance with the value of the deposit at the time of the misappropriation. What is the reason for that halakha? It is as the verse states concerning, among others, one who misappropriated a deposit: "To whom it appertains shall he give it on the day of his being guilty" (Leviticus 5:24). And in this case, since there are witnesses to the robbery, from that moment he is liable to pay him for his guilt. He is rendered guilty at the moment the witnesses saw him misappropriate the deposit.

[292] Rav Oshaya said to Rav Yehuda: My teacher, is that what you say? This is what Rabbi Asi says that Rabbi Yoḥanan says: Rabbi Akiva was in disagreement even in a case where there are witnesses to the misappropriation. What is the reason for that halakha? It is as the verse states: "To whom it appertains shall he give it on the day of his being guilty," and it is the court, not the witnesses, that renders him liable to pay him for his guilt.

[293] Rabbi Zeira said to Rabbi Abba bar Pappa: When you go there, to Eretz Yisrael, take a circuitous route to the Ladder of Tyre, and enter before Rabbi Ya'akov bar Idi, and ask of him if he heard whether according to Rabbi Yoḥanan the halakha is in accordance with the opinion of Rabbi Akiva or whether the halakha is not in accordance with the opinion of Rabbi Akiva. He went and asked. Rabbi Ya'akov bar Idi said to him: This is what Rabbi Yoḥanan says: The halakha is always in accordance with the opinion of Rabbi Akiva.

[294] The Gemara asks: What is the meaning of always? Rav Ashi said: Rabbi Yoḥanan used this term so that you will not say the following: This statement, that the halakha is in accordance with the opinion of Rabbi Akiva, applies specifically in a case where there are no witnesses, but in a case where there are witnesses, no, payment is calculated in accordance with the value of the deposit when they witnessed the misappropriation.

[295] Or alternatively, the halakha will not be in accordance with the opinion of Rabbi Akiva in a case where he returns the barrel to its place and it broke. Rabbi Yoḥanan stated that the halakha is always in accordance with the opinion of Rabbi Akiva, to exclude the opinion of Rabbi Yishmael, who says

that if one stole from another and returned it we do not require the knowledge of the owners for the item to be considered returned. Rabbi Yoḥanan teaches us that the halakha is that we require the knowledge of the owners, in accordance with the opinion of Rabbi Akiva (see 40b). And Rava says: Contrary to the opinion of Rabbi Yoḥanan, the halakha is in accordance with the opinion of Beit Hillel.

296 MISHNA: With regard to one who intends to misappropriate a deposit and voices that intent in the presence of witnesses, Beit Shammai say: He is liable to pay for any damage to the deposit from that point forward, and Beit Hillel say: He is liable to pay only if he actually misappropriates the deposit, as it is stated concerning a bailee: “Whether he has misappropriated his neighbor’s goods” (Exodus 22:7). If he tilted the deposited barrel and took from it a quarter-log of wine for his own use, and the barrel broke, then he pays only for that quarter-log. If he lifted the barrel and took from it a quarter-log of wine, and the barrel broke, since he acquired the barrel by lifting it, he pays the value of the entire barrel.

297 GEMARA: From where are these matters derived, that one is liable to pay for intent to misappropriate a deposit? It is as the Sages taught: It is written with regard to misappropriation: “For every matter of [devar] trespass” (Exodus 22:8). Beit Shammai say: The term devar, literally, word, teaches that one is liable to pay for a thought of misappropriation just as he is for an action. One pays for a matter of trespass even if there is no actual trespass. And Beit Hillel say: He is liable to pay only if he actually misappropriates the deposit, as it is stated: “Whether he has misappropriated his neighbor’s goods” (Exodus 22:7). Beit Shammai said to Beit Hillel: But isn’t it already stated: “For every matter of trespass”? Beit Hillel said to Beit Shammai: But isn’t it already stated: “Whether he has misappropriated his neighbor’s goods”?

298 If so, what is the meaning when the verse states “for every matter of trespass”? One might have thought: I have derived only that one is liable to pay if he misappropriated the deposit himself, but if he said to his slave or to his agent to misappropriate the deposit in his possession, from where is it derived that he is liable to pay due to their actions? The verse states: “For every matter of trespass,” from which it is derived that one’s speech renders him liable to pay for any misappropriation.

299 § The mishna teaches: If he tilted the deposited barrel, he is liable to pay only for the wine that he took. Rabba says: The Sages taught this halakha only if the barrel broke. But if the wine in the barrel fermented and spoiled, he pays for the entire barrel. The Gemara asks: What is the reason for this ruling? He is liable because it was his arrows, i.e., his actions, that were effective in spoiling the wine. Although he took only a quarter-log, the wine fermented and turned rancid as a result of his opening the cask.

300 § The mishna teaches: If one lifted the barrel and took from it a quarter-log of wine, he pays the value of the entire barrel. Shmuel says: When the tanna said: And took from it, it is not that he actually took the wine from the barrel. Rather, once he lifted it in order to take wine from it, although he did not yet take wine from it, if it breaks, he is liable to pay.

301 The Gemara asks: Shall we say that Shmuel holds that misappropriation does not require loss? The Sages say: No, do not draw that conclusion. It is different here, since it is preferable for the bailee that all the wine in this barrel will serve as a base for that quarter-log. Although his intent was to take a small amount of wine, since that small amount is better preserved within the full barrel of wine, it is as though he took the entire barrel.

[302] Rav Ashi raises a dilemma based on that explanation: If one lifts a purse in order to take from it a single dinar, what is the halakha? Is it only with regard to wine, which is preserved only by means of the wine in the barrel, that if one intends to take a quarter-log, it is as though he intended to take all of the wine in the barrel, but with regard to a dinar, which is preserved even alone, intent to take one dinar does not indicate intent to take all of the coins in the purse? Or, perhaps safeguarding a purse is different from safeguarding a dinar. A single coin is easily lost, whereas a purse is not, as it is more easily safeguarded. Therefore, when the bailee intends to take one dinar, he intends to take all of the coins in the purse. The Gemara concludes: The dilemma shall stand unresolved.

Chapter 4

[1] MISHNA: There is a halakhic principle that when one purchases an item, the payment of the money does not effect the transaction. The transaction is effected only by means of the buyer's physically taking the item into his possession, e.g., by pulling the item. Payment of money by the buyer creates only a moral obligation for the seller to sell him the item. When two types of currency are exchanged for each other, one of the types will have the status of the money being paid, and the other will have the status of the item being purchased. Handing over the former will not effect the transaction, while handing over the latter will. The mishna teaches: When one purchases gold coins, paying with silver coins, the gold coins assume the status of the purchased item and the silver coins assume the status of money. Therefore, when one party takes possession of the gold coins, the other party acquires the silver coins. But when one party takes possession of the silver coins, the other party does not acquire the gold coins.

[2] In an exchange of silver coins for copper coins, when one party takes possession of the copper coins, the other party acquires the silver coins. But when one party takes possession of the silver coins, the other party does not acquire the copper coins. In an exchange of flawed coins for unflawed coins, when one party takes possession of the flawed coins, the other party acquires the unflawed coins. But when one party takes possession of the unflawed coins, the other party does not acquire the flawed coins.

[3] In an exchange of an unminted coin for a minted coin, when one party takes possession of an unminted coin [asimon], the other party acquires a minted coin. But when one party takes possession of a minted coin, the other party does not acquire an unminted coin. In an exchange of a coin for movable property, when one party takes possession of the movable property the other party acquires the coin. But when one party takes possession of the coin, the other party does not acquire the movable property.

[4] This is the principle: With regard to those who exchange all forms of movable property, each acquires the property of the other, i.e., the moment that one of the parties to the exchange takes possession of the item that he is acquiring, e.g., by means of pulling, the other party acquires the item from the first party. How so? If the buyer pulled produce from the seller, but the buyer did not yet give the seller their value in money, he cannot renege on the transaction, but if the buyer gave the seller money but did not yet pull produce from him, he can renege on the transaction, as the transaction is not yet complete.

[5] But with regard to the latter case, the Sages said: He Who exacted payment from the people of the generation of the flood, and from the generation of the dispersion, i.e., that of the Tower of Babel, will in the future exact payment from whoever does not stand by his statement. Just as the people of those generations were not punished by an earthly court but were subjected to divine punishment, so too, although no earthly court can compel the person who reneged to complete the transaction, punishment will be exacted at the hand of Heaven for any damage that he caused.

[6] Rabbi Shimon says: Anyone who has the money in his possession has the advantage. The Sages said it is only with regard to the seller that payment of money does not effect a transaction, so that if the buyer paid for the item and did not yet take possession of the purchase item, the seller can renege on the sale and return the money. By contrast, once the buyer paid for the item he cannot renege on his decision and demand return of his money, even if he did not yet take possession of the purchase item.

[7] GEMARA: Rabbi Yehuda HaNasi would teach Rabbi Shimon, his son: When one party takes possession of the gold coins, the other party acquires the silver coins, consistent with the mishna. Rabbi Shimon said to him: My teacher, you taught us in your youth, in the first version of the mishna: When one party takes possession of the silver coins, the other party acquires the gold coins, and do you then teach us in your old age: When one party takes possession of the gold coins, the other party acquires the silver coins?

[8] The Gemara asks: In his youth, what did Rabbi Yehuda HaNasi hold, and in his maturity, what did he hold? What is the basis for his original opinion, and what led him to change his mind? The Gemara explains: In his youth he held: Gold coins, which are more valuable, are currency; silver coins, which are relatively not valuable, are a commodity, i.e., the purchase item. The principle is: When one party takes possession of a commodity the other party acquires the currency. In his old age, he held: Silver coins,

[9] which circulate, in the sense that they are universally accepted by merchants, in contrast to gold coins, which merchants are less willing to accept as payment for inexpensive items, are currency; gold coins, which do not circulate, are a commodity. And the principle is: When one party takes possession of the commodity, the other party acquires the currency.

[10] Rav Ashi said: It is reasonable to teach the halakha in accordance with that which he taught in his youth. This is from the fact that the tanna teaches later in the mishna: When one party takes possession of the copper coins, the other party acquires the silver coins.

[11] Rav Ashi explains: Granted, if you say that the silver coins relative to the gold coins are a commodity, that is the reason that the tanna teaches: When one party takes possession of the copper coins, the other party acquires the silver coins, as, even though relative to the gold coins, the silver coins are a commodity, the tanna teaches that relative to copper coins, they are currency. But if you say that the silver coins relative to the gold coins are currency the subsequent ruling is self-evident, as now, relative to the gold coins, which are more valuable than the silver coins, you say that silver coins are currency, then relative to copper coins, as the silver coins are more valuable than the copper coins and they also circulate more easily, is it necessary for the mishna to state that the silver coins are currency and the copper coins are a commodity?

[12] The Gemara rejects this proof. Even if you teach the halakha in accordance with the opinion of Rabbi Yehuda HaNasi in his old age, it was necessary for the tanna to teach the halakha of silver and

copper coins as well. This is because it might enter your mind to say that in a place where these copper perutot circulate, they circulate more easily than silver coins. Therefore, say that they are the currency and the silver coins are the commodity. Therefore, the tanna teaches us that since silver coins are universally accepted as currency and there is a place where copper coins do not circulate, the copper coins are a commodity.

[13] § The Gemara comments: And Rabbi Ḥiyya, as well, holds that gold coins are currency relative to silver. This is seen from the incident where Rav borrowed gold dinars from the daughter of Rabbi Ḥiyya. Ultimately, the gold dinars appreciated in value. Rav came before Rabbi Ḥiyya to ask his opinion. Rav was concerned that by returning more valuable dinars than he borrowed, this would violate the prohibition against paying interest. Rabbi Ḥiyya said to Rav: Go and pay her unflawed and weighed dinars. Return the number of dinars that you borrowed, as their monetary value is irrelevant. The Gemara asks: Granted, if you say that the gold coins are currency, this works out well, as he borrowed and repaid the same coins. But if you say that the gold coins are a commodity, this is parallel to the case of one who borrows a se'a of produce and repays a se'a of produce, which is prohibited, as the price of the produce may increase in the interim (see 75a).

[14] The Gemara rejects this proof. The dinars that Rav received from the daughter of Rabbi Ḥiyya did not constitute a standard loan, as Rav had dinars elsewhere, but he needed money immediately. And since he had dinars, it is tantamount to saying to her: Lend me money until my son comes or until I find the key. As the mishna on 75a teaches, when the borrower possesses the same item he is borrowing, and merely does not have momentary access to it, this type of borrowing and repayment is permitted.

[15] Rava said: This following tanna also holds that the gold coins are currency, as it is taught in a baraita: The peruta of which the Sages spoke in all places in the mishna is one-eighth of an Italian issar. The Gemara asks: What is the practical difference that emerges from this calculation? Ostensibly, a peruta is a peruta. The Gemara explains: Its consequences are for the betrothal of a woman with money, which can be effected only with money or an item worth at least one peruta. This peruta is assessed by means of the Italian issar. The baraita continues: An issar is one twenty-fourth of a silver dinar. The Gemara asks: What is the practical difference that emerges from this calculation? The Gemara answers: Its consequences are for buying and selling, to establish its value for use in commercial transactions.

[16] The baraita continues: A silver dinar is one twenty-fifth of a gold dinar. What is the practical difference that emerges from this calculation? The Gemara explains: Its consequences are with regard to redemption of the firstborn son. The father of a firstborn gives the priest five sela, which are worth twenty silver dinars. Were he to give the priest a gold dinar he would receive five silver dinars change.

[17] The Gemara asks: Granted, if you say that the gold coins are currency, the tanna calculates the value of the coins based on an item whose value is fixed. The value of the gold coin is the currency with fixed value, relative to which the silver dinar is a commodity, whose value fluctuates. But if you say that gold is a commodity, would the tanna calculate the value of a silver coin based on an item that appreciates and depreciates? If the value of gold fluctuates, sometimes the priest returns more than five silver dinars to the father who redeemed his son with a gold dinar, and sometimes the father must add to the gold dinar and give this additional sum along with the gold dinar to the priest to

complete the sum of five sela. Rather, learn from it that the tanna holds that the gold coins are currency. The Gemara affirms: Learn from it that this is so.

18 § We learned in a mishna there (Ma’aser Sheni 2:7): Beit Shammai say: A person may not transfer silver sela coins of tithe money or other consecrated coins into gold dinars through redemption, and Beit Hillel permit doing so. Rabbi Yoḥanan and Reish Lakish disagreed. One said: The dispute between Beit Shammai and Beit Hillel is with regard to exchanging silver sela coins for gold dinars, as Beit Shammai hold that the silver coins are currency and the gold coins are a commodity, and we do not desacralize currency with a commodity. And Beit Hillel hold that the silver coins are a commodity and the gold coins are currency, and we desacralize a commodity with currency. But everyone agrees that we desacralize produce with gold dinars.

19 What is the reason for the difference between sela coins and produce? The reason is just as it is with regard to silver coins according to Beit Hillel. With regard to silver coins according to Beit Hillel, although silver coins relative to gold coins are a commodity, relative to produce they are currency. So too is the status of gold coins according to Beit Shammai: Although gold coins are a commodity relative to silver coins, relative to produce they are currency. Therefore, one may desacralize produce with gold dinars. And one said: Even with regard to the exchange of produce for dinars there is a dispute between Beit Shammai and Beit Hillel.

20 The Gemara asks: And according to the one who says: There is a dispute even with regard to the exchange of produce for dinars, then rather than disagreeing with regard to the exchange of sela coins for dinars let them disagree with regard to the fundamental case of desacralizing, the exchange of produce for dinars. The Gemara answers: Had they disagreed with regard to the exchange of produce for dinars, I would say: This matter applies only with regard to the exchange of produce for dinars. But with regard to the exchange of sela coins for dinars, Beit Hillel concede to Beit Shammai that gold coins relative to silver coins are a commodity, and we do not desacralize currency with a commodity. Therefore, the tanna teaches us that they disagree in that case as well.

21 The Gemara suggests: Conclude that in this dispute between Rabbi Yoḥanan and Reish Lakish it is Rabbi Yoḥanan who said: One does not desacralize produce with gold dinars, as Rabbi Yoḥanan said:

22 It is prohibited for one to borrow a dinar and repay the loan with a dinar, because if the value of the dinar changes in the interim, both the borrower and the lender will have violated the prohibition against interest.

23 The Gemara elaborates: The reference is to a dinar of what type of metal? If we say the reference is to one who borrowed a silver dinar and repaid the loan with a silver dinar, is there anyone who says that silver relative to itself is not currency? Rather, it is obvious that the reference is to one who borrowed a gold dinar and repaid the loan with a gold dinar. The Gemara continues its analysis: And in accordance with whose opinion does Rabbi Yoḥanan state this halakha? If it is in accordance with the opinion of Beit Hillel, don’t they say that a gold dinar is currency? Rather, isn’t it in accordance with the opinion of Beit Shammai? And learn from it that it is Rabbi Yoḥanan who said that according to Beit Shammai we do not desacralize produce with gold dinars, as he holds that they are not considered currency.

24 The Gemara rejects this proof: No, actually I will say to you that it is Rabbi Yoḥanan who said that even according to Beit Shammai we desacralize produce with gold dinars. And the halakha of a loan is different from the halakha of desacralizing second tithe, as with regard to buying and selling,

the Sages deemed the legal status of a gold dinar like that of a commodity. As we say: It is the gold that appreciates and depreciates in value, in accordance with the halakha in the mishna: When one party takes possession of the gold coins, the other party acquires the silver coins. With regard to a loan as well, the legal status of a gold dinar is like that of a commodity, and therefore there is concern that they may violate the prohibition against interest.

[25] The Gemara comments: So too, it is reasonable to say that this is Rabbi Yoḥanan's opinion, as when Ravin came from Eretz Yisrael he said that Rabbi Yoḥanan says: Even though they said that it is prohibited to borrow a gold dinar and repay the loan with a gold dinar, yet, one may desacralize second tithe with a gold dinar. Conclude from it that it is Rabbi Yoḥanan who said that one desacralizes second-tithe produce with a gold dinar.

[26] Apropos redemption of second-tithe produce with gold, the Gemara cites proof from a mishna (Ma'aser Sheni 2:8). Come and hear: With regard to one who exchanges copper coins of second-tithe money for a silver sela coin to ease its transport to Jerusalem, Beit Shammai say: He may exchange the copper coins for the entire silver sela. And Beit Hillel say: He may exchange the copper coins for a silver shekel, which is equivalent to half a sela, and with regard to the other shekel, he must retain the copper coins. Now, if according to Beit Shammai we desacralize second-tithe produce with copper perutot, is it necessary to mention the fact that it may be desacralized with gold coins? The Gemara rejects that proof: Perutot are different, as in a place where they are in circulation, they circulate more easily than silver coins.

[27] § There is another version of this discussion, and some say that this is the dispute between Rabbi Yoḥanan and Reish Lakish. One said: The dispute between Beit Shammai and Beit Hillel is with regard to exchanging silver sela coins for gold dinars, as Beit Shammai hold that when the verse states: "And you shall bestow the money and you shall bind the money in your hand" (Deuteronomy 14:25), the term "the money" is referring to the first money, i.e., the very money with which the second-tithe produce was desacralized, and it is not referring to the second money, e.g., gold coins that became second-tithe money by virtue of their being exchanged with second-tithe silver sela coins. Evidently, the money with which the second-tithe produce was desacralized must be taken to Jerusalem and it may not be exchanged for other coins.

[28] And Beit Hillel hold that since it is written: "The money," and this second mention of money in that verse is superfluous, the term "the money" serves to include even second money. Accordingly, the verse teaches that money with which the produce was desacralized may be exchanged for other money that will be brought to Jerusalem. The Gemara continues its citation of this first explanation of the dispute between Beit Shammai and Beit Hillel: But with regard to desacralizing produce with dinars, everyone agrees that we desacralize produce in that manner, as the gold dinars are still the first money used for desacralizing, as any type of money can be used for desacralizing second-tithe produce.

[29] And one said: There is a dispute between Beit Shammai and Beit Hillel even with regard to the desacralizing of produce with dinars, as to whether desacralizing must be accomplished with silver or if it can be accomplished even with gold.

[30] The Gemara challenges: But according to the one who says: The dispute between Beit Shammai and Beit Hillel is with regard to exchanging silver sela coins for gold dinars, rather than disagreeing with regard to exchanging of silver sela coins for gold dinars, let Beit Shammai and Beit Hillel

disagree with regard to the more straightforward case of exchanging sela coins for sela coins, as according to those who forbid exchanging a sela for dinars, exchanging a sela for a sela is also forbidden, as one may not convert the second-tithe sanctity to second money.

[31] The Gemara explains: Had they disagreed with regard to the exchange of sela coins for sela coins, I would say: This matter applies only with regard to exchanging sela coins for sela coins, but with regard to exchanging sela coins for dinars, Beit Hillel concede to Beit Shammai that gold coins relative to silver coins are a commodity, and we do not desacralize currency with a commodity. Therefore, the tanna teaches us that they disagree in the case of exchanging silver sela coins for gold dinars as well.

[32] The Gemara suggests: Come and hear proof to the correct ruling in this dispute from a mishna (Ma’aser Sheni 2:9): With regard to one who exchanges a silver sela of second-tithe money for copper coins in Jerusalem, Beit Shammai say: With the entire sela he executes the exchange for copper coins; and Beit Hillel say: He may exchange half the sela for a silver shekel, and half the sela for copper coins having the value of a shekel. The Gemara analyzes the mishna: Now if we allow him to desacralize silver coins for perutot, and we do not say that there is a Torah decree of first money and not second money, then with regard to gold, which is more valuable than silver, do we say that there is a Torah decree of first money and not second money?

[33] Rava said in response: Are you raising an objection from the halakha of exchanging coins within Jerusalem in order to apply it to the halakha of exchanging coins outside of Jerusalem? The legal status of Jerusalem is different with regard to exchanging second-tithe coins, as it is written with regard to Jerusalem: “And you shall bestow the money for whatever your soul desires, for cattle or for sheep” (Deuteronomy 14:26). One may utilize the money in Jerusalem in any manner he chooses.

[34] Come and hear proof from the mishna (Ma’aser Sheni 2:8): With regard to one who exchanges copper coins of second-tithe money for a silver sela coin to ease its transport to Jerusalem, Beit Shammai say: He may exchange the copper coins for the entire silver sela. And Beit Hillel say: He may exchange the copper coins for a silver shekel, which is equivalent to half a sela, and with regard to the other shekel, he must retain the copper coins. This constitutes proof that everyone agrees one may exchange second-tithe coins for other coins.

[35] Rather, the Gemara abandons its previous explanation of the dispute and states that everyone agrees that since it is written: “The money,” and this second mention of money in that verse is superfluous, the term “the money” serves to include even second money. Rather, if the dispute between Rabbi Yoḥanan and Rabbi Shimon ben Lakish was stated, it was stated like this: One said: The dispute between Beit Shammai and Beit Hillel is with regard to the exchange of silver sela coins for gold dinars. As Beit Shammai hold: We issue a decree rendering it prohibited to do so,

[36] lest one delay his ascension to Jerusalem due to this exchange, as sometimes the silver coins do not amount to the entire gold dinar, and he will not ascend to Jerusalem until he has collected enough silver dinars to exchange for a gold dinar. And Beit Hillel hold: We do not issue a decree lest he delay his ascension, as even if the silver coins do not amount to the entire gold dinar he will ascend with the silver coins. But with regard to desacralizing produce with dinars, everyone agrees that we desacralize produce in this manner, due to the fact that since the produce rots, he certainly does not delay taking the produce to Jerusalem until they equal an entire gold dinar.

[37] And one said: Even with regard to the exchange of produce for dinars there is a dispute, due to the concern that one will delay bringing his produce to Jerusalem until the value of his second-tithe produce is equal to a gold coin.

[38] The Gemara asks: Granted, according to that version of the dispute in which you said that everyone agrees the exchange of silver sela coins for gold dinars is permitted by Torah law and it is the Sages who issued a decree forbidding it, this is the reason that the dispute between Beit Hillel and Beit Shammai is taught in terms of the formulation: One may do, and: One may not do, as this is the language of a prohibition ab initio. But according to that version of the dispute in which you said that it is with regard to the halakha by Torah law that they disagree, it should have been phrased in terms of the formulation: We desacralize, and: We do not desacralize, since if the practice is forbidden by Torah law, the exchange of silver sela coins for gold dinars is ineffective even after the fact. The Gemara concludes: Indeed, according to the latter version, it is difficult.

[39] § It was stated that there is a dispute between Rav and Levi. One said: Money can be an item used to effect exchange. And one said: Money cannot be the item used to effect a transaction by means of exchange, as that form of transaction is effective only with regard to items such as produce and vessels. Rav Pappa said: What is the reason for the opinion of the one who says that money cannot be the item used to effect a transaction by means of exchange? It is because the mind of the one acquiring the coin is on the form minted on the coin, not the value of the metal, and the value due to the form is apt to be canceled by the authorities. Therefore, in the eyes of the party acquiring it, the coin itself has no real value and therefore cannot be an item used to effect exchange.

[40] We learned in the mishna: When one party takes possession of the gold coins the other party acquires the silver coins. What, is the reference not to a case where the gold coins were given in order to acquire the silver coins by means of exchange, and therefore one can learn from it that a coin can be an item used to effect exchange? The Gemara rejects this proof: No, it is referring to a standard purchase effected by means of giving money. The Gemara raises a difficulty: If so, the language of the mishna is imprecise, as what is the meaning of: When one party takes possession of the gold coins, the other party acquires the silver coins? It should have stated: When one party takes possession of the gold coins, it obligates him to give the silver coins. The Gemara answers: Emend the text and teach: When one party takes possession of the gold coins, it obligates him to give the silver coins.

[41] The Gemara comments: So too, it is reasonable to interpret the mishna in that manner, from the fact that it teaches in the latter clause of the mishna: When one party takes possession of the silver coins, the other party does not acquire the gold coins. Granted, if you say that this is a purchase effected by means of giving money, this is the meaning of that which we said: Gold is a commodity, and silver is currency, and currency does not effect acquisition of a commodity. But if you say that the mishna is referring to an acquisition effected by means of exchange, let both acquire the coins simultaneously from each other.

[42] And furthermore, it is taught in a baraita: When one party takes possession of the silver coins, the other party does not acquire the gold coins. How so? If one sold twenty-five silver dinars to another for a gold dinar, even though he pulled the silver into his possession, he does not acquire it until the other person pulls the gold into his possession. Granted, if you say that this is a purchase effected by means of giving money, it is due to that reason that he does not acquire the gold coins; the transaction

is effected only by taking possession of the purchase item. But if you say that this is an acquisition effected by means of exchange, let him acquire the gold by pulling the silver; in a transaction of exchange the two parties acquire the two items simultaneously.

[43] The Gemara continues: Rather, what then is the nature of the transaction? Is it a purchase effected by means of giving money? If so, then say the first clause of the baraita: When one party takes possession of the gold coins the other party acquires the silver coins. How so? If one sold a gold dinar to another for twenty-five silver dinars, once he pulled the gold coin into his possession the silver coins are acquired wherever they are.

[44] The Gemara challenges: Granted, if you say that this is an acquisition effected by means of exchange, this is the meaning of that which is taught: The silver coins are acquired wherever they are, as that is the nature of the transaction of exchange. But if you say that this is a purchase effected by means of giving money, this phrase: The silver coins are acquired wherever they are, is incorrect, as the tanna should have stated: Once he pulled the gold coin into his possession the man is obligated to pay for his acquisition, as he is not required to pay with those particular silver coins.

[45] Rav Ashi said: Actually, the reference is to a purchase effected by means of giving money. And what is the meaning of: Wherever they are? It means, as they are, i.e., exactly as the owner of the silver said to him, and he cannot replace them with a different classification of coins. How so? If the owner of the silver coins said to the owner of the gold coin: I will give you payment from a purse in which there are new coins, he cannot give him payment from a purse in which there are old coins, even though old coins are preferable relative to new coins because people trust that used coins are authentic. What is the reason that the owner of the gold would prefer new silver coins? It is that he says to the owner of the silver: I need them in order to age them; i.e., these coins will remain in my possession for a long time, and old coins will blacken in these circumstances.

[46] Rav Pappa says: Even according to the one who says: Money cannot be the item used to effect a transaction by means of exchange, this means only that money does not effect a transaction of exchange; but he concedes that money is acquired by means of a transaction of exchange. If one party pulls a vessel into his possession, the other party acquires silver coins in exchange, just as it is with regard to produce, according to the opinion of Rav Naḥman. Is it not the case that even though according to the opinion of Rav Naḥman produce itself does not effect a transaction of exchange, nevertheless produce is acquired by means of a transaction of exchange? Currency, too, is no different.

[47] The Gemara raises an objection to the opinion of Rav Pappa from a baraita: One was standing on the threshing floor and had no money in his hand, and wanted to desacralize his second-tithe produce without paying an additional one-fifth. The halakha is that one who desacralizes his own produce must add one-fifth to its value. This man wants to engage in artifice as if he sold the produce to another, thereby enabling him to desacralize it without adding one-fifth. To that end, he says to another: This produce is hereby given to you as a gift,

[48] and then he says: This second-tithe produce that now belongs to you is hereby desacralized on coins that I have at home. The Gemara infers: The reason that it is necessary to employ this artifice is that he does not have coins in his hand. But if he has coins in his hand let him transfer ownership of the coins to the other person by means of the transaction of pulling, and then that other person will desacralize the second-tithe produce. The reason for this is that this procedure is preferable, as the

one who desacralizes the produce is a stranger, not the owner of the produce. Therefore, it appears less like artifice designed to circumvent paying the additional one-fifth.

49 The Gemara continues to state its objection to the opinion of Rav Pappa. And if you say a coin is acquired by means of a transaction of exchange, then even if the owner of produce has no money in his hand, let the owner transfer ownership of the coins, wherever they are, to the other person by means of a cloth, as he can perform a transaction of symbolic exchange with a cloth; and then let the other person desacralize the produce. The Gemara answers: The case in the baraita is one in which he does not have a cloth. The Gemara challenges: And let the owner transfer ownership of the coins to the other person by means of land, i.e., perform an act of transaction concerning the land and include the coins in the transaction. The Gemara answers: The case in the baraita is one in which he does not have land.

50 The Gemara asks: But isn't it taught in the baraita that he is standing on the threshing floor? The Gemara answers: He is standing on a threshing floor that is not his. The Gemara asks: And did the tanna go to all that trouble just to teach us the case of a naked man, i.e., one who has nothing at all? It is unlikely that a baraita would be devoted to so remote a case. Rather, must one not conclude from it that money is not acquired by means of a transaction of exchange? The Gemara affirms: Learn from it that this is the halakha.

51 The Gemara relates: And even Rav Pappa retracted his previous statement that coins are acquired by means of a transaction of exchange, as in this incident in which Rav Pappa had twelve thousand dinars that he lent to another in Bei Ḥozai. He transferred ownership of the dinars to his agent, Rav Shmuel bar Aḥa, by means of granting acquisition of the threshold of his house to him, to enable the agent to demand repayment of the loan on his own behalf. This obviated the need for him to consult Rav Pappa in the case of every contingency, which would complicate matters. It is apparent from the fact that the transaction was effected by means of granting acquisition of the threshold that Rav Pappa concedes that coins are not acquired by means of a transaction of exchange. When Rav Shmuel bar Aḥa came after repayment of the loan, Rav Pappa was so pleased that he went out as far as Tevakh to meet him.

52 The Gemara adds: And likewise, Ulla says: Money cannot be the item used to effect a transaction by means of exchange. And likewise, Rav Asi says: Money cannot be the item used to effect a transaction by means of exchange. And likewise, Rabba bar bar Ḥana says that Rabbi Yoḥanan says: Money cannot be the item used to effect a transaction by means of exchange.

53 Rabbi Abba raised an objection to the opinion of Ulla from a baraita: With regard to one whose donkey drivers or laborers were demanding payment of their wages from him in the marketplace, and he said to the money changer: Give me coins worth a dinar and I will provide for them, and later I will give you coins worth a dinar and a tereisit, a coin of lesser value, from money that I have at home, then if he has money at home at that time it is permitted, as it is not considered a loan and therefore the additional payment is not interest. But if he does not have money at home at that time, it is a loan and the additional payment is forbidden as interest. And if it enters your mind that money cannot be the item used to effect a transaction by means of exchange, then even in the case where the employer had money at home, since the money changer does not acquire the employer's money at home by means of exchange, it is a loan and the additional payment is forbidden as interest. Ulla was silent.

[54] Rabbi Abba then said the following suggestion to Ulla: Perhaps the Sages taught this halakha in a case where both these coins that are in his house and those coins that he took from the money changer are perotetot, small perutot that are unminted, and the legal status of both these coins and those coins is that of a commodity; and due to that status they are acquired by means of a transaction of exchange. Ulla said to him: Yes, that is the case in the baraita, and the language of the baraita is also precise, as it teaches: I will give you coins worth a dinar and a tereisit, and it does not teach: I will give you an unflawed dinar and a tereisit. Evidently, the baraita is not referring to his giving an actual dinar coin but to other coins of lesser value that equal that value. The Gemara affirms: Learn from it that this is the case.

[55] Rav Ashi said: Actually, it can be explained that there is no transaction by means of exchange in this case. Rather, it is a purchase with money and the tanna is referring to perotetot, and nevertheless there is no violation of the prohibition against interest. Since he has money at home, it is tantamount to saying: Lend me money until my son comes or until I find the key. That is not a loan, and the halakhot of interest do not apply.

[56] The Gemara suggests: Come and hear proof from a mishna (Kiddushin 28a): With regard to all items used as monetary value for another item, i.e., instead of a buyer paying money to the seller, they exchange items of value with each other, once one party in the transaction acquires the item he is receiving, this party is obligated with regard to the item being exchanged for it. The Gemara analyzes this mishna: With regard to all items used as monetary value for another item, what does the mishna mean in this phrase? It means a coin, and learn from the mishna that a coin can be an item used to effect exchange.

[57] Rav Yehuda said: This is what the mishna is saying:

[58] With regard to all items that can be appraised when used as monetary value for another item, i.e., their value can be appraised relative to the value of another item, excluding a coin, whose value is apparent, once one party in the transaction acquires the item he is receiving, this party is obligated with regard to the item being exchanged for it. The novelty of the mishna is that all items, not only vessels, can be used to perform the act of acquisition of exchange. Therefore, one should not infer that the halakha is the same with regard to coins.

[59] The Gemara comments: So too, it is reasonable to interpret the mishna in that manner, from the fact that the latter clause of that mishna teaches: How so? If one exchanges an ox for a cow, or a donkey for an ox, once this party acquires the animal that he is receiving, this party is obligated with regard to the item being exchanged for it. This clause apparently explains the previous clause, and employs the example of animals, not coins. The Gemara concludes: Learn from it that the reference in the mishna is to movable property, not to coins.

[60] The Gemara asks: And with regard to what entered our minds initially, that a coin effects symbolic exchange, what is the meaning of the clause: How so; if one exchanges an ox for a cow, once this party acquires the animal that he is receiving, this party is obligated with regard to the item being exchanged for it? This example does not involve a coin. The Gemara explains that it was assumed that this is what the mishna is saying: Not only can a coin be used in the act of acquisition of exchange, but produce, i.e., movable property, can also effect exchange. How so? If one exchanged the meat of an ox for a cow, or the meat of a donkey for an ox, once this party acquires the item that he is receiving, this party is obligated with regard to the item being exchanged for it.

[61] The Gemara comments: This works out well according to the opinion of Rav Sheshet, who said: Produce effects a transaction of exchange. But according to the opinion of Rav Naḥman, who said: A vessel, yes, it effects a transaction of exchange, but produce does not effect a transaction of exchange, what is the meaning of the continuation of the mishna beginning with the question: How so?

[62] The Gemara answers that this is what the mishna is saying: There is a purchase with money where one acquires the purchase item without pulling it that is like a transaction of exchange. How so? It is in a case where one exchanged the monetary value of an ox for a cow, or the monetary value of a donkey for an ox. In this case, one sold his ox to another for an agreed sum of money, and after the buyer acquired the ox by pulling it, he then offered to give the seller his cow in exchange for the money that he owes him. In this case the cow is acquired without the seller having to pull it. Although this acquisition initially was to be an exchange, it is ultimately a purchase for money, as the second animal is acquired as a result of the forgiving of the monetary debt.

[63] The Gemara inquires: What is the reason for the opinion of Rav Naḥman? The Gemara explains: Rav Naḥman holds in accordance with the opinion of Rabbi Yoḥanan, who says: By Torah law money effects acquisition, i.e., when one pays money he acquires the item, even if he has not yet performed another act of acquisition. And for what reason did the Sages say that pulling acquires an item and money does not? This is a rabbinic decree lest the seller say to the buyer after receiving the money: Your wheat was burned in the upper story. If a fire breaks out or some other mishap occurs after a seller receives the money, he will not bother to save the goods in his house because they no longer belong to him, and the buyer may incur a loss.

[64] The Sages therefore decreed that acquisition takes effect only when a buyer pulls the item. The mishna allows a transaction that indicates that one can effect acquisition using only money because that case of the mishna as explained by Rav Naḥman is an uncommon occurrence. It is rare for one who has sold his animal in exchange for money to change his mind and request an animal from the purchaser instead. And it is only with regard to a common matter that the Sages issued a decree, whereas with regard to an uncommon matter, the Sages did not issue a decree. Consequently, the Sages did not apply their decree to this situation.

[65] The Gemara asks: And how is the mishna explained according to the opinion of Reish Lakish, who disagrees with Rabbi Yoḥanan and says that pulling is explicitly stated in the Torah? Reish Lakish maintains that the acquisition of movable property cannot be performed with money by Torah law, and therefore there can be no distinction between common and uncommon cases. This works out well if Reish Lakish holds in accordance with the opinion of Rav Sheshet, who says that produce effects exchange. If so, he can explain the mishna in accordance with the opinion of Rav Sheshet.

[66] But if he holds in accordance with the opinion of Rav Naḥman, who says that produce does not effect exchange and a coin does not effect acquisition by Torah law or by rabbinic law, how does he explain the mishna? The Gemara answers: Perforce Reish Lakish explains the mishna in accordance with the opinion of Rav Sheshet.

[67] We learned in the mishna: With regard to those who exchange all forms of movable property, each acquires the property of the other. And Reish Lakish says: The expression: All forms of movable property, includes even a case where they exchange a money pouch full of coins for a money pouch full of coins. Apparently, coins effect exchange and are acquired by means of a transaction of

exchange. The Gemara rejects this: Rav Aḥa interpreted that the exchange of coins is referring to the exchange of a money pouch filled with anka dinars and a money pouch filled with anigera dinars. One is a coin that the kingdom invalidated, as the king decreed that the coin will no longer be used, and one is a coin that the residents of a province invalidated, as they no longer use it as currency.

[68] And it is necessary to teach the halakha in both cases, as, if the tanna taught us this halakha only with regard to a coin that the kingdom invalidated, I would have said it is not a coin due to the fact that it does not circulate at all, as the king banned its use. But with regard to a coin that the residents of a province invalidated, which circulates in a different state, say that its legal status is still that of a coin, and money cannot be acquired by means of a transaction of exchange.

[69] And if the tanna taught us this halakha only with regard to a coin that the residents of a province invalidated, I would have said it is not a coin due to the fact that in that place it neither circulates in private nor in public, as the local residents do not use it as currency. But with regard to a coin that the kingdom invalidated, which could circulate in private, say that its legal status is still that of a coin, and money cannot be acquired by means of a transaction of exchange. Therefore, it was necessary to teach the halakha in both cases.

[70] § Rabba says that Rav Huna says: If one said to another: Sell me your item for these coins that are in my hand, and when taking the money the owner of the item did not determine the sum, the buyer acquired the article and the transaction is complete, and neither can renege on the deal.

[71] And if the sum of money is one-sixth lower than the value of the item, the seller of the item has a claim of exploitation against the buyer, who must pay the difference to the seller.

[72] The Gemara elaborates: The buyer acquires the item even though he did not pull it, because since the seller is not particular about the sum, the buyer acquired the item, as it is similar to a transaction effected by means of exchange. And the seller has a claim of exploitation against the buyer because the buyer said to him: Sell me your item for these coins. The use of the language of sale indicates that it will be for an acceptable price. Rav Abba says that Rav Huna says that if the buyer said: Sell me your item for these coins, the buyer acquired the item; and the seller of the item has no claim of exploitation against the buyer, as it is a full-fledged transaction effected by means of exchange.

[73] The Gemara analyzes these halakhot: It is obvious that in a case where there is a sale of an item for money and the seller is not particular about the sum, we say that the buyer acquires the item immediately upon receiving the money, as it is similar to a transaction effected by means of exchange. But if it is a transaction effected by means of exchange and one of the parties is particular that the value of the items is equal, what is the halakha? Is its legal status that of a sale, or that of a transaction effected by means of exchange?

[74] Rav Adda bar Ahava says: Come and hear a resolution to the dilemma from a baraita: There is a case where one was grasping his cow and standing in place, and another came and said to him: Why is your cow standing here? The owner of the cow replied: I need a donkey, and I hope to exchange this cow for one. The other person said: I have a donkey that I can give you; for how much are you selling your cow? The owner of the cow responded: I am selling it for such and such a price. He then said: For how much are you selling your donkey? The owner of the donkey responded: I am selling it for such and such a price.

[75] If, after this discussion, the owner of the donkey pulled the cow, but the owner of the cow did not manage to pull the donkey before the donkey died, the owner of the donkey did not acquire the cow, even though ostensibly this was a transaction effected by means of exchange, which is typically complete once one of the parties pulls the item he is acquiring.

[76] The Gemara suggests: Learn from it that in a case where there is a transaction effected by means of exchange and one of the parties is particular that the value of the items is equal, he does not acquire the item immediately. In contrast to the standard case of exchange, the owners of the cow and donkey assessed the value of the animals before the transaction. Since they are particular about the price, the acquisition is not completed until each pulls the item he is acquiring.

[77] Rava said: Is that to say that in a standard case of exchange we are dealing with fools, who are not particular about the value of the items that they are acquiring? Rather, in every case of exchange, the parties are particular about the value of the items, and when one party pulls an item the other party acquires the other item immediately and pays for it later. And with what are we dealing here? The case in the baraita is where one party said to the other party: Let us exchange a donkey for a cow and a lamb, and the owner of the donkey pulled the cow and did not yet pull the lamb, as in that case he has not performed a proper act of pulling.

[78] The Master, Rav Huna, said above that if one said to another: Sell me your item for these coins, the buyer acquired the article, and if the sum of money is one-sixth lower than the value of the item, the seller of the item has a claim of exploitation against the buyer. The Gemara suggests: Let us say based on that halakha that Rav Huna holds that a coin can be an item used to effect exchange.

[79] The Gemara rejects this suggestion: No, Rav Huna holds in accordance with the opinion of Rabbi Yoḥanan, who says: By Torah law money effects acquisition. And for what reason did the Sages say that pulling acquires an item and money does not? This is a rabbinic decree lest the seller say to the buyer after receiving the money: Your wheat was burned in the upper story. And it is only with regard to a common matter that the Sages issued a decree, but with regard to an uncommon matter the Sages did not issue a decree. Therefore, in this case there is no decree, and the transaction is governed by Torah law. Mar Huna, son of Rav Naḥman, said to Rav Ashi: You teach this halakha in that manner; we teach it in this manner, not by inference but as an explicit ruling: And likewise, Rav Huna said: Money cannot be the item used to effect a transaction by means of exchange.

[80] § Above, the Gemara mentioned a form of exchange in which there are not two items of equal value being exchanged, but rather one person attempts to transfer possession of his item to the buyer by means of a symbolic exchange involving, e.g., a cloth. With regard to that symbolic transaction, the Gemara asks: With what vessel does one acquire the item in question, i.e., whose vessel is used in order to effect this symbolic transaction?

[81] Rav says: One effects the transaction with the vessels of the one acquiring the item, who effects the transaction by giving the vessels to the owner of the item. The moment that the owner pulls the vessel into his possession, the transaction is complete and ownership of the item in question is transferred to his counterpart. Rav explains that the one acquiring the item is amenable to having the one transferring ownership of the item acquire his vessel, so that he will resolve to transfer ownership to him. And Levi says: One effects the transaction by having the one acquiring the item pull the vessels of the one transferring ownership, as we seek to explain below.

[82] Rav Huna from Diskarta said to Rava: But according to Levi, who says that one effects the transaction with the vessels of the one transferring ownership, there is a difficulty. In a case where one acquires land by means of symbolic exchange where the item used is a cloak, it turns out that he is acquiring land by means of a cloak. If so, this is a case of property that is guaranteed, i.e., land, and it is acquired with movable property that is not guaranteed, by means of a transaction performed on the latter. And we learned the opposite in a mishna (Kiddushin 26a): Property that is not guaranteed is acquired with property that is guaranteed, i.e., land, by means of a transaction performed on the latter.

[83] Rava said to him: If Levi, whose opinion you questioned, were here, he would take out rods of fire before you and flog you for your unwarranted question. Do you maintain that he said that at the moment he transfers ownership of the cloak he transfers ownership of the land to him? That is not the case; rather, in exchange for that pleasure the owner of the item experiences from the fact that the one acquiring the cloak accepted it from him, he resolves to transfer ownership to him. This is unlike the acquisition of movable items by means of a transaction of land, where both are acquired simultaneously. Here, the transfer of ownership of the cloak effects the subsequent transfer of ownership of the land.

[84] The Gemara comments: This dispute between Rav and Levi is parallel to a dispute between tanna'im. The verse states: "Now this was the custom in former time in Israel concerning redemption and concerning substitution, to confirm all matters; a man drew off his shoe, and gave it to his neighbor" (Ruth 4:7). The verse is interpreted: "Redemption"; that is a sale. And likewise it says: "Neither shall be sold nor shall be redeemed" (Leviticus 27:28). "Substitution"; that is the transaction of exchange. And likewise it says: "He may neither exchange it nor substitute it" (Leviticus 27:10).

[85] With regard to the phrase "To confirm all matters; a man drew off his shoe, and gave it to his neighbor," the baraita asks: Who gave the shoe to whom? Boaz gave his shoe to the redeemer, the closest relative of Elimelech, who had the right of first refusal to the land that Naomi, Elimelech's widow, was planning to sell. The redeemer was transferring that right to the land to Boaz, who was acquiring it by means of his shoe. Rabbi Yehuda says: The redeemer gave his shoe to Boaz. The dispute between Rav and Levi is parallel to the dispute between the first tanna and Rabbi Yehuda.

[86] § It was taught: One can acquire property through a symbolic exchange by using a vessel, even if it does not have the value of one peruta. Rav Naḥman says: The Sages taught that this symbolic exchange can be effected only by using a vessel, but not by using produce, i.e., any item other than a vessel. Rav Sheshet says: It can be effected even by using produce. The Gemara explains: What is the reason for the opinion of Rav Naḥman? The verse states: "His shoe" (Ruth 4:7), from which it is derived: With regard to a shoe and any other item similar to a shoe, i.e., a vessel, yes, the symbolic exchange can be effected; with regard to any item other than a vessel, no, it cannot be effected.

[87] What is the reason for the opinion of Rav Sheshet? The verse in Ruth states: "To confirm all matters," from which it is derived that all items, even if they are not vessels, can effect the exchange. The Gemara asks: According to Rav Naḥman as well, isn't it written: "To confirm all matters"? The Gemara explains: In his opinion, that phrase: "To confirm all matters," is referring to all items that can be acquired through an exchange effected by using a shoe. The Gemara asks: And according to Rav Sheshet as well, isn't it written: "His shoe"? The Gemara explains: Rav Sheshet could have said to you that from that term it is derived: Just as his shoe is a complete item, so too, every complete

item can effect a symbolic exchange, to exclude half a pomegranate and half a nut, which cannot effect a symbolic exchange. A whole pomegranate or nut can be used for that purpose.

88 Rav Sheshet, son of Rav Idi, said: In accordance with whose opinion do we write today in documents that the transaction was effected with a vessel that is fit to acquire items with it? The Gemara explains: The term with a vessel serves to exclude the opinion of Rav Sheshet, who says: One acquires an item through a transaction of symbolic exchange by using produce. The term that is fit serves to exclude the opinion of Shmuel, who says: One acquires an item

89 with date pits used for cleaning and smoothing parchment. The term to acquire items serves to exclude the opinion of Levi, who says that the symbolic exchange is effected by means of the vessels of the one transferring ownership of the item. This latter expression teaches us that the vessel is given to acquire and not to transfer ownership to the other. With regard to the term: With it, Rav Pappa said: It serves to exclude a coin, which cannot effect a symbolic exchange. And Rav Zevid, and some say Rav Ashi, said: It serves to exclude items from which deriving benefit is prohibited.

90 Some say a different version of the dispute, as follows. With regard to the term: With it, Rav Pappa said: It serves to exclude a coin, which cannot effect a symbolic exchange. With regard to the term: That is fit, Rav Zevid, and some say Rav Ashi, said: It serves to exclude items from which deriving benefit is prohibited. But according to this version, a verse to exclude date pits is not necessary, as they are of no significance at all.

91 § The Gemara returns to an analysis of a passage in the mishna. When one party takes possession of an asimon, the other party acquires the minted coin. The Gemara asks: What is an asimon? Rav said: It is one of the coins given as a token to gain entry into the bathhouse, for which the bathers would pay later.

92 The Gemara raises an objection from a baraita: One desacralizes second-tithe produce neither with an asimon nor with one of the coins given as a token to gain entry into the bathhouse. This proves by inference that an asimon is not one of the coins given as tokens in a bathhouse. And if you would say the tanna is explaining the meaning of the term asimon, there is a difficulty with that explanation. But wasn’t it taught in another baraita like this: One desacralizes second-tithe produce with an asimon; this is the statement of Rabbi Dosa. And the Rabbis say: One does not desacralize second-tithe produce with an asimon. And they agree that one does not desacralize the second-tithe produce by transferring its sanctity onto one of the coins given as a token to gain entry into the bathhouse. It is clear from this baraita that an asimon is not a token given in a bathhouse.

93 Rather, Rabbi Yoḥanan said: What is an asimon? It is a blank, i.e., a piece of metal in the shape of a coin that was not yet imprinted. The Gemara comments: And Rabbi Yoḥanan follows his standard line of reasoning, as Rabbi Yoḥanan said: Rabbi Dosa and Rabbi Yishmael said the same thing. Rabbi Dosa, as we stated, said that the legal status of an asimon is that of a coin. With regard to Rabbi Yishmael, what is his statement? It is as it is taught in a baraita: “And you shall bind up [vetzarta] the money in your hand” (Deuteronomy 14:25). This serves to include any type of money that is bound [hanitzrar] in one’s hand, i.e., that has monetary value; this is the statement of Rabbi Yishmael. Rabbi Akiva says: It serves to include any type of money that has an imprint [tzura]. Rabbi Akiva requires a minted coin in order to desacralize a second-tithe produce coin, while Rabbi Yishmael says that a blank can be used as well.

94 § The mishna teaches: How so? If the buyer pulled produce from the seller, but the buyer did not yet give the seller their value in coins, he cannot renege on the transaction, but if the buyer gave the seller coins, but did not yet pull produce from him, he can renege on the transaction, as the transaction is not yet complete. By Torah law money effects acquisition, i.e., when one pays money he acquires the item, even if he has not yet performed another act of acquisition. And for what reason did the Sages say that pulling acquires an item and money does not? This is a rabbinic decree lest the seller say to the buyer after receiving the money: Your wheat was burned in the upper story. If a fire breaks out or some other mishap occurs after a seller receives the money, he will not bother to save the goods in his house because they no longer belong to him, and the buyer may incur a loss.

95 The Gemara asks: Ultimately, the one who ignited the fire is required to pay for the damage caused, and the one who purchased the movable items with money will be reimbursed for his loss, so why was there a need to issue this decree? Rather, it is a rabbinic decree lest a fire be ignited spontaneously due to circumstances beyond one's control, where no one is liable to pay for the damage caused. If you establish the purchase item in the possession of the seller, he will expend great effort, exert himself, and rescue the item, as it is still his own property. But if you do not establish the purchase item in the possession of the seller, he will not expend great effort, exert himself, and rescue the item. That is the opinion of Rabbi Yoḥanan.

96 Reish Lakish says: The act of acquisition of pulling is explicit in the Torah, and it is not merely by rabbinic decree that payment of money does not effect acquisition of movable property. The Gemara asks: What is the reason for the opinion of Reish Lakish? He derives it from the Torah, as the verse states: "And if you sell to your colleague an item that is sold, or acquire from your colleague's hand, you shall not exploit his brother" (Leviticus 25:14), and the reference is to an item that is acquired from hand to hand, i.e., by means of pulling.

97 And Rabbi Yoḥanan said: The term "from your colleague's hand" is not teaching that an item can be acquired by pulling. Rather, it serves to exclude land, which is not subject to the halakha of exploitation because it is not physically handed over from one to another.

98 The Gemara asks: And how does Reish Lakish respond to that explanation? The Gemara answers: Reish Lakish agrees that the verse serves to exclude land from the halakha of exploitation. But if it is so that this was its only purpose, let the verse write: And if you sell, from your colleague's hand, an item that is sold, you shall not exploit. Why do I need the additional phrase "or acquire"? Learn from it that acquisition by Torah law is effected by means of pulling.

99 The Gemara asks: And as for Rabbi Yoḥanan, what does he do with the phrase "or acquire"? What halakha does he derive? The Gemara answers: He requires that phrase for that which is taught in a baraita: From the phrase in the verse: "And if you sell to your colleague an item that is sold…you shall not exploit," I have derived only a case where the buyer was exploited. From where is it derived that the halakha is the same in a case where the seller was exploited? The verse states: "Or acquire… you shall not exploit," indicating that it is prohibited for the one who acquires the item to exploit the seller.

100 The Gemara asks: And from where does Reish Lakish derive this halakha? He derives two halakhot from the phrase "or acquire from your colleague's hand." He derives that it is prohibited to exploit the seller and that movable items are acquired by means of pulling.

[101] We learned in the mishna that Rabbi Shimon says: Anyone who has the money in his possession has the advantage. It is the seller who can retract from the transaction; the buyer cannot retract from the transaction. The Gemara asks: Granted, if you say that giving money effects acquisition of movable property, it is due to that reason that the seller can retract from the transaction and the buyer cannot retract from the transaction. Rabbi Yoḥanan explained that the Sages instituted pulling to complete the transaction for the benefit of the buyer so that the seller will expend great effort and rescue the item, as it is still his own property. But the seller acquires the money immediately. But if you say in general that giving money does not effect acquisition of movable property, let the buyer also renege on the transaction.

[102] The Gemara answers: Reish Lakish could have said to you: I did not state my opinion in accordance with the opinion of Rabbi Shimon; when I stated my opinion it was in accordance with the opinion of the Rabbis.

[103] The Gemara asks: Granted, according to Reish Lakish, that is the dispute between the opinions of Rabbi Shimon and the Rabbis, as Rabbi Shimon holds that money effects acquisition of the item and the Rabbis hold that only pulling the item effects its acquisition. But according to Rabbi Yoḥanan, what difference is there between the opinion of Rabbi Shimon and that of the Rabbis? The Gemara responds: The difference between them is with regard to the statement of Rav Ḥisda, as Rav Ḥisda says: Just as the Sages instituted pulling for the sellers, likewise, they instituted pulling for the buyers. Until the item is pulled, the buyer can also renege on the transaction. Rabbi Shimon does not hold in accordance with the statement of Rav Ḥisda, and the Rabbis hold in accordance with the statement of Rav Ḥisda.

[104] We learned in the mishna: But the Sages said: He Who exacted payment from the people of the generation of the flood, and from the generation of the dispersion, will in the future exact payment from whoever does not stand by his statement. Granted, if you say that giving money effects acquisition of movable property, it is due to that reason that one who reneges on the transaction after the money is paid stands subject to the curse: But the Sages said: He Who exacted payment. But if you say that giving money does not effect acquisition of movable property, why does one who reneges after the money is paid stand subject to the curse: But the Sages said: He Who exacted payment? The Gemara answers: It is due to the fact that he reneged on a statement of his committing himself to buy the item.

[105] The Gemara asks: And does one who reneged on a statement of commitment stand subject to the curse: But the Sages said: He Who exacted payment? But isn’t it taught in a baraita:

[106] Rabbi Shimon says: Even though the Sages said that when one party takes possession of a garment, the other party acquires a gold dinar, but when one party takes possession of a gold dinar, the other party does not acquire a garment, in any case, that is what the halakha would be. But the Sages said with regard to one who reneges on a transaction where one party pulled the gold dinar into his possession: He Who exacted payment from the people of the generation of the flood, and from the people of the generation of the dispersion, and from the inhabitants of Sodom and Gomorrah, and from the Egyptians in the Red Sea, will in the future exact payment from whoever does not stand by his statement.

[107] The baraita concludes: And one who negotiates, where the negotiation culminates with a statement committing himself to acquire the item, did not acquire the item without a formal act of

acquisition. But with regard to one who reneges on his commitment, the Sages are displeased with him.

[108] And Rava says: With regard to one who reneges on his commitment, we have only the statement that the Sages are displeased with him, but not that he is subject to a curse. The Gemara explains: If there is a statement of commitment and there is the payment of money accompanying it, he stands subject to the curse: But the Sages said: He Who exacted payment. If there is a statement of commitment and there is no payment of money accompanying it, he does not stand subject to the curse: But the Sages said: He Who exacted payment.

[109] § Rava says: A verse and a baraita support the opinion of Reish Lakish that money does not effect acquisition of movable property by Torah law. A verse, as it is written: “And deal falsely with his colleague in a matter of deposit, or of pledge, or of robbery, or oppressed his colleague” (Leviticus 5:21). The verse is referring to cases similar to a deposit where there is denial of an item and not merely a debt. With regard to the term “pledge,” Rav Ḥisda says: This is referring to a case where the debtor designated a vessel as collateral for his loan and then denies his debt. With regard to the term “oppressed,” Rav Ḥisda says: This is referring to a case where the employer designated a vessel for him to guarantee payment of his wages and withheld payment, resulting in his oppression.

[110] And when the verse repeats three of these cases after stating that each individual admitted that he lied and is liable to return the item that he misappropriated, it is written: “And then it shall be, if he has sinned, and is guilty, that he shall restore that which he took by robbery, or the thing that he has gotten by oppression, or the deposit that was deposited with him” (Leviticus 5:23), while the verse does not repeat the term “pledge.” What is the reason that the verse omits that case? Is it not because it lacks pulling by the lender? Since the lender did not pull the item designated as collateral for the loan, he did not acquire the item and is not liable to bring an offering for taking a false oath if he fails to pay, as he denied owing an abstract debt, not an actual item. Apparently, there is no full-fledged acquisition without pulling the item into one’s possession.

[111] Rav Pappa said to Rava: Say that it suffices that the verse repeated the case of oppression. In that case, there is also no denial of an actual item, merely of an obligation to pay one’s worker. The halakha would be the same in the case of a pledge, i.e., of a loan where the lender designated an item although there was no pulling. The Gemara rejects that contention: With what are we dealing here? We are dealing with a case where the workers took the item for their payment from the employer, and then deposited that item with him, and the employer than denied having received that deposit. Accordingly, he is denying owing an actual item, not an abstract debt.

[112] The Gemara challenges this explanation: That is precisely the case of a deposit that is already mentioned in the verse. What novel element is introduced by this case? The Gemara explains: There are two types of deposit: A standard deposit and the case where one deposits with a bailee an item that had previously belonged to the bailee.

[113] The Gemara asks: If so, and that is the explanation of the verse, let the verse repeat the case of a pledge as well, and interpret it in a case where the lender took the item from him by pulling it into his possession, and then deposited that item with the debtor. The Gemara responds: If the verse had repeated the case of a pledge it would be neither a refutation of nor a support for the opinion of Reish Lakish, as the cases could be explained otherwise. Now that the verse does not repeat the case of a

pledge, it supports his opinion that one acquires movable property only by means of pulling it into his possession.

[114] The Gemara asks: And does the verse not repeat the case of a pledge? But isn't it taught in a baraita: Rabbi Shimon said: From where is it derived to apply that which is stated above, in the first verse cited from Leviticus, to the verse stated below, i.e., the second verse cited from Leviticus? It is derived as it is written: "Or anything about which he has taken a false oath" (Leviticus 5:24). And Rav Naḥman says that Rabba bar Avuh says that Rav says: This clause serves to include the case of a pledge in the requirement of return, teaching that even in the case where the debtor designated an item as collateral for a loan, the lender is obligated to return the item although there was no pulling. The Gemara rejects that contention: In any event, the verse did not repeat the case of a pledge explicitly, and one derives support for the opinion of Reish Lakish from that omission.

[115] From where do we derive support for the opinion of Reish Lakish from a baraita? It is as it is taught in a baraita: If one had consecrated money and gave it to a bathhouse attendant [leballan] as payment for use of the bath, he is liable for misuse of consecrated property as soon as he pays him, even before he uses the bathhouse. And Rav says: One can infer that it is specifically with regard to one giving the consecrated money to a bathhouse attendant that he is liable immediately, as in that case there is no lack of pulling, since he is paying for usage of the bathhouse, not for an item. But one can infer that in cases involving other matters, where the one giving the consecrated money is acquiring an item and there is a lack of pulling, he is liable for misuse only once he pulls the item he is purchasing. Apparently, by Torah law, it is only by means of pulling an item into his possession, not through payment of money, that one acquires an item.

[116] The Gemara asks: But isn't it taught in a baraita: If one had consecrated money and gave it to a barber, he is liable for misuse of consecrated property immediately, as soon as he gives him the money, and in the case of a barber, doesn't he need to pull the haircut utensils in order for their transaction to be finalized? The Gemara answers: With what are we dealing here? We are dealing with a gentile barber, who is not subject to the requirement of pulling, which applies only to Jews, as it is written: "And if you sell to your colleague something that is sold." Everyone agrees that a transaction with gentiles is finalized with the payment of money.

[117] The Gemara comments: This is also taught in a baraita: If one had consecrated money and gave it to a barber, or to a sailor, or to any craftsmen, he is liable for misuse of consecrated property only once he pulls the item belonging to the worker. The Gemara asks: These two baraitot are difficult, as they contradict each other. The first baraita states that if one had consecrated money and he gave it to a barber, he is liable for misuse of consecrated property as soon as he gives the money. The second baraita states that he is liable for misuse of consecrated property only once he pulls the item. Rather, must one not conclude from it that here, the halakha in the first baraita is with regard to one who gives consecrated money to a gentile barber, who is liable when he gives the money to the barber, and there, the halakha in the second baraita is with regard to one who gives consecrated money to a Jewish barber, who is liable only once he pulls the item? The Gemara affirms: Learn from it that this is the case.

[118] The Gemara comments: And so says Rav Naḥman, in agreement with the opinion of Rabbi Yoḥanan: By Torah law, the giving of money effects acquisition of movable property. The Gemara adds: And Levi examined his compendium of baraitot, and he discovered this baraita: If one had a

consecrated ma’a and he gave it to a wholesaler [siton] as the first payment for a large quantity of produce, he is liable for misuse of consecrated property. This baraita describes a situation where the buyer did not pull the produce, yet he is liable for misuse. Apparently, by Torah law the giving of money effects acquisition.

[119] But this baraita is difficult according to Reish Lakish. The Gemara answers: Reish Lakish could have said to you: In accordance with whose opinion is this baraita? It is in accordance with the opinion of Rabbi Shimon, not that of the Rabbis.

[120] § The mishna teaches with regard to one who reneges on a transaction after the money was paid: But the Sages said: He Who exacted payment from the people of the generation of the flood, and from the generation of the dispersion, will in the future exact payment from whoever does not stand by his statement. It was stated that there is an amoraic dispute. Abaye said that we inform one who seeks to renege on a transaction: Be aware that this is the punishment of one who does not stand by his statement. Rava said that we curse him with that statement.

[121] The Gemara elaborates: Abaye said that we inform him, as it is written: “Nor curse a ruler among your people” (Exodus 22:27), from which it is derived that it is prohibited to curse a ruler or any other member of the Jewish people. Rava said that we curse him, and the prohibition against cursing is not a concern, as it is written: “Among your people,” from which it is derived that the prohibition applies only with regard to one who performs an action befitting your people, not one who reneges on a transaction after the money is paid.

[122] Rava said: From where do I say this halakha? I learned it from the incident where buyers gave Rabbi Ḥiyya bar Yosef money to purchase salt from him. Ultimately the price of salt increased, and Rabbi Ḥiyya bar Yosef sought to renege on the deal. He came before Rabbi Yoḥanan to ask his opinion. Rabbi Yoḥanan said to him: Go and give them the salt, and if not, accept upon yourself: He Who exacted payment. And if you say we merely inform him of this punishment, is Rabbi Ḥiyya bar Yosef one who must be informed? He knows the halakha. The Gemara rejects this proof: Rather, what is the alternative, that we curse him? Would Rabbi Ḥiyya bar Yosef come to accept upon himself a curse of the Sages?

[123] Rather, the details of the incident were different. It is a down payment that buyers gave Rabbi Ḥiyya bar Yosef. The money was paid merely to bolster the commitment to complete the transaction. Rabbi Ḥiyya bar Yosef held that the down payment effects acquisition of salt commensurate with its value, and therefore he wanted to give them only that portion of the salt. And Rabbi Yoḥanan said to him: The down payment effects acquisition of salt commensurate with the entire amount of the transaction.

[124] § It was stated that there is an amoraic dispute with regard to a down payment. Rav says: A down payment effects acquisition of merchandise commensurate with its value. And Rabbi Yoḥanan said: It effects acquisition of merchandise commensurate with the entire amount of the transaction.

[125] The Gemara raises an objection from a baraita: With regard to one who gives a down payment to another, and says to him: If I renege, my down payment is forfeited to you, and the other person says to him: If I renege, I will double your down payment for you, the conditions are in effect; this is the statement of Rabbi Yosei. The Gemara comments: Rabbi Yosei conforms to his standard line of reasoning, as he says: A transaction with inconclusive consent [asmakhta] effects acquisition. Even

though it is a commitment that he undertook based on his certainty that he would never be forced to fulfill the condition, it is considered a full-fledged commitment.

[126] The baraita continues: Rabbi Yehuda says: It is sufficient that the down payment effects acquisition of merchandise commensurate with the amount of his down payment. Rabban Shimon ben Gamliel said: In what case is this statement said? It is when the buyer said to the seller: My down payment will effect acquisition of the merchandise. But if one sold another a house or a field for one thousand dinars, and the buyer paid him five hundred dinars of that sum, he has acquired the entire house, and he returns the rest of the money to the seller even after several years have passed. The Gemara asks: What, is it not that the same is true with regard to movable property as well, and in a case where the agreement is unspecified, the buyer acquires the entire item, not merely commensurate with the down payment?

[127] The Gemara rejects that comparison: No, with regard to movable property in a case where the agreement is unspecified, the buyer does not acquire the entire item. The Gemara asks: And in what way is movable property different from land? The Gemara explains: In the case of land, which with the payment of money one genuinely acquires it in a legal sense, the buyer acquires the entire tract of land with a down payment. In the case of movable property, which with the payment of money one acquires it only in the sense that if he reneges he will have to receive the curse: He Who exacted payment, the buyer does not acquire the entire item with a down payment.

[128] The Gemara suggests: Let us say that this amoraic dispute between Rav and Rabbi Yoḥanan is parallel to a dispute between tanna’im. As it is taught in a baraita: With regard to one who lends money to another on the basis of collateral, and the Sabbatical Year commenced, even if the collateral is worth only half the sum of the loan, the Sabbatical Year does not abrogate the loan; this is the statement of Rabban Shimon ben Gamliel. Rabbi Yehuda HaNasi says: If the value of the collateral was commensurate with the sum of his loan, the Sabbatical Year does not abrogate the loan, but if it was not commensurate with the sum of his loan, the Sabbatical Year abrogates the loan.

[129] The Gemara asks: What is the meaning of the statement: The Sabbatical Year does not abrogate the loan, that Rabban Shimon ben Gamliel is saying? If we say it means that the Sabbatical Year does not cancel that part of the loan commensurate with the collateral, but it does cancel the rest, this indicates by inference that Rabbi Yehuda HaNasi holds that the Sabbatical Year also abrogates that half as well. That is difficult, as is there not collateral commensurate with that half?

[130] If that half is canceled as well, then why does he need the collateral that he is holding? The lender clearly took the collateral to enable him to collect at least part of his debt after the Sabbatical Year. Rather, do we not conclude from it: What is the meaning of the statement: The Sabbatical Year does not abrogate the loan, that Rabban Shimon ben Gamliel is saying? It means that the Sabbatical Year does not abrogate the entire loan. And what is the meaning of: The Sabbatical Year abrogates the loan, that Rabbi Yehuda HaNasi is saying? It is referring to that half of the loan that he did not take on the basis of collateral.

[131] And they disagree with regard to this: As Rabban Shimon ben Gamliel holds that a down payment effects acquisition of merchandise commensurate with the entire amount of the transaction, and Rabbi Yehuda HaNasi holds that a down payment effects acquisition of merchandise commensurate with its value. Apparently, the amoraic dispute parallels the tannaitic dispute.

[132] The Gemara rejects that parallel: No, what is the meaning of the statement: The Sabbatical Year does not abrogate the loan, that Rabban Shimon ben Gamliel is saying? It is referring to that half of the loan that he took on the basis of collateral. This indicates by inference that Rabbi Yehuda HaNasi holds: The Sabbatical Year also abrogates that half of the loan that he took on the basis of collateral. The Gemara asks: Then why does he need the collateral that he is holding? The Gemara answers: He requires it as a mere reminder to increase the likelihood that the loan will be repaid, and it does not prevent cancellation of a loan.

[133] § The Gemara relates: Buyers gave money to Rav Kahana to purchase linen. Ultimately, the price of linen increased. Rav Kahana came before Rav to ask his opinion. Rav said to him: Give them a quantity of linen equivalent in value to the money that you received, and concerning the rest, your verbal commitment is merely a statement, and reneging on a verbal commitment that was unaccompanied by an act of acquisition does not constitute an act of bad faith.

[134] The Gemara comments: This is as it was stated: There is an amoraic dispute with regard to reneging on a verbal commitment that was unaccompanied by an act of acquisition. Rav says: It does not constitute an act of bad faith. And Rabbi Yoḥanan says: It constitutes an act of bad faith.

[135] The Gemara raises an objection: Rabbi Yosei, son of Rabbi Yehuda, says: What is the meaning when the verse states: “A just ephah, and a just hin, shall you have” (Leviticus 19:36)? But wasn’t a hin included in an ephah? Why is it necessary to state both? Rather, this is an allusion that serves to say to you that your yes [hen] should be just, and your no should be just. Apparently, it is a mitzva for one to fulfill his promises. Abaye says: That verse means that one should not say one matter with his mouth and think one other matter in his heart. It is prohibited for one to make a commitment that he has no intention of fulfilling. Rav Kahana made his commitment in good faith and reneged due to changed circumstances. That is not prohibited.

[136] The Gemara raises an objection. Rabbi Shimon says: Even though the Sages said that when one party takes possession of a garment, the other party acquires a gold dinar, but when one party takes possession of a gold dinar, the other party does not acquire a garment, in any case, that is what the halakha would be. But the Sages said with regard to one who reneges on a transaction where one party pulled the gold dinar into his possession: He Who exacted payment from the people of the generation of the flood, and from the people of the generation of the dispersion, and from the inhabitants of Sodom and Gomorrah, and from the Egyptians in the Red Sea, will in the future exact payment from whoever does not stand by his statement. And one who negotiates, where the negotiation culminates with a statement in which he commits himself to acquire the item, did not acquire the item without a formal act of acquisition. But with regard to one who reneges on his commitment, the Sages are displeased with him. Apparently, one who reneges is considered to have acted in bad faith.

[137] The Gemara explains: This matter is a dispute between tanna’im, as we learned in a mishna (Bava Metzia 83a): There was an incident involving Rabbi Yoḥanan ben Matya, who said to his son: Go out and hire laborers for us. His son went and allocated sustenance for them, as part of their employment terms, without specifying the type of sustenance. And when he came to his father, his father said to him: My son, even if you prepare for them a meal like the feast of Solomon during his era, you will not fulfill your obligation to them, as they are the descendants of Abraham, Isaac, and Jacob, and due to that status they are deserving of any meal that they want. Rather, this is what you

should do: Before they begin engaging in their labor, go out and say to them: Your employment is on the condition that you have the right to claim from me only the customary meal of bread and legumes.

[138] The Gemara asks: And if it enters your mind that reneging on a verbal commitment unaccompanied by an act of acquisition constitutes an act of bad faith, how did Rabbi Yoḥanan ben Matya tell his son to renege? The Gemara answers: This is not difficult; it is different there in that case, as the laborers themselves do not rely on the son. What is the reason they do not rely on the son? It is due to the fact that they know that he relied on his father giving his approval when committing to feed them.

[139] The Gemara asks: If so, then even if the laborers began engaging in their labor, they still would not rely on the son. Why then did his father instruct him specifically to tell them of the change before they began their labor? The Gemara answers: Once they began engaging in their labor they would certainly rely on the son's commitment, as they would say: He must have come before his father and stated the conditions of their employment, and his father is amenable to those terms. Therefore, it was necessary to inform them before they began working.

[140] The Gemara asks: And did Rabbi Yoḥanan say this, i.e., that one who reneges on a verbal commitment acted in bad faith? But didn't Rabba bar bar Ḥana say that Rabbi Yoḥanan says: One who says to another: I am giving you a gift, is able to renege on his commitment? The Gemara asks: He is able to renege? It is obvious that he is able to renege, as in the absence of an act of acquisition no one can compel him to give the gift. Rather, it means: It is permitted for him to renege on his commitment. Apparently, one who reneges on a verbal guarantee is not considered to have acted in bad faith. Rav Pappa said: And Rabbi Yoḥanan concedes that in the case of a small gift one may not renege, as the recipients rely on him to fulfill his verbal commitment. By contrast, in the case of a large gift the recipients are aware that one might reconsider, and therefore they do not rely on his statement and do not assume that his decision is final.

[141] The Gemara comments: So too, it is reasonable to say that this is the opinion of Rabbi Yoḥanan, as Rabbi Abbahu says that Rabbi Yoḥanan says: With regard to an Israelite who said to a Levite: You have a kor of first-tithe produce that is in my possession and that I separated from my produce, the Levite may render all or part of this kor teruma of the tithe for first-tithe produce that he has in another place. Granted, if you say that one is unable, i.e., it is not permitted for him, to renege, it is due to that reason that the Levite may render it teruma of the tithe for other produce. But if you say that one is able, i.e., it is permitted for him, to renege, why may he render it teruma of the tithe for other produce? The owner of the produce could renege, and in that case it will eventuate that he is consuming untithed produce, as the teruma of the tithe that he separated did not belong to him.

[142] The Gemara answers: With what are we dealing here? We are dealing with a case where the Levite took the first-tithe produce from him and then deposited it with him, so that it already belongs to the Levite.

[143] The Gemara asks: If so, that this is the circumstance addressed in the statement of Rabbi Yoḥanan, say the latter clause of that halakha: If the owner of the produce gave the first-tithe produce to a different Levite, the first Levite has only a grievance against the owner, but not any legal claim. And if it enters your mind that this is a case where the first Levite took the first-tithe produce from the owner and then deposited it with him, why does the Levite have only a grievance against him?

Once the first Levite pulled the produce into his possession it is his, and therefore, he has property in the possession of the owner of the produce. Rather, must one not conclude from it that this is a case where the Levite did not take the produce and deposit it? The Gemara affirms: Conclude from it that there was only a verbal commitment, and that proves that reneging on a verbal commitment constitutes an act of bad faith.

144 The Gemara relates: There was a certain man who gave money as payment for sesame. Ultimately, the price of sesame increased, and the sellers reneged and said to him: We have no sesame; take your money. The buyer did not take his money, and the money was stolen. They came before Rava to adjudicate the case. Rava said to the buyer: Once they said to you: Take your money, and you did not take it, it is not necessary to say that their legal status is not that of a paid bailee. But my ruling is that their legal status is not even that of an unpaid bailee. The Sages said to Rava: But aren't the sellers who reneged required to accept upon themselves the curse: He Who exacted payment? Rava said to them: Indeed, they must pay or accept the curse.

145 Rav Pappi said that Ravina said to me: One of the Sages, and Rav Tavot is his name, and some say Rav Shmuel bar Zutra is his name, and he is one who even if they were to give him the entire expanse of the world he would not deviate from the truth in his speech, said to me: There was an incident in which I was involved. On that day, it was twilight on Shabbat eve, and I was sitting, and a certain man came and stood at the entrance. He said to me: Do you have sesame to sell?

146 I said to him: No. He said to me: Let these dinars remain as a deposit with you, as the day has grown dark for me and I am unable to reach home before Shabbat. I said to him: This house is before you. He placed them in the house and the dinars were stolen. That man came to have his case judged before Rava, demanding his money. Rava said to him: With regard to anyone who states: This house is before you, it is not necessary to say that he is not a paid bailee, but he is not even an unpaid bailee. Ravina said to Rav Tavot: But didn't the Sages say to Rava: The sesame merchant is required to accept upon himself the curse: He Who exacted payment? And Rav Tavot said to me: There were never such matters; that incident never occurred.

147 § The mishna teaches that Rabbi Shimon says: Anyone who has the money in his possession has the advantage. It is taught in a baraita: Rabbi Shimon says: When does the one with the money in his possession have the advantage? It is when both the money and the produce are in the possession of the seller. But if the money is in the possession of the seller and the produce is in the possession of the buyer, the seller cannot renege, because his money is in his possession. The Gemara understood this to mean that the buyer still had the money in his possession, and asks: In his, i.e., the buyer's, possession? Isn't it in the possession of the seller? Rather, emend the text: Because the value of his, i.e., the buyer's, money is in his, i.e., the buyer's, possession.

148 The Gemara asks: Isn't it obvious that the seller cannot renege, as the buyer acquired the produce through the transaction of pulling? Rava said: With what are we dealing here? It is a case where the upper story of the house belonging to the buyer, where the produce was stored, was rented to the seller. The Gemara elaborates: What is the reason the Sages instituted that pulling, and not payment of money, effects acquisition? It is a rabbinic decree, lest a seller say to the buyer: Your wheat burned in the upper story after you paid. Here, the produce is in the domain of the buyer. Therefore, if a fire is ignited due to circumstances beyond his control, the buyer will exert himself and bring the produce from the upper story.

149 The Gemara relates: There was a certain man who gave money in exchange for wine. Ultimately he heard that men from the house of Parzak the vizier [rufila] sought to appropriate the wine. The buyer said to the seller: Give me my money, as I do not want the wine. The case came before Rav Ḥisda, who said to him: Just as the Sages instituted pulling with regard to sellers, so did they institute pulling with regard to buyers. Since the buyer had yet to pull the wine into his possession, he can renege on the transaction.

150 MISHNA: The measure of exploitation for which one can claim that he was exploited is four silver ma’a from the twenty-four silver ma’a in a sela, or one-sixth of the transaction. Until when is it permitted for the buyer to return the item? He may return it only until a period of time has passed that would allow him to show the merchandise to a merchant or to his relative who is more familiar with the market price of merchandise. If more time has elapsed he can no longer return the item, as the assumption is that he waived his right to receive the sum of the disparity.

151 The mishna continues: Rabbi Tarfon ruled in Lod: Exploitation is a measure of eight silver ma’a from the twenty-four silver ma’a of a sela, one-third of the transaction. And the merchants of Lod rejoiced, as this ruling allowed them a greater profit margin and rendered the nullification of a transaction less likely. Rabbi Tarfon said to them: Throughout the entire day it is permitted to renege on the transaction and not merely for the period of time it takes to show the purchase item to a merchant or a relative. The merchants of Lod said to him: Let Rabbi Tarfon leave us as we were, with the previous ruling, and they reverted to following the statement of the Rabbis in the mishna with regard to both rulings.

152 GEMARA: It was stated that there is an amoraic dispute with regard to exploitation. Rav says: We learned that exploitation is determined by one-sixth of the transaction, i.e., one-sixth of the purchase item, not one-sixth of the money paid. And Shmuel says: We learned that exploitation is also determined by one-sixth of the money paid. The Gemara elaborates: With regard to an item worth six ma’a that was sold for five ma’a, or an item worth six ma’a that was sold for seven ma’a, everyone agrees that we follow the transaction, i.e., the fraction of the variation in price is determined relative to the market value of the item sold, and it is exploitation. Where Rav and Shmuel disagree is in the case of an item worth five ma’a sold for six ma’a, or an item worth seven ma’a sold for six ma’a.

153 According to Shmuel, who says that we also follow the fraction of the variation in price as determined by the money paid, both this case and that case are exploitation, as there is a disparity of one-sixth between the price paid and the value of the item. According to Rav, who says that we follow the transaction, when an item worth five ma’a sells for six ma’a, the halakha is that there is a nullification of the transaction, as the disparity between the value of the item and the price paid is greater than one-sixth. When an item worth seven ma’a sells for six ma’a, the halakha is that there is a waiver of the sum of the disparity, as the disparity between the value of the item and the price paid is less than one-sixth.

154 And Shmuel says: When we say that there is a waiver or a nullification of the transaction, it is in a case where there is not a disparity of one-sixth from both aspects, i.e., both in terms of the money paid and in terms of the value of the item. But in a case where there is a disparity of one-sixth from one aspect, either in terms of the money paid or the value of the item, it is exploitation.

155 The Gemara cites proof for the opinions of Rav and Shmuel. We learned in the mishna: The measure of exploitation for which one can claim that he was exploited is four silver ma’a from the twenty-four silver ma’a in a sela, which is one-sixth of the transaction. What, is it not a case where he bought an item worth twenty ma’a for twenty-four ma’a? And accordingly, one can conclude from the mishna that we learned that exploitation is also determined by one-sixth of the money paid, in accordance with the opinion of Shmuel. The Gemara rejects this proof: No, it is a case where he sold an item worth twenty-four ma’a for twenty ma’a.

156 The Gemara asks: If so, who was exploited in this transaction? It is the seller. Say the latter clause of the mishna: Until when is it permitted for the buyer to return the item? In the time that it takes the buyer to show the merchandise to a merchant or to his relative. And Rav Naḥman said: The Rabbis taught this halakha only with regard to a buyer, who is in possession of the item and can show it to a merchant immediately. But a seller may always renege on the transaction. Since the purchase item is not in his possession, he can determine its market price only if he happens to encounter a similar item, and there is no time frame within which this will certainly occur.

157 Rather, it is a case where he sold an item worth twenty-four ma’a for twenty-eight ma’a. We learned in the mishna that Rabbi Tarfon ruled in Lod: Exploitation is a measure of eight silver ma’a from the twenty-four silver ma’a of a sela, one-third of the transaction. What, is it not a case where he bought an item worth sixteen ma’a for twenty-four ma’a? And accordingly, one can conclude from the mishna that we learned that exploitation is also determined by one-third of the money paid, in accordance with the opinion of Shmuel.

158 The Gemara rejects this proof: No, it is a case where he sold an item worth twenty-four ma’a for sixteen ma’a. The Gemara asks: If so, who was exploited in this transaction? It is the seller. Say the latter clause of the mishna: Rabbi Tarfon said to them: Throughout the entire day it is permitted to renege on the transaction. And Rav Naḥman says: They taught this halakha only with regard to a buyer, but a seller may always renege on the transaction. Rather, it is a case where he sold an item worth twenty-four ma’a for thirty-two ma’a.

159 The Gemara comments: It is taught in a baraita in accordance with the opinion of Shmuel: The one upon whom the exploitation was imposed has the advantage. How so? In a case where one sold him an item worth five ma’a for six ma’a, who was exploited? It is the buyer. Therefore, the buyer is at an advantage. If he wishes, he can say to the seller: Give me back my money and nullify the transaction, or he can say: Give me back the sum which you received by engaging in exploitation of me. In a case where one sold him

160 an item worth six ma’a for five ma’a, who was exploited? It is the seller. Therefore, the seller is at an advantage. If he wishes, he can say to the buyer: Give me back my merchandise and nullify the transaction, or he can say: Give me back the sum which you received by engaging in exploitation of me.

161 § A dilemma was raised before the Sages: According to the opinion of the Rabbis that one has only until a period of time has passed that would allow him to show the merchandise to a merchant or to his relative in order to claim that he has been exploited, in a case where the disparity between the value of the purchase item and the price paid is less than one-sixth, is there a waiver of the discrepancy and therefore the transaction is finalized immediately, or in this case as well, is the transaction finalized only after the time that it takes the buyer to show the merchandise to a merchant

or to his relative? And in addition, if you say that the transaction is finalized only after the time that it takes to show the merchandise to a merchant or to his relative, what difference is there between a disparity of one-sixth and a disparity of less than one-sixth?

[162] The Gemara answers: There is a difference, as in the case of a disparity of one-sixth, the one who was exploited has the advantage, since if he wishes, he reneges on the transaction, and if he wishes, the buyer acquires the purchase item, and the one who perpetrated the exploitation returns the sum gained through his exploiting the other, while in the case of a disparity of less than one-sixth, the buyer acquires the purchase item, and the one who perpetrated the exploitation returns the sum gained through his exploiting the other, but there is no option of nullifying the transaction.

[163] The Gemara returns to the dilemma: At what point in time is a disparity of less than one-sixth between the value of the purchase item and the price paid waived? The Gemara suggests: Come and hear a resolution of the dilemma from the mishna: Rabbi Tarfon said to them: Throughout the entire day it is permitted to renege on the transaction and not merely for the period of time it takes to show the purchase item to a merchant or a relative. The merchants of Lod said to him: Let Rabbi Tarfon leave us as we were, with the previous ruling. They reverted to following the statement of the Rabbis.

[164] The Gemara explains the proof. The Sages assumed that the legal status of a disparity of less than one-third according to the opinion of Rabbi Tarfon, who holds that one-third is the determinative disparity, is like a disparity of less than one-sixth according to the opinion of the Rabbis, who hold that one-sixth is the determinative disparity. Granted, if you say that in the case of a disparity of less than one-sixth according to the Rabbis the buyer can claim exploitation only in the time that it takes him to show the merchandise to a merchant or to his relative, and according to Rabbi Tarfon the transaction is finalized only after the entire day has passed, it is due to that reason that the merchants of Lod reverted to following the statement of the Rabbis, as there was some benefit to them in following the opinion of the Rabbis. But if you say that in the case of a disparity of less than one-sixth according to the Rabbis the waiver is in effect and the transaction is finalized immediately,

[165] and according to Rabbi Tarfon too, there is a waiver of the disparity of less than one-third and the transaction is finalized immediately, why did they revert to following the statement of the Rabbis? In that case, the ruling of Rabbi Tarfon would be preferable for them, as that which the Rabbis deem exploitation, i.e., a discrepancy of one-sixth, is waived according to Rabbi Tarfon.

[166] The Gemara rejects this proof: Do you maintain that the legal status of a disparity of less than one-third according to the opinion of Rabbi Tarfon is like the legal status of a disparity of less than one-sixth according to the opinion of the Rabbis? No, the legal status of a disparity ranging from one-sixth until one-third according to the opinion of Rabbi Tarfon is like the legal status of a disparity of one-sixth itself according to the opinion of the Rabbis, and the exploited party receives the sum of the exploitation in return. The Gemara asks: If so, for what reason did the merchants of Lod rejoice initially? They gained nothing relative to the ruling of the Rabbis.

[167] Resolve, based on this difficulty, the dilemma raised below, and conclude that in cases of nullification of the transaction according to the Rabbis, one may always renege on the transaction. Therefore, the reaction of the merchants of Lod is understandable, as, since Rabbi Tarfon said to them that a disparity between one-sixth and one-third is merely exploitation, they rejoiced, as this would mean that the buyer has only the time it takes to show the merchandise to a merchant or a

relative to renege. When he said to them that the exploited person can renege on the transaction for the entire day, they reverted to following the statement of the Rabbis.

168 The Gemara explains why the dilemma is resolved: As, if it enters your mind to say that nullification of the transaction according to the Rabbis is limited to only within the time that it takes for the buyer to show the merchandise to a merchant or to his relative, for what reason did they rejoice over the ruling of Rabbi Tarfon? His ruling did not enable them to sell the merchandise at a higher price than the ruling of the Rabbis did. The Gemara rejects this proof: They initially rejoiced over the case of a disparity of one-sixth itself, as according to Rabbi Tarfon there is a waiver of the disparity, and according to the Rabbis it is exploitation.

169 § The Gemara cites the dilemma referenced above. A dilemma was raised before the Sages: With regard to nullification of the transaction according to the Rabbis, may one always renege on the transaction? Or perhaps he can renege only within the time that it takes him to show the merchandise to a merchant or to his relative. And if you say that the transaction is nullified only within the time that it takes him to show the merchandise to a merchant or to his relative, what difference is there between a disparity of one-sixth and a disparity of greater than one-sixth? The Gemara answers: There is a difference, as in the case of a disparity of one-sixth, only the one who was exploited can renege on the transaction, while in the case where the disparity is greater than one-sixth, both can renege on the transaction.

170 The Gemara returns to discuss the dilemma: What is the halakha? The Gemara suggests: Come and hear a resolution of the dilemma from the mishna: The merchants of Lod reverted to following the statement of the Rabbis. Granted, if you say that one can claim nullification of the transaction according to the Rabbis only within the time that it takes the buyer to show the merchandise to a merchant or to his relative, and according to Rabbi Tarfon one can do so for the entire day, it is due to that reason that they reverted to following the statement of the Rabbis. But if you say that one can claim nullification of the transaction according to the Rabbis and always renege on the transaction, why did they revert to following the statement of the Rabbis? In that case, the ruling of Rabbi Tarfon is preferable for them, as he deems such a disparity exploitation and rules that one can claim nullification of the transaction for the entire day and no more, which is more beneficial to the merchant.

171 The Gemara answers: Nullification of the transaction is uncommon, and therefore the merchants of Lod did not take that into consideration when calculating which ruling was most advantageous.

172 The Gemara cites the halakhic resolutions of these dilemmas. Rava said: The halakha is that if the disparity is less than one-sixth, the merchandise is acquired immediately. If the disparity is greater than one-sixth, either party can demand nullification of the transaction. If the disparity is precisely one-sixth, the buyer has acquired the merchandise, and the one who benefited from the exploitation returns the sum gained by the exploitation. And one may claim both this, nullification of the transaction, and that, return of the sum gained, only within the time that it takes to show the merchandise to a merchant or to his relative.

173 The Gemara comments: It is taught in a baraita in accordance with the opinion of Rava: In cases of exploitation, if the disparity is less than one-sixth, the merchandise is acquired immediately. If the disparity is greater than one-sixth, the transaction is nullified. If the disparity is precisely one-sixth, the buyer has acquired the merchandise, and the one who benefited from the exploitation returns the

sum gained by the exploitation. This is the statement of Rabbi Natan. Rabbi Yehuda HaNasi says: In a case where the seller was exploited, the seller is at an advantage. If he wishes, he reneges on the transaction and says to the buyer: Give me my merchandise, or he can say: Give me the sum that you gained by exploiting me. And one may claim both this, nullification of the transaction, and that, return of the sum gained, only within the time that it takes to show the merchandise to a merchant or to his relative.

[174] § The mishna teaches: Until when is it permitted for the buyer to return the item? He may return it only until a period of time has passed that would allow him to show the merchandise to a merchant or to his relative. Rav Naḥman says: The Sages taught this halakha only with regard to a buyer, but a seller may always renege on the transaction. The Gemara suggests: Let us say that the mishna supports his opinion, as the merchants of Lod reverted to following the statement of the Rabbis. Granted, if you say that a seller may always renege on a transaction,

[175] it is due to this reason that they reverted to following the statement of the Rabbis, as the sellers were in any event able to renege at any point, while Rabbi Tarfon extended the period during which the buyers could renege on the transaction.

[176] But if you say that the legal status of a seller is also limited like that of a buyer in terms of the period of time during which he may renege, what difference is there to the merchants? Just as the Sages instituted an ordinance on behalf of a buyer enabling him to renege on the transaction, so too, the Sages instituted an ordinance on behalf of a seller. If the time afforded to the seller is equal to the time afforded to the buyer, the fact that Rabbi Tarfon extended this time would not be a reason for the merchants to revert to following the opinion of the Rabbis, as there is a benefit and a loss for the merchants according to both opinions.

[177] The Gemara answers: With regard to the merchants of Lod, it is rare for them to err, and therefore they preferred limiting the period during which the buyer could renege over extending the period during which they themselves could renege.

[178] The Gemara relates: The landlord of Rami bar Ḥama sold a donkey and erred in fixing its price. Rami bar Ḥama encountered him and noticed that he was sad. Rami bar Ḥama said to him: Why are you sad? The landlord said to him: I sold a donkey and I erred in fixing its price. Rami bar Ḥama said to him: Go and renege on the transaction. The landlord said to him: I have waited more than the period of time that it takes for me to show the merchandise to a merchant or to my relative. Rami bar Ḥama sent the landlord before Rav Naḥman for a ruling and Rav Naḥman said to him: The Sages taught this halakha only with regard to a buyer, but a seller may always renege on a transaction.

[179] The Gemara asks: What is the reason for this? The Gemara explains: A buyer has his merchandise in his possession; therefore, anywhere that he goes he shows it to those familiar with the market price and they tell him whether he erred or whether he did not err. A seller, who does not have his merchandise in his possession, can ascertain the market price only when merchandise like his merchandise happens to come before him, and only then will he know whether he erred or whether he did not err.

[180] § The Gemara relates: There was a certain man who had silk strips [varshekhei] to sell. He announced that he was selling them for six ma’a, and they were worth five ma’a, and if they would give him five and a half ma’a, he would take it and sell the silk. This man, i.e., a potential buyer, came and said to himself: If I give him five and a half ma’a, it is a case of a waiver, and I will not be

entitled to recover the difference. I will give him six ma’a and claim from him by law the return of the sum gained by the exploitation. He did so. The case came before Rava, who said to him: The Sages taught this halakha of exploitation only with regard to one who buys merchandise from a merchant, but one who buys merchandise from a regular homeowner does not have a claim of exploitation against him.

181 The Gemara relates a similar incident: There was a certain man who was holding jewelry to sell. He announced that he was selling it for sixty ma’a, and it was worth fifty ma’a, and if they would give him fifty-five ma’a, he would take it and sell the jewels. This man, i.e., a potential buyer, came and said to himself: If I give him fifty-five ma’a, it is a case of a waiver, and I will not be entitled to recover the difference. I will give him sixty ma’a and claim from him by law the return of the sum gained by the exploitation. He did so. The case came before Rav Ḥisda, who said to him: The Sages taught this halakha of exploitation only with regard to one who buys merchandise from a merchant, but one who buys merchandise from a regular homeowner does not have a claim of exploitation against him.

182 Rav Dimi said to Rav Ḥisda: The ruling is correct. And likewise, Rabbi Elazar said: The ruling is correct. The Gemara asks: But didn’t we learn in the mishna that follows: Just as the halakhot of exploitation apply to a layman [lahedyot], so do the halakhot of exploitation apply to a merchant? Who is the layman to whom the mishna is referring? Is he not a regular homeowner as opposed to a merchant? Rav Ḥisda said: That mishna is referring to simple linen garments [tzadriyyata], which the homeowner crafts expressly for sale. But with regard to vessels and garments designed for the personal use of a homeowner, which are important to him, he sells them only to receive extra money, as people are generally hesitant to part with their belongings. Therefore, when purchasing an item from a homeowner, a buyer must consider the likelihood that his asking price is greater than the item’s actual worth.

183 MISHNA: Both the buyer and the seller are subject to the halakhot of exploitation. Just as the halakhot of exploitation apply to a layman, so do the halakhot of exploitation apply to a merchant. Rabbi Yehuda says: There is no exploitation for a merchant, as he is an expert in the market price of merchandise. The one upon whom the exploitation was imposed has the advantage. If he wishes, he can say to the other: Give me back my money and nullify the transaction, or he can say: Give me back the sum that you gained by exploiting me.

184 GEMARA: The Gemara asks: From where are these matters derived, that both the buyer and the seller are subject to the halakha of exploitation? As the Sages taught concerning the verse: “And if you sell to your colleague an item that is sold, or acquire from your colleague’s hand, you shall not exploit his brother” (Leviticus 25:14). I have derived only a case where a buyer was exploited. From where do I derive that the halakha is the same in a case where the seller was exploited? The same verse states: “Or acquire from your colleague’s hand, you shall not exploit his brother.”

185 The Gemara comments: And it was necessary to write the prohibition against exploitation with regard to a buyer, and it was necessary to write the prohibition against exploitation with regard to a seller. As, had the Merciful One written this prohibition only with regard to a seller, one would conclude that it is prohibited for him because he is certain of the value of his merchandise, but with regard to a buyer, who is not certain of the value of the seller’s merchandise, say that the Merciful

One did not render it prohibited for him to engage in exploitation with the verse “You shall not exploit.”

[186] And had the Merciful One written this prohibition only with regard to a buyer, one would conclude that it is prohibited for him because he acquires the item and he benefits from his purchase, as people say: If you purchased an item, you acquired a durable item for yourself. But with regard to a seller, who loses from the sale, as people say: One who sells an item loses, say that the Merciful One did not render it prohibited for him to engage in exploitation with the verse “You shall not exploit.” Therefore, it was necessary for the Torah to write this prohibition with regard to both parties to the transaction.

[187] § The mishna teaches that Rabbi Yehuda says: There is no exploitation for a merchant. The Gemara expresses surprise at this statement: Due to the fact that he is a merchant, he is not subject to the halakhot of exploitation? Anyone could arrive at a mistaken assessment of the value of merchandise.

[188] Rav Naḥman says that Rav says: It is with regard to a merchant who is a trader, who buys and sells merchandise, that they taught the halakha. What is the reason that he is not subject to the halakhot of exploitation according to Rabbi Yehuda? He knows how much his merchandise is worth, and he waives the sum of the disparity between the value and the price for the buyer. And the reason why he sells the merchandise in that manner, knowing that he is selling it for less than its value, is due to the fact that other merchandise happens to become available to him and he needs the money to purchase that item.

[189] The Gemara asks: But now, in any event, he retracts from the transaction, indicating that he did not waive the sum of the disparity. Rav Ashi said: What is the meaning of: There is no exploitation for a merchant? He is not subject to the principles of exploitation at all, as even if the disparity is less than the measure of exploitation, i.e., less than one-sixth, he may renege on the transaction. Since his entire livelihood is based on the slight profit margin that he earns from each transaction, he does not waive even that sum. The Gemara comments: It is taught in a baraita in accordance with the opinion of Rav Naḥman: Rabbi Yehuda says: There is no exploitation for a merchant, because he is expert in these matters.

[190] § The mishna teaches: The one upon whom the exploitation was imposed has the advantage. If he wishes, he can say to the other: Give me back my money and nullify the transaction, or he can say: Give me back the sum that you gained by exploiting me. The Gemara asks: Whose opinion is expressed in the mishna? It is neither the opinion of Rabbi Natan nor the opinion of Rabbi Yehuda HaNasi.

[191] The Gemara explains: If it is the opinion of Rabbi Natan, in the mishna the tanna teaches: If he wishes, he can say: Give me back my money and nullify the transaction, or he can say: Give me back the sum that you gained by exploiting me. And in the baraita (50b) Rabbi Natan does not teach: If he wishes, indicating that the transaction takes effect regardless of his wishes. And if it is the opinion of Rabbi Yehuda HaNasi, in the mishna the tanna teaches the halakha with regard to the buyer, and in the baraita Rabbi Yehuda HaNasi teaches: In a case where the seller was exploited, the seller is at an advantage, apparently to the exclusion of the buyer.

[192] The Gemara presents a mnemonic device for the Sages who discussed this difficulty: Zayin, referring to Rabbi Elazar; beit, referring to Rabba; reish, referring to Rava; shin, referring to Rav Ashi.

[193] Rabbi Elazar says: Concerning this halakha of exploitation in the mishna, I do not know who taught it, as it does not correspond to the opinion of any of the Sages. Rabba said: Actually, the mishna is the opinion of Rabbi Natan, and emend and teach that Rabbi Natan stated in the baraita as well: If he wishes. Rava said: Actually, the mishna is the opinion of Rabbi Yehuda HaNasi, and the ruling that Rabbi Yehuda HaNasi omits in the mishna he explicates in the baraita. The mishna and the baraita are complementary. Rav Ashi said: The language of the mishna is also precise, as the tanna teaches: Both the buyer and the seller, and then he proceeds to elucidate the halakha of the buyer. Learn from it that the tanna indeed omitted the halakha of the seller, but he did not exclude the seller from the halakha. The Gemara affirms: Learn from it that this is the case.

[194] § It was stated that there is a dispute among amora'im. With regard to one who says to another: I will be party to this sale on the condition that you have no claim of exploitation against me, even if you are exploited, Rav says: The exploited party has a claim of exploitation against him, and Shmuel says: He does not have a claim of exploitation against him. The Gemara suggests: Let us say that Rav stated his opinion in accordance with the opinion of Rabbi Meir, and Shmuel stated his opinion in accordance with the opinion of Rabbi Yehuda.

[195] This is as it is taught in a baraita: With regard to one who says to a woman: You are hereby betrothed to me on the condition that you do not have a claim against me for food, clothing, and conjugal rights that a husband is obligated to provide his wife by Torah law, she is betrothed to him and his condition is void; this is the statement of Rabbi Meir, who maintains that a person cannot stipulate a condition that negates obligations by Torah law. And Rabbi Yehuda says: In monetary matters, as opposed to personal obligations, one's condition is in effect.

[196] The Gemara refutes this parallel. Rav could have said to you: I stated my opinion even in accordance with the opinion of Rabbi Yehuda, as Rabbi Yehuda states his opinion that a stipulation is valid in monetary matters only there, where a woman knows that she is entitled to food and clothing but waives her rights to them.

[197] But here, where he says: On the condition that you have no claim of exploitation against me, does the other party know that there will be exploitation so that he will consciously waive his rights to claim compensation in the event that there is? He believes that perhaps there will be no exploitation at all.

[198] And Shmuel says: I state my opinion even in accordance with the opinion of Rabbi Meir, as Rabbi Meir states his opinion only there, in the case of betrothal, where the husband definitely abrogates Torah law with his condition. But here, who says that either party to the sale will abrogate any Torah law?

[199] Rav Anan says: This matter was explained to me personally by Mar Shmuel. In the case of one who says to another: I will be party to this sale on the condition that you have no claim of exploitation against me, the other party does not have a claim of exploitation against him, as one can waive his rights to compensation for the exploitation that he suffered. But if one said: I will be party to this sale on the condition that it is not subject to the halakhot of exploitation, it is subject to the halakhot of exploitation, as in this case it is directly counter to Torah law.

200 The Gemara raises an objection from a baraita: In the case of one who conducts business on faith; and in the case of one who says to another: I will be party to this sale on the condition that you have no claim of exploitation against me, the exploited party does not have a claim of exploitation against the one who exploited him. According to Rav, who said: I stated my opinion even in accordance with the opinion of Rabbi Yehuda, in accordance with whose opinion is this baraita, as pursuant to that statement, even Rabbi Yehuda holds that in cases of exploitation one cannot stipulate counter to that which is written in the Torah?

201 Abaye said: Based on this proof from the baraita it is clear that Rav stated his opinion in accordance with the opinion of Rabbi Meir, and that Shmuel stated his opinion in accordance with the opinion of Rabbi Yehuda, and this baraita expresses the opinion of Rabbi Yehuda.

202 Rava said: It is not difficult, as there is a distinction between the cases. Here, in this baraita, the tanna is speaking in a case where the condition is stated in an ordinary case, where it is not stated explicitly that the price paid is not the market value. In that case, Rav says that Rabbi Yehuda holds that the condition is void. There, where Rabbi Yehuda would uphold the condition, the tanna is speaking in a case where the exploitation is explicit, i.e., both parties know that the price paid is not the market value.

203 This is as it is taught in a baraita: In what case is this statement said? It is in an ordinary case, but in a case where the exploitation is explicit, e.g., in the case of a seller who said to the buyer: Concerning this item that I am selling to you for two hundred dinars, I know about it that it is worth only one hundred dinars, and I am selling it on the condition that you have no claim of exploitation against me, the buyer has no claim of exploitation against him. And likewise, in the case of a buyer who said to the seller: Concerning this item that I am buying from you for one hundred dinars, I know about it that it is worth two hundred dinars, and I am buying it on the condition that you have no claim of exploitation against me, the seller has no claim of exploitation against him.

204 Apropos the mention of one who conducts business on faith, the Gemara cites a baraita that teaches several halakhot concerning such an arrangement. The Sages taught: When selling merchandise that one purchased in bulk, one who conducts business on faith may not calculate the price of the merchandise of inferior quality on faith and the price of the merchandise of superior quality at their market value. Rather, he has two options: Either the price of both this merchandise and that merchandise must be calculated on faith, or the price of both this merchandise and that merchandise must be calculated at their market value.

205 The baraita continues: And the buyer gives the seller the payment for the money he spent in hiring a porter, the payment for the money he spent in hiring a camel driver if necessary, and the payment for the lodgings he used during the time of the transaction. These expenses had been borne by the seller, so it is not exploitation if he recovers them by charging the buyer. But as for the seller’s own wages, i.e., payment for the time he spent engaging in the transaction, he does not take his own wages, as the one from whom he purchased the merchandise already gave him his full wages.

206 The Gemara asks: With regard to his wages in full, from where did he give that to him? With what was he paid by the one from whom he purchased the merchandise? The Gemara responds: Rav Pappa said: This is referring to sellers of inexpensive garments, where the one from whom he purchases the merchandise gives four additional units for each one hundred units purchased, and that functions as payment for his efforts.

[207] MISHNA: How much can the sela coin be eroded through usage, and its use in a transaction at its original value will still not constitute exploitation? Rabbi Meir says: The accepted depreciation is four issar, which is a rate of one issar per dinar, or one twenty-fourth of a dinar. And Rabbi Yehuda says: The accepted depreciation is four pundeyon, which is a rate of one pundeyon per dinar, or one-twelfth of a dinar. And Rabbi Shimon says:

[208] The accepted depreciation is eight pundeyon, which is a rate of two pundeyon per dinar, or one-sixth of a dinar.

[209] The mishna continues: Until when is it permitted for one to return a worn coin once he realizes that it is defective? In the cities [bakerakim], one may return it only until a period of time has passed that would allow him to show it to a money changer, who is an expert in matters of coins. In the villages, where there is no money changer, one may return it only until Shabbat eves, when people purchase their Shabbat needs. Although these are the limits of how much a coin must be eroded in order for there to be exploitation, if the one who gave the coin to the aggrieved party recognized it, he must accept it back from him even after twelve months have passed no matter how little the erosion affected its value. And he has only a grievance against him, as the Gemara will explain.

[210] And one may give the slightly eroded coin for use in the desacralizing of second-tithe produce and he need not be concerned, as one who would refuse to accept a slightly eroded coin is merely a miserly soul, while the coin is in fact valid for any use.

[211] GEMARA: And the Gemara raises a contradiction to the mishna from a baraita in which the same measures of depreciation are enumerated, as in that baraita those measures are introduced with the question: How much must the sela coin be eroded so that its use in a transaction at its original value will constitute exploitation? That is diametrically opposed to the mishna.

[212] Rav Pappa says: This is not difficult. The tanna of our mishna calculates the measures from low to high. The tanna says that it does not constitute exploitation up to, but not including, the levels of depreciation enumerated in the mishna. Beginning with those levels of depreciation, it is exploitation. And the external tanna, i.e., the tanna of the baraita, calculates from high to low. That tanna says that it is exploitation down to and including the levels of depreciation enumerated in the baraita. It is only beneath those levels that it is not considered exploitation. There is no halakhic dispute between the two tanna’im.

[213] The Gemara returns to discuss the mishna and asks: What is different with regard to a sela, that the tanna’im disagree about the level of depreciation that constitutes exploitation, and what is different with regard to a garment, that the tanna’im do not disagree concerning whether the disparity between value and price that constitutes exploitation is one-sixth or less than one-sixth?

[214] Rava said: Who is the tanna that taught the halakhot of exploitation with regard to a garment in the mishnayot cited earlier in this chapter? It is Rabbi Shimon, who maintains that even in the case of a sela, the measure of exploitation is one-sixth. Abaye said that the two cases are different: With regard to a garment, a person is likely to waive the disparity up to one-sixth, as people say: Overpay and acquire an item for your back, i.e., a garment, and acquire at cost items for your stomach, i.e., food. Since it is worth purchasing fine garments, the disparity is not significant. By contrast, with regard to the sela in question, since it does not circulate, he does not waive even the sum of a smaller disparity.

215 § With regard to the matter of exploitation and coins itself, the Gemara elaborates: How much will the sela coin be eroded and its use in a transaction will constitute exploitation? Rabbi Meir says: Four issar, which is a rate of an issar per dinar. Rabbi Yehuda says: Four pundeyon, a pundeyon per dinar. Rabbi Shimon says: Eight pundeyon, two pundeyon per dinar. If the depreciation is greater than that, he may sell the coin at its value as metal, not for its original value.

216 To what extent can the coin erode and it will still be permitted for one to maintain it as a coin? With regard to a sela, it can be used as a sela until it erodes so that its value reaches one shekel, i.e., half a sela. With regard to a dinar, it can be used as a dinar until it erodes so that its value reaches one-quarter. Once it erodes to the point where its value reaches an issar less than that, it is prohibited to spend it. He may not sell the invalidated coin to a merchant, nor to a violent man, nor to a murderer, because they deceive others with it or force them to take it. Rather, he should perforate it and suspend it as an ornament on the neck of his son or the neck of his daughter.

217 The Gemara continues its analysis of the baraita. The Master said: With regard to a sela, it can be used as a sela until it erodes so that its value reaches one shekel, i.e., half a sela. With regard to a dinar, it can be used as a dinar until it erodes so that its value reaches one-quarter. The Gemara asks: What is different whereby with regard to a sela, it can be used as a sela until it erodes so that its value reaches one shekel, which is half a sela, and what is different whereby with regard to a dinar, it can be used as a dinar until it erodes so that its value reaches one-quarter [rova]?

218 Abaye says: What is the meaning of rova that the baraita teaches? It too is referring to a coin called rova, which is worth one-quarter of a shekel, which is half a dinar. Rava said: The language of the baraita is also precise in this regard, as the tanna teaches rova and does not teach one-quarter [revia]. The Gemara concludes: Learn from that inference that the reference of the tanna of the baraita is to the coin called rova, which is half a dinar.

219 The Gemara asks: Why does the tanna state his ruling so that the amount of erosion that disqualifies a dinar is dependent on a shekel? Why does the tanna state the measure as one-quarter of a shekel, rather than stating it as one-half of a dinar? The Gemara explains: By doing so, the tanna teaches us a matter in passing, that there are cases where a dinar originates from a shekel, e.g., a shekel that eroded and is now worth one-half its original value, i.e., one dinar.

220 This supports the opinion of Rabbi Ami, as Rabbi Ami says: With regard to a dinar that originated from a shekel, it is permitted to maintain it and use it as a dinar. Based on its size and shape, there is no concern that people will confuse it with a shekel. With regard to a dinar that originated from a sela, it is prohibited to maintain it and use it as a dinar. Due to the fact that even after erosion the coin remains the size of a sela, which is clearly larger than a dinar, the concern is that people will mistakenly consider it more valuable than a dinar.

221 § The Gemara continues its analysis of the baraita, which teaches: Once it erodes to the point where its value reaches an issar less than that, it is prohibited to spend it. The Gemara asks: What is the tanna saying in that statement? Abaye said that this is what the tanna is saying: If a sela eroded by the amount of an issar greater than the measure of exploitation, it is prohibited to spend it at its original value. Rava said to Abaye: If so, then even any amount greater than the measure of exploitation should be forbidden as well. Rather, Rava said that this is what the tanna is saying: If a sela eroded by the amount of an issar per dinar, it is prohibited to spend it, and this unattributed

baraita is in accordance with the opinion of Rabbi Meir, who says in the mishna that the measure of exploitation is one issar per dinar.

222 We learned in a mishna there (Kelim 12:7): A sela that was invalidated for use as a coin, and an individual designated it so that he would weigh with it items that require weighing, is susceptible to becoming ritually impure. His designation rendered it a vessel like any other weight. To what extent can the coin erode and it will still be permitted to maintain it? For a sela, it is an erosion of two dinars, half its value. If it eroded to an extent that it was worth less than that, he must cut it into pieces to prevent its being confused with a proper coin.

223 The Gemara asks: If it eroded but its current value is greater than one shekel, what is the halakha? Rav Huna says: If it eroded and depreciated less than one shekel he must cut it into pieces, and if it eroded and depreciated more than that he must also cut it into pieces. Rabbi Ami says: If it eroded and depreciated less than one shekel he must cut it into pieces, and if it eroded and depreciated more than that he may maintain it, because there is no concern that one will confuse a coin that eroded to that extent with a sela.

224 The Gemara raises an objection from the baraita:

225 If the erosion was greater than that, he may sell the coin at its value as metal, not for its original value. What, is it not that it eroded more than its measure of exploitation? The Gemara rejects this claim: No, the term greater means that if it did not yet erode to its measure of exploitation, he may sell it at its value.

226 Another objection was raised: To what extent can the coin erode and one would still be permitted to maintain it? For a sela that deteriorated, it is permitted to maintain it up to a shekel, which is half its value. Does this not mean that the sela depreciated little by little, which indicates that even though it lost half its value, which is far greater than the measure of exploitation, it is still permitted for one to maintain it, and there is no concern about deceit? The Gemara rejects this: No, it is referring to a coin that fell into the fire and eroded all at once, and therefore no deceit is possible.

227 The Master said in the baraita: If a coin greatly depreciated he should perforate it, and suspend it as an ornament on the neck of his son or the neck of his daughter. And the Gemara raises a contradiction from a baraita: With regard to an eroded coin, one should not make it a weight among his weights, nor cast it among his metal scraps [gerutotav], nor perforate it and suspend it on the neck of his son or the neck of his daughter, lest he come to use it by mistake. Rather, he should either grind it or melt it, or cut it into pieces, or take it and cast it into the Dead Sea.

228 Rabbi Elazar said, and some say Rav Huna said that Rabbi Elazar said: This is not difficult. Here, where it is permitted to fashion the coin into an ornament, it is in a case where he perforated the coin in the middle, and therefore it can no longer be mistaken for a valid coin; there, where it is prohibited to fashion the coin into an ornament, it is in a case where he perforated the coin from the side. In that case the concern is that he might cut the edge of the coin and use the unperforated remainder to deceive others.

229 § The mishna teaches: Until when is it permitted for one to return a depreciated coin? In the cities, one may return it only until a period of time has passed that would allow him to show it to a money changer, who is an expert in matters of coins. In the villages, where there is no money changer, one may return it only until Shabbat eves, when people purchase their Shabbat needs. The

Gemara asks: What is different with regard to a sela whereby the tanna distinguishes between cities and villages, and what is different with regard to a garment whereby he does not distinguish between cities and villages?

230 Abaye said: When we learned the halakha in the mishna with regard to a garment as well, it is with regard to its sale in the cities that we learned it. Concerning the sale of a garment in a village, he can return it even at a later stage. Rava said: There is a difference between a garment and a coin. In the case of a garment, every person is certain with regard to its value, and presumably the buyer will be informed of his mistake immediately. In the case of a sela, since not every person is certain with regard to its value, and rather it is only a money changer who is certain, therefore, in the cities, where there is a money changer available, the buyer can return the coin until a period of time has passed that would allow him to show it to a money changer. In the villages, where there is no money changer available, he has until Shabbat eves, when people go to the market, at which point he will discover the actual value of the sela.

231 The mishna teaches: And although these are the limits of how much a coin must be eroded in order for there to be exploitation, if the one who gave the coin to the aggrieved party recognized it, he must accept it back from him even after twelve months have passed, no matter how little the erosion affected its value; and he has only a grievance against him. The Gemara asks: Where did this occur? If it was in the cities, didn't you say that he has only until a period of time has passed that would allow him to show it to a money changer? If it was in the villages, didn't you say that he has until Shabbat eves?

232 Rav Ḥisda said: The Sages taught an attribute of piety here, according to which he must accept it even after considerable time has passed. The Gemara asks: If so, say the latter clause of the mishna: And he has only a grievance against him. For whom is there a grievance? If it is for the pious person who accepted the return of the flawed coin although he was not required to accept it, and is teaching that he may have a grievance against the one who requested of him to accept the coin, let him not accept the coin from him and let him not have a grievance. Rather, perhaps it is referring to that person from whom he accepted the coin. But after the person piously accepts return of the coin from him, is it reasonable that the one who returned the coin will have a grievance?

233 The Gemara answers that this is what the tanna is saying: But with regard to another person who is not pious and does not accept the coin, although he does not accept return of the coin from him after the time has passed, the one who requested that he accept it has only a grievance against him. One cannot compel the person from whom he received the coin to accept it in return, as although the coin maintains its value, not everyone is willing to conduct business with a coin whose value is questionable.

234 § The mishna teaches: And one may give the slightly eroded coin for use in the desacralizing of second-tithe produce and he need not be concerned, as one who would refuse to accept a slightly eroded coin is merely a miserly soul, while the coin is in fact valid for any use. Rav Pappa said: Conclude from this formulation of the mishna that this one who insists upon the integrity of his coins and accepts only unflawed coins is characterized as a miserly soul. The Gemara adds: And this matter applies only if the flawed coins that he rejected still circulate.

235 The Gemara comments: This supports the opinion of Ḥizkiyya, as Ḥizkiyya says: If one comes to change this flawed silver coin for copper coins, he changes it for its value, deducting several perutot

due to erosion. If he comes to desacralize second tithe with it, he desacralizes the produce with it as though its value were that of an unflawed [beyafa] coin.

[236] The Gemara asks: What is Ḥizkiyya saying? Is he merely repeating the halakha cited in the mishna? The Gemara explains that this is what he is saying: Although when he comes to change into perutot this flawed silver coin upon which he redeemed his second-tithe produce he changes it for its actual, not its original, value, when he desacralizes second tithe with it, he desacralizes the produce with it as though it were an unflawed coin.

[237] The Gemara asks: Is that to say that Ḥizkiyya holds that we treat second tithe with contempt, i.e., we redeem it for less than its actual value? But doesn't Ḥizkiyya say: In the case of second-tithe produce that does not have the value of even one peruta and therefore cannot be redeemed, one says: The second-tithe produce and its one-fifth that is added when one redeems his own second-tithe produce are desacralized upon the first coins upon which I already redeemed second-tithe produce worth at least one peruta, because it is impossible for a person to be precise with his coins? Presumably, the value of the coins with which he redeemed the produce somewhat exceeded the value of the produce. Therefore, he can desacralize additional produce worth less than one peruta with those coins. Apparently, Ḥizkiyya holds that one may not display contempt for second-tithe produce by redeeming it on coins worth less than its value.

[238] The Gemara explains: What is the meaning of beyafa? It means that although the coin has eroded, it is accorded unflawed status, and one may desacralize second-tithe produce with it. Nevertheless, it is assessed according to its actual, not its original, value, as we do not treat second tithe with two forms of contempt. One may use an eroded coin, but only according to its actual value.

[239] § Apropos the statement of Ḥizkiyya, the Gemara analyzes the matter itself. Ḥizkiyya said: In the case of second-tithe produce that does not have the value of one peruta and therefore cannot be redeemed, one says: The second-tithe produce and its one-fifth that is added when one redeems his own second-tithe produce are desacralized upon the first coins upon which I already redeemed second-tithe produce worth at least one peruta, because it is impossible for a person to be precise with his coins.

[240] The Gemara raises an objection from a mishna (Ḥalla 1:9): With regard to teruma and first fruits, a non-priest is liable to receive the penalty of death at the hand of Heaven for partaking of them intentionally, and the Torah imposes the payment of a penalty of one-fifth of the value of the produce for partaking of them unwittingly.

[241] And their consumption is prohibited to non-priests; and they are the property of the priest in every sense, e.g., to sell them to another priest or betroth a woman with them; and if they were intermingled with non-sacred produce they are negated only if the ratio is one part teruma in one hundred parts non-sacred produce; and they require the washing of one's hands before partaking of them; and one who was impure and immersed must wait for sunset before partaking of them. These are halakhot that are in effect with regard to teruma and first fruits, which is not so with regard to second tithe.

[242] The Gemara asks: What is the meaning of: Which is not so with regard to second tithe? Is it not, by inference, that second tithe is negated in a majority of non-sacred produce? And if it is so that the opinion of Ḥizkiyya is correct and even second-tithe produce worth less than one peruta can be redeemed, second tithe is an item whose prohibition has permitting factors, and the principle is that

any item whose prohibition has permitting factors is not negated even if it is in a mixture with one thousand permitted parts.

[243] The Gemara rejects this proof: And from where is it learned that from the phrase: Which is not so with regard to second tithe, one infers that second tithe is negated in a simple majority? Perhaps infer that second tithe is not negated at all. The Gemara answers: You cannot say so, as with regard to teruma, the tanna in the mishna is teaching the stringencies of teruma but he is not teaching the leniencies of teruma. The Gemara asks: But doesn't the tanna teach: And they are the property of the priest, which is a leniency? Apparently, the tanna did not restrict his treatment of the halakhot of teruma to stringencies.

[244] The Gemara states: The inference that second tithe is not negated at all should not enter your mind, as it is taught explicitly in a baraita: Second tithe is negated in a simple majority. And with regard to which second tithe did the Sages say this? It is with regard to second tithe that is not worth even one peruta, and which entered Jerusalem and exited. The Gemara states its objection to the ruling of Ḥizkiyya: And if it is so that the opinion of Ḥizkiyya is correct and even second-tithe produce worth less than one peruta can be redeemed, let him take action according to Ḥizkiyya and redeem the second tithe upon the first coins. Therefore, as an item whose prohibition has permitting factors, it should not be negated at all. The Gemara answers: This is a case where he did not redeem his second tithe, and therefore he has no first coins upon which to redeem the produce.

[245] The Gemara asks: And let him bring other second-tithe produce worth half a peruta that he has, and join it to the second tithe worth half a peruta intermingled with the non-sacred produce, and desacralize them together. It remains an item whose prohibition has permitting factors. The Gemara answers: Second tithe by Torah law and second tithe by rabbinic law do not join. By Torah law second tithe is negated in a majority of non-sacred produce and retains no sanctity, and it is by rabbinic law that an item whose prohibition has permitting factors is not negated. Therefore, the half-peruta of second tithe that he brought, which is not in a mixture and is second tithe by Torah law, cannot be redeemed.

[246] The Gemara continues: And let him bring half a peruta of second-tithe produce from doubtfully tithed produce [demai], which is by rabbinic law, and join it to the intermingled half-peruta. The Gemara explains: One may not do so ab initio lest he come to bring a half-peruta from produce that is definitely untithed, as in practice one treats demai in the same manner that he treats untithed produce.

[247] The Gemara suggests: And let him bring two perutot and desacralize second tithe worth one and a half perutot upon them, and desacralize this half-peruta of second tithe upon that remaining half-peruta. The Gemara rejects this: Do you hold that the sanctity of second-tithe produce worth one and a half perutot takes effect on two perutot? No, the sanctity of one peruta takes effect on one peruta of the coins, and the sanctity of the half-peruta of produce does not take effect on anything. Once again it becomes a case of one half-peruta of produce that is second tithe by Torah law and the half-peruta in mixture that is second tithe by rabbinic law, and second tithe by Torah law and second tithe by rabbinic law do not join.

[248] The Gemara asks: And let him bring an issar, worth eight perutot, and redeem second tithe worth almost that much, and redeem the intermingled half-peruta of second tithe upon the rest. The Gemara

answers: One may not do so ab initio, lest he come to bring perutot to redeem the produce, in which case the sanctity of the tithe will not take effect on a half-peruta, and the remedy will be ineffective.

249 It is taught in the baraita: And which entered Jerusalem and exited. The Gemara asks: And why is the matter of negation in a majority relevant? Let him bring it back into Jerusalem and partake of it there. The Gemara answers: The reference is to second tithe that became ritually impure outside Jerusalem. The Gemara asks: But why not let him redeem it, in accordance with the statement of Rabbi Elazar? As Rabbi Elazar says: From where is it derived with regard to second-tithe produce that became ritually impure that one may redeem it

250 even in Jerusalem, although ritually pure second tithe cannot be desacralized in Jerusalem? It is as it is stated: “For you are unable to carry [se’et] it…and you shall turn it into money, and bind up the money in your hand” (Deuteronomy 14:24–25). And se’et means nothing other than eating, as it is stated: “And he took portions [masot] from before him” (Genesis 43:34). Since ritually impure second-tithe produce may not be consumed, Rabbi Elazar holds that one may desacralize it even if it had been brought into Jerusalem.

251 Rather, the halakha of the baraita is taught not with regard to second-tithe produce, but with regard to food acquired with second-tithe money, which cannot be desacralized. The Gemara asks: With regard to food acquired with second-tithe money too, let him redeem it, as we learned in a mishna (Ma’aser Sheni 3:10): Food acquired with second-tithe money that became ritually impure should be redeemed. The Gemara answers: The baraita is in accordance with the opinion of Rabbi Yehuda, who says: Food acquired with second-tithe money that became ritually impure must be buried and may not be redeemed.

252 The Gemara asks: If the baraita is in accordance with the opinion of Rabbi Yehuda, why did the tanna teach specifically a case where the food exited Jerusalem? Even if it did not exit Jerusalem, that halakha also applies, as he holds that once the food becomes ritually impure it must be buried. Rather, actually, it is taught in the baraita with regard to second tithe that is ritually pure, and what is the meaning of exited? It is not that the produce actually exited Jerusalem. Rather, the baraita is discussing a case where the partitions, i.e., the walls, surrounding the city fell. The legal status of that second-tithe produce is that of produce that exited the city.

253 The Gemara asks: But doesn’t Rava say: The halakha that a partition enables one to eat second-tithe produce is by Torah law, and the halakha with regard to the capability of partitions of the city to gather second-tithe produce into the city is by rabbinic law, and when the Sages issued a decree that partitions gather second-tithe produce in terms of their being considered within the city, they did so only where there are intact partitions, but where there are no intact partitions, the Sages did not issue a decree? The Gemara answers: Once they issued the decree, the Sages did not distinguish between cases where there are intact partitions and cases where there are not intact partitions. Once the Sages issued the decree with regard to partitions and the produce being gathered they applied it globally. This is one manner of explaining the baraita.

254 Rav Huna bar Yehuda said that Rav Sheshet said: The tanna of the baraita is teaching one halakha: It is with regard to second-tithe produce that is not worth even one peruta and which both entered Jerusalem and then exited it. It cannot be redeemed because it is worth less than one peruta. The Gemara asks: Why? And let him bring it back into Jerusalem and partake of it there. The Gemara answers: It is a case where the partitions surrounding the city fell.

[255] The Gemara asks: And let him redeem the second-tithe produce, as doesn't Rava say: The halakha that a partition enables one to eat second-tithe produce is by Torah law, and the halakha with regard to the capability of partitions of the city to gather second-tithe produce into the city is by rabbinic law, and when the Sages issued a decree that partitions gather second-tithe produce in terms of their being considered within the city, they did so only where there are intact partitions, but where there are no intact partitions, the Sages did not issue a decree? The Gemara answers: The Sages did not distinguish between cases where there are intact partitions and cases where there are not intact partitions.

[256] The Gemara comments: If so, why did the tanna teach specifically a case where the produce does not have the value of one peruta? The same would hold true even if it has the value of one peruta. The Gemara answers: The tanna is speaking utilizing the style of: It is not necessary. It is not necessary to state that if the produce has the value of one peruta the halakha is that the partitions gather it and it can no longer be redeemed, but if it does not have the value of one peruta, say that the partitions do not gather it. Therefore, he teaches us that the partitions gather even second-tithe produce worth less than one peruta, and it cannot be redeemed.

[257] § The Sages taught that it is written: "And if a man will redeem of his tithe, he shall add to it the fifth part thereof" (Leviticus 27:31), from which it is inferred: Of his tithe, but not all his tithe. This serves to exclude second tithe that does not have the value of one peruta, which cannot be redeemed. It was stated that there is an amoraic dispute with regard to this halakha. Rav Ami says: The second tithe cannot be redeemed in a case where the produce itself does not have the value of one peruta. Rav Asi says: The second tithe cannot be redeemed in a case where its additional payment of one-fifth does not have the value of one peruta. Other amora'im dispute the same issue. Rabbi Yoḥanan says: The produce itself does not have the value of one peruta. Rabbi Shimon ben Lakish says: Its additional payment of one-fifth does not have the value of one peruta.

[258] The Gemara raises an objection from a baraita: With regard to second-tithe produce that does not have the value of one peruta, it is sufficient that he will say: It and its additional payment of one-fifth are desacralized upon the first coins upon which I already redeemed second-tithe produce.

[259] The Gemara explains the objection: Granted, according to the one who says: There is not the value of a peruta in its additional payment of one-fifth, this is the reason that the tanna teaches: It is sufficient, which indicates that even though in the produce itself it has the value of one peruta, since there is not the value of a peruta in its one-fifth payment, it works out well, as it is sufficient if he redeems the produce with other second-tithe produce. But according to the one who says: It is in a case where the produce itself does not have the value of one peruta that the second tithe cannot be redeemed, what is the meaning of: It is sufficient? From the outset, there was never sufficient value for there to be any element of redemption. The Gemara concludes: Indeed, it is difficult to explain the baraita according to that opinion.

[260] § Apropos the additional payment of one-fifth, a dilemma was raised before the Sages: Is the payment of one-fifth calculated from within, i.e., one-fifth of the value of the redeemed item, or is the payment of one-fifth calculated from without, meaning one-quarter of the value of the redeemed item, which is one-fifth of the eventual payment, i.e., the principal plus the additional one-fifth? Ravina says: Come and hear a resolution of the dilemma from a baraita: In a case where the owner says he is willing to redeem consecrated property for twenty dinars, and any other person is willing

to purchase the property for twenty dinars, the owners take precedence and redeem the property due to the fact that they are obligated to add one-fifth, and the Temple treasury profits more from the owner than from anyone else. If one who is not the owner said: It is incumbent upon me to desacralize it for twenty-one dinars,

[261] the owner gives a payment of twenty-six dinars. Were they to enable the other person to purchase it for twenty-one dinars, the Temple treasury would incur a loss, as the principal plus one-fifth paid by the owner is greater than the payment of the other person, who must pay only the principal. Were the owner to pay only twenty for the principal and add one-fifth, the principal paid by the owner is less than the sum offered by the other person. Therefore, the owner pays the principal proposed by the other person and then adds the payment of one-fifth that he was obligated to pay based on his own offer, i.e., five dinars, for a total of twenty-six. Likewise, if the other person offers twenty-two dinars, the owner gives twenty-seven; if the other person offers twenty-three, the owner gives twenty-eight; if the other person offers twenty-four, the owner gives twenty-nine.

[262] If the other person offers twenty-five dinars, the owner gives thirty, due to the fact that the owner does not add one-fifth based on the raise in the offer of this other person, but only on the principal according to his own offer. It is clear from these calculations that a principal of twenty plus an addition of one-fifth equal twenty-five dinars. Learn from it that one-fifth is calculated from without, meaning one-quarter of the value of the redeemed item. The Gemara affirms: Learn from it that this is the halakha.

[263] The Gemara comments: The two sides of this dilemma are parallel to a dispute between tanna'im, as it is taught in a baraita that it is written: "And shall add unto it one-fifth part thereof" (Leviticus 27:27). This means that the item and its additional one-fifth payment will total five parts; one-fifth is calculated from without; this is the statement of Rabbi Yoshiya. Rabbi Yonatan says: Its one-fifth means one-fifth of the principal; one-fifth is calculated from within.

[264] § A dilemma was raised before the Sages: Does failure to pay the additional one-fifth prevent consumption outside of Jerusalem of second tithe that was redeemed, or does it not prevent consumption? The dilemma is: Is second-tithe produce worth four dinars redeemed with four dinars, and the obligation to add the payment of one-fifth is an obligation incumbent upon the owner himself? In that case, apparently, failure to pay the additional one-fifth does not prevent consumption. Or perhaps second-tithe produce worth four dinars is redeemed with five dinars, no less, and failure to pay the additional one-fifth prevents consumption.

[265] Ravina said: Come and hear a resolution to this dilemma from a mishna (Demai 1:2): For second tithe of doubtfully tithed produce [demai], whose status is that of untithed produce by rabbinic law, there is no payment of one-fifth if the owner redeems its second tithe, and there is no obligation of the eradication of tithes after three years, as is the case with tithes taken from untithed produce.

[266] Ravina explains: But by inference, there is payment of principal. Although there is no obligation to add one-fifth, second tithe separated from demai requires redemption. What is the reason for this? Apparently, concerning the principal, about which failure to pay it prevents consumption of second tithe of untithed produce by Torah law, it is also a sum that must be paid in the case of demai by rabbinic law. Concerning the payment of one-fifth, about which failure to pay it does not prevent consumption of second tithe of untithed produce by Torah law, it is not a sum that must be paid in the case of demai by rabbinic law.

267 The Gemara suggests: Let us say that the two sides of this dilemma are parallel to a dispute between tanna’im, as it is taught in a baraita: In a case where one gave payment to redeem the principal but did not give payment of the additional one-fifth, Rabbi Eliezer says: One may eat it, and Rabbi Yehoshua says: One may not eat it. Rabbi Yehuda HaNasi said: The statement of Rabbi Eliezer appears correct with regard to Shabbat, when the Sages deemed it permitted for one to eat without the additional payment, in deference to Shabbat, and the statement of Rabbi Yehoshua appears correct with regard to the days of the week.

268 The Gemara infers: From the fact that Rabbi Yehuda HaNasi says: The statement of Rabbi Eliezer appears correct with regard to Shabbat, by inference they disagree even with regard to the days of the week. Likewise, from the fact that Rabbi Yehuda HaNasi says: The statement of Rabbi Yehoshua appears correct with regard to the days of the week, by inference they disagree even with regard to Shabbat. Apparently, theirs is a fundamental dispute.

269 What, is it not that they disagree with regard to this reasoning, that Rabbi Eliezer holds that failure to pay the additional one-fifth does not prevent consumption, as redemption of the principal alone suffices; and Rabbi Yehoshua holds that failure to pay the additional one-fifth prevents consumption?

270 Rav Pappa said: No, perhaps the explanation is that everyone agrees that failure to pay the additional one-fifth does not prevent consumption, and here they disagree with regard to whether we are concerned for potential negligence. One Sage, Rabbi Yehoshua, holds: We are concerned for negligence, lest one fail to pay the additional one-fifth and therefore the owner may not eat the second-tithe produce until he adds the one-fifth payment. And one Sage, Rabbi Eliezer, holds: We are not concerned for negligence, and one will presumably add the one-fifth payment later.

271 Rabbi Yoḥanan says: Although the tanna’im disagree with regard to second tithe, all concede with regard to consecrated property that if the one who consecrated it paid the principal and did not add one-fifth, that he successfully desacralized the produce, since the Temple treasurers demand payment from him in the marketplace, preventing any potential negligence. Therefore, he may use the property immediately.

272 The Gemara asks: And do they not disagree with regard to consecrated property? But isn’t it taught in a baraita: In a case where one gave payment to redeem the principal but did not give him payment of the additional one-fifth, Rabbi Eliezer says: He successfully desacralized the produce, and the Rabbis say: He did not desacralize the produce? Rabbi Yehuda HaNasi said: The statement of Rabbi Eliezer appears correct with regard to consecrated property, and the statement of the Rabbis appears correct with regard to second tithe.

273 The Gemara infers: From the fact that Rabbi Yehuda HaNasi says that the statement of Rabbi Eliezer appears correct with regard to consecrated property, by inference they disagree even with regard to second tithe. Likewise, from the fact that Rabbi Yehuda HaNasi said that the statement of the Rabbis appears correct with regard to second tithe, by inference they disagree even with regard to consecrated property. This contradicts Rabbi Yoḥanan’s statement that there is no dispute with regard to consecrated property.

274 Rather, if it was stated, it was stated like this: Rabbi Yoḥanan says: All concede that concerning Shabbat with regard to consecrated property that he successfully desacralized the property. One reason for this halakha is as it is written: “And you shall call Shabbat a delight” (Isaiah 58:13). The

Sages sought to facilitate that delight in Shabbat by ruling leniently. And furthermore, it is desacralized without payment of the additional one-fifth, since the Temple treasurers demand payment from him in the marketplace.

[275] § Rami bar Ḥama says: The Sages said that consecrated property cannot be desacralized with land, as the Merciful One states with regard to the redemption of a consecrated field: “And he will give the money and it will be assured to him” (Leviticus 27:19), indicating that redemption is accomplished with money. The question is with regard to payment of its additional one-fifth: What is the halakha in terms of the possibility that it will be desacralized with land?

[276] If a non-priest unwittingly ate teruma, his debt can be repaid to the priest only with non-sacred property, not with teruma, as the Merciful One states: “And if a man eats that which is sacred unwittingly…and he shall give that which is sacred to a priest” (Leviticus 22:14), from which it is derived that repayment must be with an item fit to become sacred, i.e., a non-sacred item, not teruma, which cannot be consecrated again. The question is with regard to payment of its additional one-fifth: What is the halakha in terms of the possibility that it will be repaid not from non-sacred items, but from teruma?

[277] Second-tithe produce cannot be desacralized with an unminted coin, as the Merciful One states: “And you shall bind up [vetzarta] the money in your hand” (Deuteronomy 14:25), which the Sages interpret as serving to include any item that has the imprint [tzura] of a coin upon it for desacralization, not an unminted coin. The question is with regard to payment of its additional one-fifth: What is the halakha in terms of the possibility that it will be desacralized with an unminted coin?

[278] Rami bar Ḥama was unable to resolve this series of dilemmas, and the matter proceeded and came before Rava, who said to the people who related the dilemmas to him: The verse states: “And shall add unto it one-fifth part thereof” (Leviticus 27:27), which serves to include its additional one-fifth within the same legal status as that of its principal.

[279] Ravina said: We too learn this in a mishna (Terumot 6:4): One who steals teruma and did not partake of it pays a payment of double the principal at the price of the teruma, as a thief pays double the value of the item that he stole. Both payments are calculated based on the price of teruma, which is lower than the price of non-sacred food, as the demand for it is lower because it is eaten only by priests. If the thief ate it unwittingly, he pays a payment worth the value of two principals and adds one-fifth in this manner: He pays one principal and one-fifth from non-sacred items, like any non-priest who partakes of teruma, and with regard to the other principal, he pays it according to the price of teruma.

[280] Learn from it that the legal status of its one-fifth payment is like that of the principal itself, in that it must be paid from non-sacred property. The Gemara affirms: Learn from it that it is so.

[281] § Rava said: With regard to robbery, it is written: “And he shall restore the robbed item that he robbed…and he shall add its one-fifth payments to it” (Leviticus 5:23–24), and we learned in a mishna (Bava Kamma 103a): 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, then the additional one-fifth is considered a new principal obligation. This robber adds 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.

282 Rava continues: With regard to teruma too, it is written: “If a man eats that which is sacred unwittingly, then he shall add its one-fifth payment to it” (Leviticus 22:14), and as we learned in a mishna (Terumot 6:1): One who partakes of teruma unwittingly pays the principal and an additional one-fifth. This is the halakha whether it concerns one who partakes of teruma, or one who drinks it, or one who applies oil to himself; or whether it is ritually pure teruma or ritually impure teruma. He pays its one-fifth payment, and if he partook of that one-fifth, he pays one-fifth of its one-fifth. Rava concludes: While with regard to second tithe, it is neither written in the Torah, nor taught in a mishna, nor raised as a dilemma before us by the amora’im.

283 The Gemara pursues a similar line of inquiry: With regard to consecrated property it is written: “And if he who consecrated it will redeem his house, then he shall add one-fifth of the money of your valuation unto it, and it shall be his” (Leviticus 27:15), and we learned in a mishna (55b): One who redeems his own consecrated property that he consecrated himself adds one-fifth to the sum of the redemption. We learned one-fifth; we did not learn one-fifth of the one-fifth. What is the halakha? The Gemara elaborates: With regard to teruma it is written: “Then he shall add,” and with regard to consecrated property too, isn’t it written: “Then he shall add”? Apparently, in a case of consecrated property one also pays one-fifth of the one-fifth.

284 Or perhaps we should learn the halakha as follows: With regard to teruma it is written: “Then he shall add [veyasaf],” and the halakha of one-fifth of the one-fifth is derived in this manner: If you take the letter vav of the word veyasaf, and cast it to the end of the word ḥamishito, its one-fifth payment, it then becomes the plural ḥamishitav, its one-fifths payments, as it is written in the case of robbery, indicating that one pays one-fifth of one-fifth. With regard to consecrated property, it is written: “Then he shall add [veyasaf] one-fifth [ḥamishit].” Even when you take the vav of veyasaf and cast it to the end of the word ḥamishit, ultimately it is only ḥamishito, in the singular, indicating payment of only a single one-fifth. What is the halakha?

285 The Gemara suggests: And why not derive the halakha of consecrated property from the fact that it is tantamount to a second consecration. When one redeems consecrated property with another item, although that item is thereby consecrated, not all the halakhot of consecrated property apply to it. And Rabbi Yehoshua ben Levi says: For redemption of first consecration one adds one-fifth; for redemption of second consecration one does not add one-fifth. Rav Pappi said to Ravina that this is what Rava said: The legal status of the additional one-fifth is like that of initial consecration, not like that of second consecration.

286 The Gemara asks: What halakhic conclusion was reached about this dilemma? Rav Tavyumei said in the name of Abaye that the verse states with regard to one who redeems a house that he consecrated: “Then he shall add one-fifth of the money of your valuation unto it” (Leviticus 27:15). The Torah juxtaposes its payment of one-fifth to the money of its valuation, i.e., the consecrated house: Just as when redeeming the money of its valuation one adds one-fifth, so too, when redeeming the money of its one-fifth, one adds one-fifth as well.

287 § The Gemara analyzes the matter itself. Rabbi Yehoshua ben Levi says: For redemption of first consecration one adds one-fifth; for redemption of second consecration one does not add one-fifth. Rava said: What is the reason for the opinion of Rabbi Yehoshua ben Levi? It is as the verse states:

“And if he who consecrated it will redeem his house, then he shall add one-fifth of the money of your valuation unto it” (Leviticus 27:15), from which it may be inferred that when he who consecrates the house redeems it, he adds one-fifth, but this is not so with regard to one who associates an item with an existing sanctity, as in this case, where the sanctity of the one-fifth is derived from its association with the sanctity of the house.

[288] The Gemara relates that the tanna who recited mishnayot and baraitot in the study hall taught a baraita before Rabbi Elazar. It is written: “And if it is of a non-kosher animal, then he shall redeem it according to your valuation” (Leviticus 27:27). This verse teaches that just as a non-kosher animal that was consecrated is unique in that it is an example of initial consecration and it is devoted entirely to Heaven, as neither the owner nor anyone else may derive benefit from it after its consecration, and one violates the prohibition against misuse of consecrated property by using it after it was consecrated, so too, with regard to any item that both undergoes initial consecration and is devoted entirely to Heaven, one violates the prohibition against misuse of consecrated property by using it after it was consecrated.

[289] Rabbi Elazar said to the tanna: Granted, the statement: It is devoted entirely to Heaven, serves to exclude offerings of lesser sanctity, e.g., peace-offerings. Since the owners have a share in them, as they may partake of those offerings, they are not subject to the prohibition against misuse of consecrated property. But what does the mention of initial consecration in the baraita serve to exclude? Is it that initial consecration is subject to the prohibition against misuse of consecrated property and ultimate consecration is not subject to the prohibition against misuse of consecrated property? Even the property consecrated last in a series of redemptions is full-fledged consecrated property. Perhaps it is with regard to the matter of the payment of one-fifth that you are saying this, and it is in accordance with the statement of Rabbi Yehoshua ben Levi? The tanna said to him: Yes, that is what I am saying.

[290] Apropos that baraita, Rav Ashi said to Ravina: Is it so that a non-kosher animal is subject to initial consecration

[291] but it is not subject to an intermediate stage of consecration resulting from redemption? Ravina said to him: It is due to the fact that it is not subject to ultimate consecration. A non-kosher animal does not ultimately remain consecrated, as it is used neither as an offering nor in the upkeep of the Temple. Instead, it is redeemed and its value is consecrated.

[292] Rav Aḥa of Difti said to Ravina: It is subject, at least, to an intermediate stage of consecration; and in that case, let one add one-fifth as well. Ravina said to him: Its legal status is like that of ultimate consecration: Just as one does not add one-fifth with regard to a non-kosher animal in ultimate consecration, as that category does not exist in a non-kosher animal, so too, one does not add one-fifth in a case of intermediate consecration.

[293] Rav Zutra, son of Rav Mari, said to Ravina: What did you see that led you to liken the intermediate stage of consecration to ultimate consecration? Let us liken it to initial consecration. Ravina said to him: It stands to reason that he should liken it to ultimate consecration, as he thereby derives the halakha of an item consecrated by association with the sanctity of an item consecrated by association. The Gemara asks: On the contrary, he should have likened it to initial consecration, as he thereby derives the halakha of an item after which there is another stage of sanctity, the intermediate stage of consecration, from an item after which there is another stage of sanctity.

294 The Gemara answers: It is as Rava says: “The burnt-offering” (Leviticus 6:2), employing the definite article, indicates that the reference is to the first burnt-offering. So too, when it is written: The non-kosher animal, the reference is to the initial consecration of the non-kosher animal, not the intermediate stage of consecration.

295 The Gemara comments: It is taught in a baraita in accordance with the opinion of Rabbi Yehoshua ben Levi: If one said that this cow is in place of that cow, which belongs to the Temple treasury, or this garment is in place of that garment, which belongs to the Temple treasury, his consecrated property is redeemed, and the treasurer of consecrated property is at an advantage. If the replacement item is equal to or more valuable than the original item, it belongs to the treasurer, and if it is less valuable, the one who consecrated it must pay the difference.

296 If he said: This cow valued at five sela is in place of this cow, which belongs to the Temple treasury, or: This garment valued at five sela is instead of this garment, which belongs to the Temple treasury, his consecrated property is redeemed. Even if the second consecrated item is more valuable, it is not considered a consecration done in error. He will have to pay the difference. He adds one-fifth when redeeming the item that was the initial consecration, but when redeeming the item for which the initial consecration was redeemed, the second consecration, he does not add one-fifth.

297 MISHNA: The measure of exploitation is four silver ma’a from the twenty-four silver ma’a of a sela. And the smallest monetary claim in court for which a plaintiff can obligate a respondent to take an oath is two silver ma’a. And the smallest monetary admission for which that respondent takes the oath is an admission that one owes at least the value of one peruta.

298 On a related note, the tanna adds that there are five halakhic situations involving perutot: The admission to part of a claim must be that one owes at least the value of one peruta, and a woman is betrothed with the value of one peruta. And one who derives benefit of the value of one peruta from consecrated property has misused consecrated property and is liable to bring an offering, and one who finds an item that has the value of one peruta is obligated to proclaim that he found it. And with regard to one who robs from another an item that has the value of one peruta and took an oath to him that he robbed nothing, when he repents and seeks to return the stolen item he must take it and follow its owner even to Media. In that case, he may not return the item by means of a messenger; he must give it directly to its owner.

299 GEMARA: The Gemara asks: We already learned this on another occasion in an earlier mishna (49b): The measure of exploitation for which one can claim that he was exploited is four silver ma’a from the twenty-four silver ma’a in a sela, which is one-sixth of the transaction. The Gemara answers: It was necessary for the tanna to mention two halakhot: The smallest monetary claim in court for which a plaintiff can obligate a respondent to take an oath is two silver ma’a, and the smallest monetary admission for which that respondent takes the oath is an admission that one owes at least the value of one peruta. Therefore, the tanna cited the halakha of exploitation as well.

300 The Gemara asks: That too we already learned in a mishna (Shevuot 38b): The oath for admission to part of a claim imposed by the judges is in a case where the claim is two silver ma’a, and the admission is the value of one peruta. The Gemara answers: It was necessary for the tanna to teach the latter clause of the mishna, as it teaches: There are five halakhic situations involving perutot, which is not taught elsewhere.

[301] § The mishna teaches: There are five halakhic situations involving perutot. The Gemara asks: And let the tanna also teach that the measure of exploitation is one peruta. Rav Kahana said: That is to say that there is no exploitation concerning perutot. Any disparity between value and price that is less than the value of the smallest silver coin, an issar, which is worth eight perutot, is not considered exploitation.

[302] And Levi says: There is exploitation even for perutot. And likewise, Levi taught in his version of the Mishna, which parallels the Mishna redacted by Rabbi Yehuda HaNasi, that there are five halakhic situations involving perutot: The measure of exploitation is one peruta, the admission is the value of one peruta, and the betrothal of a woman is with one peruta, and the halakha of one who takes an oath denying a robbery applies in the case where he denies having robbed another of at least one peruta, and the convening of judges to adjudicate a case of monetary law is in the case where the claim is at least one peruta.

[303] The Gemara asks: And with regard to the tanna of our mishna, what is the reason he does not teach the case of the convening of judges in his list of cases involving perutot? The Gemara answers: He taught the case of robbery, which includes all monetary claims one has against another.

[304] The Gemara asks: But doesn't the tanna teach the case of robbery and teach the case of lost property? Apparently, he lists monetary cases that are included under the rubric of robbery. The Gemara answers: With regard to these two cases, it was necessary for the tanna to teach them separately, as there is a novel element in each. The novel element in the case of robbery is not only that a robbery of one peruta is considered robbery, but also in the case of one who robs an item from another worth at least one peruta and then took an oath to him that he robbed nothing, he must carry the stolen item and follow its owner even to Media. The novel element in the case of lost property is that one who finds lost property the value of at least one peruta is obligated to proclaim that he found it, even though the lost article depreciated and is no longer worth one peruta.

[305] The Gemara asks: And as for Levi, what is the reason he does not teach that one is obligated to proclaim that he found lost property only if it is worth at least one peruta? The Gemara answers: He taught the case of robbery, which includes all monetary claims one has against another.

[306] The Gemara asks: But doesn't he teach robbery and also teach the convening of judges? Apparently, he lists monetary cases that are included under the rubric of robbery. The Gemara explains: With regard to the convening of judges it was necessary for the tanna to specify the halakha to exclude the opinion of Rav Ketina, as Rav Ketina says: The court attends to monetary claims of even less than the value of one peruta. Anyone wronged by another is entitled to have his case adjudicated in court.

[307] The Gemara asks: And as for Levi, what is the reason he does not teach the peruta of misuse of consecrated property? The Gemara answers: He is speaking with regard to non-sacred property; he is not speaking with regard to consecrated property.

[308] The Gemara asks: But in the case of the tanna of our mishna, who is speaking with regard to consecrated property, let him teach the halakha that second tithe may be redeemed only if the produce is worth at least one peruta. The Gemara answers: This tanna holds in accordance with the one who says: Second tithe is redeemed only if its one-fifth, which one adds when redeeming his own produce, is worth at least one peruta. In other words, second tithe is redeemed only if it is worth at least four perutot. The Gemara asks: And let him teach that second tithe is redeemed only if its

one-fifth, which one adds when redeeming his own produce, is worth at least one peruta. The Gemara responds: The tanna is speaking with regard to the principal; the tanna is not speaking with regard to the one-fifth.

309 § With regard to the matter itself raised in the previous discussion, the Gemara elaborates. Rav Ketina says: The court attends to monetary claims of even less than the value of one peruta. Rava raises an objection from a baraita. It is written: “And he shall make restitution for that which he has done amiss in the sacred matter” (Leviticus 5:16).

310 This serves to include misuse of consecrated property less than the value of one peruta in the halakha of restitution to the Temple treasury. The Gemara infers: To the Temple treasury, yes, one must return that which he took; but to an ordinary person [hedyot], no, one need not pay restitution for theft of less than one peruta.

311 Rather, if Rav Ketina’s ruling was stated, this is how it was stated: Rav Ketina says: If the court attends to a monetary claim of the value of one peruta, the judges conclude adjudicating and issue a ruling even if the item in question depreciated to less than the value of one peruta. For the beginning of the legal proceedings, we require a claim worth one peruta, whereas for the verdict, we do not require a claim worth one peruta.

312 MISHNA: In this mishna, as in the previous one, the tanna enumerates several halakhot that share a common element. There are five halakhic situations where one-fifth is added to the value of the principal, and these are they: A non-priest who eats either teruma, or teruma of the tithe, which the Levite separates from the first tithe and gives to a priest, or teruma of the tithe of demai, or ḥalla, or first fruits; in each of these cases, he adds one-fifth when paying restitution to the priest who owned the produce. And one who redeems his own fruit of a fourth-year sapling or second-tithe produce adds one-fifth. One who redeems his own consecrated property adds one-fifth. One who derives benefit worth one peruta from consecrated property adds one-fifth. And one who robs the value of one peruta from another and takes a false oath in response to his claim adds one-fifth when paying restitution.

313 GEMARA: Rava says: Rabbi Elazar found the halakha in the mishna with regard to teruma of the tithe of demai to be difficult. He asked: And since the obligation to tithe demai is by rabbinic law, did the Sages reinforce their pronouncements and render them parallel to Torah law by requiring the addition of one-fifth when paying restitution?

314 Rav Naḥman said that Shmuel said: In accordance with whose opinion is this mishna? It is in accordance with the opinion of Rabbi Meir, who says: The Sages reinforced their pronouncements and rendered them parallel to Torah law, as it is taught in a baraita: With regard to an agent who brings a bill of divorce from a country overseas, if he gave it to the woman but did not say to her: It was written in my presence and it was signed in my presence, as is the requirement by rabbinic ordinance, one who marries that woman must divorce her, and any offspring born of that marriage is a mamzer; this is the statement of Rabbi Meir. And the Rabbis say: Although he is in violation of the ordinance, the offspring is not a mamzer. How then should the agent proceed? He should take the bill of divorce from her and give it to her again, this time in the presence of two witnesses, and say to her: It was written in my presence and it was signed in my presence.

315 The Gemara asks: And according to Rabbi Meir, although the bill of divorce was otherwise valid, merely due to the fact that he did not say to her: It was written in my presence and it was signed in

my presence, must he divorce her and the offspring is a mamzer? The Gemara answers: Yes, as Rabbi Meir conforms to his standard line of reasoning, as Rav Hamnuna says in the name of Ulla that Rabbi Meir would say: In the case of anyone who gives a bill of divorce that deviates from the formula coined by the Sages with regard to bills of divorce, one who then marries the divorced woman on the basis of that bill of divorce must divorce her, and the offspring is a mamzer. Concerning teruma of the tithe of demai as well, Rabbi Meir reinforced the pronouncements of the Sages and rendered them parallel to Torah law.

316 Rav Sheshet raises an objection to this principle from a mishna (Demai 1:2), which teaches: One may desacralize silver coins of second tithe of demai upon other silver coins, and copper coins upon copper coins, and silver coins upon copper coins, and copper coins upon produce, and he may then redeem that produce with money; this is the statement of Rabbi Meir. And the Rabbis say: That produce that redeemed the copper coins must be taken up and eaten in Jerusalem. It may not be redeemed again.

317 Rav Sheshet continues: And can one desacralize silver coins with copper coins? But didn't we learn in a mishna (Ma'aser Sheni 2:6): In the case of a silver sela of second tithe and a sela of non-sacred property that were intermingled, one brings copper ma'a equaling the value of a sela and says: Wherever there is a sela of second tithe among these two coins, it is redeemed upon these copper ma'a, which assume the sanctity of second tithe. And he selects the better-quality sela among the two and redeems the copper coins upon that sela. The result is that the better-quality sela is second tithe, while the other sela and the copper coins are non-sacred.

318 The reason one must employ this procedure is due to the fact that the Sages said: One desacralizes second-tithe silver coins upon copper coins under duress. And it is not that he will maintain them in that form; rather, it is that he again desacralizes them upon silver coins. In any event, the tanna teaches that one desacralizes second-tithe coins in this manner under duress, from which it may be inferred: Under duress, yes; not under duress, no. This is the halakha with regard to redemption of second-tithe coins by Torah law. By contrast, in the case of demai, which is by rabbinic law, Rabbi Meir permits desacralizing it in this manner ab initio. Apparently, Rabbi Meir is more lenient with regard to matters of rabbinic law than he is with regard to matters of Torah law.

319 Rav Yosef said: Although Rabbi Meir is lenient with regard to redemption of second-tithe demai, he is stringent with regard to its consumption. This is as it is taught in a baraita: The Sages permitted only a wholesaler to sell demai. Since a wholesaler acquires grain from numerous sources and sells large quantities, he would suffer significant loss if he were required to separate tithes each time. But in the case of a proprietor who purchased produce from an am ha'aretz, whether he purchased large quantities to sell in bulk or whether he purchased small quantities to sell little by little, he must tithe the produce; this is the statement of Rabbi Meir.

320 The baraita continues: And the Rabbis say: Both a wholesaler and a proprietor who sells in bulk may sell demai, or send it to another, or give it to him as a gift, and they need not be concerned. The one who receives the produce separates the tithes and consumes the remaining produce. In this baraita, Rabbi Meir was stringent with regard to the concern that someone will consume demai without the tithes being separated.

321 Ravina raises an objection from a mishna (Demai 5:3): One who purchases bread from a baker who is unreliable with regard to tithes [am ha'aretz] may tithe from warm bread for, i.e., to exempt,

cold bread, and from cold bread for warm bread, and one may do so even if the bread is in different shapes from many molds; this is the statement of Rabbi Meir.

322 Granted, one may tithe from cold bread for warm bread, in accordance with the opinion of Rabbi Elai, as Rabbi Elai says: From where is it derived with regard to one who separates teruma from poor-quality produce for superior-quality produce that his teruma is teruma? It is as it is stated: “And you shall bear no sin by reason of it, seeing that you have set apart from it the best thereof” (Numbers 18:32). The Torah warns the Levites not to separate teruma from low-quality produce. The question arises: If when one separates lower-quality produce, that produce is not sacred, why would one think that he bears sin? He did nothing. From here it is derived that although the Levite acted improperly, in the case of one who separates teruma from poor-quality produce for superior-quality produce, his teruma is teruma.

323 Rather, with regard to the halakha that one may tithe even if the bread is in different shapes from many molds, let Rabbi Meir be concerned lest the buyer come to tithe from the loaves that one is obligated to tithe for the loaves that one is exempt from tithing, or from the exempt for the obligated. Since these loaves are all demai, it is possible that the loaves shaped in one mold were baked from produce that was tithed and the loaves shaped in another mold were baked from produce that was not tithed. Apparently, Rabbi Meir rules leniently in cases of rabbinic law, e.g., demai.

324 The Gemara returns to discuss the difficulties raised above. Abaye said: The problem raised by Rabbi Elazar was legitimately difficult for him, and Shmuel did not legitimately responded to his difficulty by stating that the mishna is in accordance with the opinion of Rabbi Meir. The reason the response is insufficient is that it was the case in the mishna of teruma of the tithe, which is punishable with death at the hand of Heaven, that was difficult for Rabbi Elazar, who was questioning whether the Sages reinforced their pronouncements concerning such a prohibition and rendered them parallel to Torah law; and Shmuel responded to him by citing Rabbi Meir’s opinion concerning a bill of divorce, which involves court-imposed capital punishment. Perhaps the case involving court-imposed capital punishment is different, as it is more stringent, and Rabbi Meir renders rabbinic law parallel to Torah law only in such a case.

325 Abaye continued: And Rav Sheshet does not legitimately raise an objection, as Rabbi Elazar and Shmuel are speaking about cases punishable by death, and Rav Sheshet raised his objection from a case involving a mere prohibition, as it is written with regard to second tithe: “You may not eat within your gates the tithe of your grain, or of your wine, or of your oil” (Deuteronomy 12:17). And to that which Rav Sheshet raised as an objection, Rav Yosef legitimately respond to his difficulty.

326 But as for Ravina, the question arises: Rather than raising an objection from this case of a baker, from which proof is cited that Rabbi Meir does not draw a parallel between rabbinic law and Torah law, let him cite support for the assessment of the opinion of Rabbi Meir from the case of a bread merchant [mipalter], as we learned in a mishna (Demai 5:4): One who purchases bread from a merchant tithes separately from the bread of each and every mold; this is the statement of Rabbi Meir. In this case, Rabbi Meir is stringent with regard to demai.

327 Rather, what have you to say in explaining why Ravina did not cite a proof from this mishna? It is because a merchant purchases his supply from two or three people. Therefore, Rabbi Meir holds that one must be concerned that perhaps one of the suppliers separated tithes and another did not, so the customer must separate tithes from the bread of each and every mold. But if that is the case,

Ravina should not cite a proof from the case of the baker, as well; as the baker discussed in the mishna typically purchases his stock of grain from only one person. Therefore, in that case there is no concern that perhaps the customer will tithe from the loaves that he is exempt from tithing for the loaves that he is obligated to tithe.

328 Rava said: Shmuel responds well to that which was difficult to Rabbi Elazar, as the category of death in the world is one. Therefore, it is appropriate to cite proof from the case of court-imposed capital punishment to the case of death at the hand of Heaven.

329 MISHNA: These are matters that are not subject to the halakhot of exploitation even if the disparity between the value and the payment is one-sixth or greater: Slaves, and documents, and land, and consecrated property. In addition, if they are stolen, these items are subject neither to payment of double the principal for theft nor to payment of four or five times the principal, if the thief slaughtered or sold a stolen sheep or cow, respectively. An unpaid bailee does not take an oath and a paid bailee does not pay if these items were stolen or lost. Rabbi Shimon says:

330 With regard to sacrificial animals for which one bears responsibility to replace them, they are subject to the halakhot of exploitation, as this responsibility indicates a certain aspect of ownership. And those for which one does not bear responsibility to replace them, they are not subject to the halakhot of exploitation. Rabbi Yehuda says: Even in the case of one who sells a Torah scroll, an animal, or a pearl, these items are not subject to the halakhot of exploitation, as they have no fixed price. The Rabbis said to him: The early Sages stated that only these items listed above are not subject to the halakhot of exploitation.

331 GEMARA: The Gemara asks: From where are these matters derived? It is as the Sages taught: It is written: “And if you sell to your colleague an item that is sold, or acquire from your colleague’s hand, one shall not exploit his brother” (Leviticus 25:14). This is referring to an item acquired from hand to hand. Land is excluded, as it is not movable. Slaves are excluded, as they are juxtaposed to land in several sources, and therefore their legal status is like that of land in certain respects. Documents are excluded, as it is written: “And if you sell to your colleague an item that is sold,” indicating an item that is itself sold and itself acquired. Documents are excluded, as they are not sold themselves and they are not acquired themselves. They have no intrinsic value, and they exist only for the proof therein.

332 From here the Sages said: In the case of one who sells his documents that are no longer in use to a perfumer for use in packaging his wares, they are subject to the halakhot of exploitation because he is selling the paper itself. The Gemara asks: Isn’t this obvious? In that case, one sold paper, and it is no different from any other movable property. The Gemara answers: This serves to exclude the opinion of Rav Kahana, who says: There is no exploitation for cases involving perutot, as paper is sold for mere perutot. The Sages therefore teach us: There is exploitation for cases involving perutot. Consecrated property is excluded, as the verse states: “One shall not exploit his brother” (Leviticus 25:14), indicating that these halakhot apply only to transactions involving “his brother,” but not to transactions involving consecrated property.

333 Rabba bar Memel objects to this: Is that to say that anywhere that it is written “his hand,” the reference is to his actual hand, and not merely to his possession, in its metaphorical sense? If that is so, that which is written: “And taken all his land from his hand” (Numbers 21:26), would you also explain here that he was holding all his land in his hand? Rather, clearly, “from his hand” means

from his possession. Here too, “from your colleague’s hand” in the case of exploitation means from his possession.

334 The Gemara asks: Is that to say that anywhere that it is written “his hand” the reference is not to his actual hand? But isn’t it taught in a baraita: “If the theft is found in his hand” (Exodus 22:3): I have derived from here only his hand; from where do I derive that the halakha is the same if the stolen item is found on his roof, in his courtyard, or in his enclosure? The verse states: “If the theft is found [himmatze timmatze]”; the use of the double verb teaches that the halakha applies in any case where the stolen item is in his possession.

335 The Gemara infers: The halakha applies if the stolen item is found in his possession, and this includes any place in his possession. The reason is that the Merciful One writes: “If the theft is found [himmatze timmatze].” If that were not so, I would say that wherever He writes “his hand,” the reference is to his actual hand. And furthermore, it is taught in a baraita that it is written with regard to a bill of divorce: “And place it in her hand” (Deuteronomy 24:1). I have derived only her hand; from where do I derive that the halakha is the same if he places the bill of divorce on her roof, in her courtyard, or in her enclosure? The verse states: And place, in any case that he places it in her possession. Here too, the Gemara infers: The reason that any place in her possession is included is that the Merciful One writes “and place.” If that were not so, I would say that wherever He writes “his hand,” the reference is to his actual hand.

336 Rather, the Gemara rejects Rabba bar Memel’s objection and concludes: Every mention of the term “his hand” in the Torah is a reference to his actual hand. And it is different there, in the verse: “And taken all his land from his hand” (Numbers 21:26), where it cannot be said that the reference is to his actual hand. Rather, it means there: In his possession.

337 § Rabbi Zeira raises a dilemma with regard to rental: Is it subject to the halakhot of exploitation, or is it not subject to the halakhot of exploitation? The Gemara elaborates: Is it an item that is sold about which the Merciful One speaks, but not a rental; or perhaps there is no difference? Abaye said to him: Is it written: And if you sell an item that is sold forever? What is written is simply: “And if you sell an item that is sold,” and indeed for its day the rental is considered a sale. The legal status of a rental is that of a sale for a limited period. Consequently, it is subject to the halakhot of exploitation.

338 Rava raises a dilemma: In a case involving wheat kernels, and one sowed them in the ground, what is the halakha? Are they subject to the halakhot of exploitation, or are they not subject to the halakhot of exploitation? The Gemara elaborates: Is their legal status like that of kernels cast into a jug, and they are subject to the halakhot of exploitation, as they remain movable property? Or, perhaps he subordinated them to the ground, and like land they are not subject to the halakhot of exploitation.

339 The Gemara asks: What are the circumstances? If we say that the hired laborer said: I sowed six kav of grain in the field, and witnesses came and said that he sowed only five kav in it, but doesn’t Rava himself say: With regard to any item that is otherwise subject to the halakhot of exploitation, and it is sold by measure, or by weight, or by number, even if the disparity was less than the measure of exploitation in the transaction, the transaction is reversed. A disparity of one-sixth between the value of an item and its price constitutes exploitation only in cases where there is room for error in assessing the value of an item. In a case where the sale item is easily quantifiable, any deviation from

the designated quantity results in a nullification of the transaction, even if the wheat kernels are subordinate to the ground.

340 Rather, it is a case where the hired laborer said: I cast kernels in the field as required, without quantifying the measure of the kernels that he cast, and it was discovered that he did not cast kernels in the field as required. Are they subject to the halakhot of exploitation or are they not subject to the halakhot of exploitation? Is the legal status of these kernels like that of kernels cast into a jug, and they are subject to the halakhot of exploitation? Or, perhaps the laborer subordinated them to the ground?

341 Rava raises an additional dilemma: If the laborer admitted to part of the claim, does he take an oath with regard to the kernels or does he not take an oath with regard to the kernels? Is their legal status like that of kernels cast into a jug, and one takes an oath with regard to them? Or, perhaps he subordinated them to the ground, and one does not take an oath with regard to them, as the halakha is that one does not take an oath about a claim involving land.

342 Rava raises an additional dilemma: Does the sacrifice of the omer offering permit one to eat the produce grown from these kernels, or does the sacrifice of the omer offering not permit one to eat the produce? The Gemara asks: What are the circumstances? If it is a case where the kernels took root, we already learned that halakha. If it is a case where the kernels did not yet take root, we already learned that halakha also. As we learned in a mishna (Menaḥot 70a): If crops took root before the sacrifice of the omer offering, the omer offering renders it permitted to eat them. And if not, if they took root only after the sacrifice of the omer offering, it is prohibited to eat them until the time for the sacrifice of the next omer offering will arrive.

343 No, Rava’s dilemma is not superfluous, as it is necessary to raise it in a case where one reaped grain and sowed its kernels prior to the time of the omer offering, and the time of the omer offering arrived and passed while they were in the ground, and the kernels did not take root before the sacrifice of the omer offering.

344 This is Rava’s dilemma: What is the halakha? Is it permitted for one to take some of the kernels and eat from them? Is their legal status like that of kernels cast into a jug, and the sacrifice of the omer offering rendered their consumption permitted? Or perhaps he subordinated them to the ground, and their legal status is that of seeds that did not take root, and they are therefore forbidden. The Gemara concludes: The dilemmas shall stand unresolved.

345 § Rava said that Rav Ḥasa said that Rabbi Ami raises a dilemma with regard to those matters that are not subject to the halakhot of exploitation: Is the halakha that they are not subject to exploitation where the disparity in the price is one-sixth, but they are subject to nullification of the transaction when it is greater than that? Or, perhaps they are not subject to nullification of the transaction either. Rav Naḥman said: Rav Ḥasa then said that Rabbi Ami resolved this dilemma and said: They are not subject to exploitation; they are subject to nullification of the transaction. Rabbi Yona said: This ruling applies to consecrated property. Rabbi Yirmeya said: It applies to land. And both of them said it in the name of Rabbi Yoḥanan: They are not subject to exploitation; they are subject to nullification of the transaction.

346 The Gemara comments: The one who states that this ruling applies to consecrated property, all the more so does it apply to land. The one who states that this ruling applies to land states it only with regard to land, but it does not apply to consecrated property, in accordance with the opinion of

Shmuel, as Shmuel says: Consecrated property worth one hundred dinars that one desacralized upon a coin worth one peruta, is desacralized. Since consecrated property is not subject to the halakhot of exploitation at all, it is desacralized upon coins worth any sum.

[347] We learned in a mishna there (Temura 26b): If the consecrated animal was blemished and another was substituted for it, the blemished animal leaves its consecrated state and assumes non-sacred status, and one is required to calculate the difference in monetary value between the two animals and pay it to the Temple treasury. Rabbi Yoḥanan says: It leaves its consecrated state and assumes non-sacred status by Torah law, and one is required to calculate the difference in monetary value and pay it to the Temple treasury by rabbinic law. And Reish Lakish says: Even the halakha that one is required to calculate the difference in monetary value and pay it to the Temple treasury is by Torah law.

[348] The Gemara asks: With what are we dealing? If we say that the difference between the value of the substitute animal and the value of the consecrated animal was the measure of exploitation, does Reish Lakish say in that case: He is required to calculate the difference in monetary value and pay it to the Temple treasury by Torah law? But didn’t we learn in the mishna: These are matters that are not subject to the halakhot of exploitation: Land, slaves, documents, and consecrated property?

[349] Rather, the difference was the measure of nullification of the transaction. In that case, would Rabbi Yoḥanan say: He is required to calculate the difference in monetary value and pay it to the Temple treasury by rabbinic law? But didn’t Rabbi Yona say that this ruling applies to consecrated property, and didn’t Rabbi Yirmeya say it applies to land, and both of them say in the name of Rabbi Yoḥanan: They are not subject to exploitation; they are subject to nullification of the transaction? The Gemara answers: Actually, the difference was the measure of nullification of the transaction. And reverse attribution of the opinions, so that the opinion of Rabbi Yoḥanan will be attributed to Reish Lakish, and the opinion of Reish Lakish will be attributed to Rabbi Yoḥanan.

[350] The Gemara asks: With regard to what do Reish Lakish and Rabbi Yoḥanan disagree? They disagree with regard to the halakha of Shmuel, as Shmuel says: Consecrated property worth one hundred dinars that one desacralized upon a coin worth one peruta is desacralized. One Sage, Reish Lakish, accepts the opinion of Shmuel, and therefore the consecrated article is desacralized by Torah law and the requirement to calculate and pay the difference is by rabbinic law. And one Sage, Rabbi Yoḥanan, does not accept the opinion of Shmuel, and he therefore holds that the requirement to calculate and pay the difference is by Torah law.

[351] If you wish, say instead that everyone accepts the opinion of Shmuel, and here they disagree about this: One Sage, Rabbi Yoḥanan, holds that yes, consecrated property worth one hundred dinars that one desacralized upon a coin worth one peruta is desacralized after the fact, but ab initio, no, one may not do so. Therefore, one must nevertheless pay the difference to the Temple treasury by Torah law. And one Sage, Reish Lakish, holds that the opinion of Shmuel applies even ab initio. Therefore, the requirement to pay the difference to the Temple treasury is by rabbinic law.

[352] If you wish, say instead: Actually, the difference between the actual value of the animal and the amount used to desacralize it was within the measure of exploitation, and do not reverse attribution of the opinions of Reish Lakish and Rabbi Yoḥanan. And they disagree with regard to the opinion of Rav Ḥisda, who said: What is the meaning of: They are not subject to the halakhot of exploitation? It

means that they are not subject to the principle of exploitation at all. Rather, a more stringent standard applies,

[353] in that even if the difference in price is less than the measure of exploitation, the exploited party may renege on the transaction. Rabbi Yoḥanan does not accept the opinion of Rav Ḥisda and Reish Lakish does.

[354] The Gemara raises an objection to Rav Ḥisda's opinion from a baraita: Dealings with a layman are subject to the halakhot of interest and exploitation, but dealings with consecrated property are not subject to the halakhot of interest and exploitation. The Gemara answers: Is the objection from the baraita stronger than that from the mishna, which was defused when we established it to be referring to the principle of exploitation, i.e., that the principle that up to one-sixth is not considered exploitation does not apply to consecrated property? So too the baraita should be understood: The halakhot of interest and the principle of exploitation apply to dealings with a layman, but the halakhot of interest and the principle of exploitation do not apply to dealings involving consecrated property.

[355] The Gemara raises a difficulty: If so, is that consistent with that which is taught in the latter clause of that baraita: This is the stringency with regard to the layman, in contrast to the halakha with regard to consecrated property? According to this explanation, the halakha with regard to consecrated property is more stringent than the halakha with regard to a layman. The Gemara answers: This stringency is only in the case of interest, as it is permitted to collect interest from consecrated property. The Gemara asks: If so, let the tanna also teach: This is the stringency with regard to consecrated property, in contrast to the halakha with regard to the layman in the case of exploitation.

[356] The Gemara rejects this question: How can these cases be compared? Granted, the mishna states: This is the stringency with regard to the layman, in contrast to the halakha with regard to consecrated property, and nothing further, i.e., there are no other cases where the halakha is more stringent for the layman than it is for consecrated property. But with regard to consecrated property, can one say: This is the stringency, and nothing further, there are no other stringencies? There are many halakhot in which consecrated property is treated more stringently than non-sacred property.

[357] § The Gemara asks: What are the circumstances of interest in cases of consecrated property? If we say that the Temple treasurer lent one hundred consecrated dinars in exchange for repayment of one hundred and twenty dinars, didn't the treasurer thereby misuse consecrated property? And once the treasurer misused the money by giving it to a layman, his money immediately leaves its consecrated state and assumes non-sacred status. And it is then money of a layman, and the halakhot of interest apply to it.

[358] Rav Hoshaya said: With what are we dealing here? We are dealing with a case where one accepts upon himself to supply fine flour to the Temple at the price of four se'a for a sela, and the market price rose and stood at three se'a for a sela, as it is taught in a baraita: In the case of one who accepts upon himself to supply fine flour at four se'a for a sela, and their market price stood at three se'a for a sela, he is required to fulfill his commitment and supply fine flour at four se'a for a sela. If one committed to supply fine flour at three se'a for a sela, and their market price decreased until it stood at four se'a for a sela, he must supply fine flour at four se'a for a sela. This is a form of interest, as the result is that the Temple treasury is at an advantage. Although an arrangement of that kind is prohibited in transactions involving laymen, in dealings of the Temple treasury it is permitted.

[359] Rav Pappa said that there is a less complicated case of interest involving consecrated property: Here we are dealing with building stones that are entrusted to the Temple treasurer, in accordance with the opinion of Shmuel, as Shmuel says: One builds the structures in the Temple with non-sacred materials to avoid misuse of consecrated property during construction, and one consecrates those materials thereafter. The treasurer has provisional possession of property that will ultimately belong to the Temple treasury. The stones are non-sacred and can be loaned to others, but nevertheless they are not subject to the halakhot of interest.

[360] § The mishna teaches: Slaves, documents, land, and consecrated property are not subject to the halakhot of payment of double the principal. 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 the other” (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.

[361] 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.

[362] 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 the other, i.e., to another person, but not to the Temple treasury.

[363] The mishna teaches: Nor payment of four and five times the principal, as these payments to do not apply to consecrated animals. The Gemara asks: What is the reason for this exclusion? The Gemara explains: The Merciful One states a payment of four or five times the principal, but not payment of three and four times the principal. It has already been established that there is no double payment in the cases in the mishna. The fourfold or fivefold payment in the case of the slaughter or sale of a stolen sheep or cow comprises the principal, the double payment, and then an additional two or three times the principle, respectively. Consequently, once the double payment is subtracted, the total paid would be three or four times the principal, and the verse makes no allowance for such a payment.

[364] The mishna teaches: An unpaid bailee does not take an oath if these items were stolen or lost. 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 an unpaid bailee: “When a man delivers to his neighbor money or vessels to safeguard, and it is stolen out of the man’s house; if the thief is found, he shall pay double. If the thief is not found, then the master of the house shall approach the judge” (Exodus 22:6–7). “When a

man delivers to his neighbor” is a generalization; “money or vessels” is a detail. And when the verse states: “And it is stolen out of the man’s house,” it then generalizes again.

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[367] The mishna continues: A paid bailee does not pay if these items were stolen or lost. The Gemara asks: From where are these matters derived? The Gemara answers: It is as the Sages taught in a baraita with regard to the verse that discusses a paid bailee: “When a man delivers to his neighbor a donkey, or an ox, or a sheep, or any beast to safeguard, and it dies, or is hurt, or is driven away, no man seeing it, the oath of the Lord shall be between them both…but if it be stolen from him, he shall make restitution to its owner” (Exodus 22:9–11). “When a man delivers to his neighbor” is a generalization; “a donkey, or an ox, or a sheep” is a detail. And when the verse states: “Or any beast to safeguard,” it then generalizes again.

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[370] § After determining the source of the halakhot in the mishna, the Gemara analyzes those halakhot. The mishna teaches: An unpaid bailee does not take an oath if these items were stolen or lost. And the Gemara raises a contradiction from a mishna. Half-shekels were donated by the people during the month of Adar and placed in a special chamber in the Temple, from where, as needed, some of the shekels were taken for use in purchasing public offerings in the coming months. This was done in order to give all of the Jewish people a share in those public offerings. Additionally, from the moment that the money is taken from there, both those shekels that arrived at the Temple and those that did not yet arrive become Temple property. The mishna teaches (Shekalim 5a): With regard to residents of the city who sent their shekels to the Temple, and the coins were stolen from the agent or were lost en route, the halakha depends on the circumstances.

[371] If this occurred after the contributions of the chamber had already been collected from the chamber,

[372] the agents must take the oath of a bailee to the treasurers that they did not misappropriate the coins. If the collection of the chamber was not yet performed, the lost or stolen shekels remain the property of the residents of the city. Therefore, the agents take an oath to the residents of the city. The residents of the city then contribute other shekels in place of the original shekels. If the original shekels were then found or the thieves returned them, both these, the original shekels, and those, the replacement shekels, assume the status of consecrated shekels and belong to the Temple. But the two half-shekels that they contributed this year do not count to absolve them from their obligation to contribute the shekels for the following year. This mishna teaches that an unpaid bailee does take an oath concerning consecrated property, contrary to the mishna here.

[373] Shmuel said: Here we are dealing with paid bailees, and the purpose of the oath is not to exempt them from their liability to pay for the theft. Rather, they take an oath that they performed their task properly, in order to collect their wages. The Gemara asks: If so, is this phrase accurate: They take an oath to the treasurers? The tanna should have taught: They take an oath to the residents of the city, from whom they are claiming their wages. Rabba said: They take an oath to the residents of the city in the presence of the treasurers, so that the treasurers will not suspect that the residents of the city did not contribute their shekels at all. Alternatively, the agents take an oath that they executed their mission properly, so that the Temple treasurers will not call them negligent.

[374] The Gemara asks: But isn’t it taught in the mishna: And the coins were stolen or were lost en route, and paid bailees are liable to pay in cases of theft and loss? And here too, when safeguarding consecrated property, although paid bailees do not pay for the theft, as a paid bailee is exempt, let them at least forfeit their wages, as their responsibility to safeguard the money includes preventing theft and loss.

[375] Rabba said: When the tanna says that they were stolen, the reference is to a case where the item was stolen by armed bandits. When he said that they were lost, the reference is to a case where the agent’s ship sank at sea. Since the shekels left his possession through circumstances beyond his control, this is considered an unavoidable accident, for which a paid bailee is exempt.

[376] Rabbi Yoḥanan said: In accordance with whose opinion is this mishna? It is in accordance with the opinion of Rabbi Shimon, who says: Consecrated items for which one bears responsibility to replace them are subject to the halakhot of exploitation, and therefore one takes an oath concerning them.

[377] The Gemara asks: This works out well if the contribution of the chamber had not yet been collected into the baskets. At that stage, residents of the city bear responsibility to replace the shekels, and that is why Rabbi Shimon deems the agent liable to take an oath. But if the shekels were lost or stolen once the contribution of the chamber had been collected, the shekels are tantamount to sacrificial animals for which one does not bear responsibility, and the residents of the city should be exempt, as it is taught in a baraita: One collects shekels in the Temple chamber with the intention of fulfilling the obligation for those coins that are lost on the way, and for those that are collected but did not yet arrive, and for those that are destined to be collected in the future. Apparently, the residents of the city no longer bear responsibility for the shekels.

[378] The Gemara concludes: Rather, Rabbi Elazar said: This oath of the agents is a rabbinic ordinance, instituted so that people will not treat consecrated property with contempt. If they knew that there is no oath, they would neglect to safeguard the shekels properly.

[379] § The mishna teaches: A paid bailee does not pay if these items were stolen or lost. Rav Yosef bar Ḥama raises a contradiction before Rabba. We learned in the mishna: A paid bailee does not pay. And the Gemara raises a contradiction from a baraita: One who hires a day laborer to watch the red heifer to ensure that it is not disqualified, to watch the child to ensure that he remains ritually pure from birth in order to draw the water mixed with the ashes of the heifer, or to safeguard the seeds for the barley that will be used in the omer offering, does not give him wages for Shabbat. Therefore, if the items that the day laborer was entrusted to watch were lost on Shabbat, financial responsibility for their loss on Shabbat is not incumbent upon him, since he is not a paid bailee on that day.

[380] The baraita continues: But if he was a laborer hired for a week, hired for a month, hired for a year, or hired for seven years, the one who hired him gives him wages for labor performed on Shabbat as well. Therefore, if the items were lost on Shabbat, financial responsibility for their loss on Shabbat is incumbent upon him. What, is it not that he is liable to pay for the loss he caused? As the list of the items being safeguarded includes consecrated items, this baraita apparently rules that a paid bailee bears responsibility for consecrated property.

[381] The Gemara rejects this: No, the ruling of the baraita stating that the bailee is responsible is only with regard to forfeiting his wages because he was derelict in safeguarding the items with which he was entrusted. Rav Yosef bar Ḥama asks: If so, in the first clause of the baraita, which teaches that financial responsibility for their loss on Shabbat is not incumbent upon him, is this also with regard to forfeiting his wages? But does he have wages for the work he did on Shabbat? But isn’t it taught that one does not give him wages for Shabbat? Clearly, the reference is to responsibility to pay for the safeguarded items themselves. Rabba was silent, unable to answer.

[382] Rabba said to Rav Yosef bar Ḥama: Have you heard anything with regard to this? Rav Yosef bar Ḥama said to him that this is what Rav Sheshet says: The ruling of the latter clause is stated with regard to a case where the laborers made a commitment to the one who hired them to take responsibility for the items, and they performed an act of acquisition with the one who hired them to reinforce that commitment. And likewise Rabbi Yoḥanan says: The ruling of the latter clause is stated with regard to a case where the laborers made a commitment to the one who hired them to take responsibility for the items, and they performed an act of acquisition with him.

[383] § The mishna teaches that Rabbi Shimon says: Sacrificial animals for which one bears responsibility to replace them are subject to the halakhot of exploitation, and those for which one does not bear responsibility to replace them are not subject to the halakhot of exploitation. The Gemara relates that the tanna who recited mishnayot and baraitot in the study hall taught a baraita before Rabbi Yitzḥak bar Abba with regard to the source of the opinion of Rabbi Shimon. It is derived from the verse: “If anyone sins, and commits a trespass against the Lord, and deals falsely with his colleague in a matter of deposit, or of pledge, or of robbery, or has oppressed his neighbor” (Leviticus 5:21).

[384] In that baraita, it is taught: For an oath concerning sacrificial animals for which one bears responsibility, one is liable to bring an offering for taking a false oath, as I apply the phrase “against the Lord, and deals falsely.” And for an oath concerning sacrificial animals for which one does not

bear responsibility, one is exempt, as I read in their regard: With his neighbor, and deals falsely. That reading indicates that even one who deals falsely in matters related to the Lord, e.g., sacrificial animals, is liable to bring an offering for a false oath.

[385] Rabbi Yitzḥak said to him: Isn’t it the opposite [kelapei layya]?

[386] The opposite is reasonable. An oath concerning sacrificial animals for which one does not bear responsibility is considered to be a matter related to the Lord even more than an oath concerning a sacrificial animal for which one bears responsibility, as in the latter case it is owned by the person in some respects. The tanna said to him: Should I delete this baraita because it is corrupted?

[387] Rabbi Yitzḥak bar Abba said to him: No, this is what the baraita is saying: For an oath taken concerning sacrificial animals for which one bears responsibility, one is liable to bring an offering for a false oath, as it is included due to the phrase “against the Lord, and deals falsely.” It is derived from this that one is liable for taking a false oath even with regard to an item which belongs, to a certain degree, to the Lord. And with regard to sacrificial animals for which one does not bear responsibility, one is exempt, as it is excluded by the phrase: With his neighbor and deals falsely. It is derived from this that one is liable to bring an offering for a false oath only if it pertained to property that belongs to a layman, i.e., his neighbor, but not for an item that belongs completely to God, as is the case with regard to sacrificial animals for which one does not bear responsibility.

[388] § The mishna teaches: Rabbi Yehuda says: Even in the case of one who sells a Torah scroll, a pearl, or an animal, those items are not subject to the halakhot of exploitation. It is taught in a baraita that Rabbi Yehuda says: Even in the case of one who sells a Torah scroll, it is not subject to the halakhot of exploitation, as there is no limit to its value. It is the Torah of God, which is priceless. An animal and a pearl are not subject to the halakhot of exploitation because a person seeks to pair them. An animal is paired with an animal of similar strength so that they can be yoked together to work in the field. A pearl is paired with a similar pearl to fashion jewelry. Since there is a need to obtain a specific variant of these items, one is not particular about the price.

[389] The baraita continues: The Rabbis said to him: But isn’t it the case that with regard to every item, a person seeks to pair them with similar items under certain circumstances? According to your explanation, the halakhot of exploitation would never apply. The Gemara asks: And what does Rabbi Yehuda respond to that question? He claims that these are significant to a person, but those are not significant to him. In other words, it is particularly important to find a precise match for an animal and a pearl. The Gemara continues to analyze Rabbi Yehuda’s opinion. And up to how much can one deviate from the value of items for which exploitation does not apply, as Rabbi Yehuda is clearly not saying that any deviation is acceptable? Ameimar said: One can deviate up to double their value.

[390] It is taught in a baraita that Rabbi Yehuda ben Beteira says: Even in the case one who sells a horse, or a sword, or a helmet [veḥatitom] during wartime, these items are not subject to the halakhot of exploitation, because they then have the capacity to preserve life, and a person is willing to pay any price for them.

[391] MISHNA: Just as there is a prohibition against exploitation [ona’a] in buying and selling, so is there ona’a in statements, i.e., verbal mistreatment. The mishna proceeds to cite examples of verbal mistreatment. One may not say to a seller: For how much are you selling this item, if he does not wish to purchase it. He thereby upsets the seller when the deal fails to materialize. The mishna lists other examples: If one is a penitent, another may not say to him: Remember your earlier deeds. If one

is the child of converts, another may not say to him: Remember the deeds of your ancestors, as it is stated: “And a convert shall you neither mistreat, nor shall you oppress him” (Exodus 22:20).

392 GEMARA: The Sages taught: It is written: “And you shall not mistreat [tonu] one man his colleague; and you shall fear your God, for I am the Lord your God” (Leviticus 25:17). The tanna explains: The verse is speaking with regard to verbal mistreatment. The baraita proceeds: Do you say that it is speaking of verbal mistreatment [be’ona’at devarim], or perhaps it is speaking only with regard to monetary exploitation [be’ona’at mammon]? When it says in a previous verse: “And if you sell to your colleague an item that is sold, or acquire from your colleague’s hand, you shall not exploit [tonu] his brother” (Leviticus 25:14), monetary exploitation is explicitly stated. How then do I realize the meaning of the verse: “And you shall not mistreat one man his colleague”? It is with regard to verbal mistreatment.

393 How so? If one is a penitent, another may not say to him: Remember your earlier deeds. If one is the child of converts, another may not say to him: Remember the deed of your ancestors. If one is a convert and he came to study Torah, one may not say to him: Does the mouth that ate unslaughtered carcasses and animals that had wounds that would have caused them to die within twelve months [tereifot], and repugnant creatures, and creeping animals, comes to study Torah that was stated from the mouth of the Almighty?

394 If torments are afflicting a person, if illnesses are afflicting him, or if he is burying his children, one may not speak to him in the manner that the friends of Job spoke to him: “Is not your fear of God your confidence, and your hope the integrity of your ways? Remember, I beseech you, whoever perished, being innocent?” (Job 4:6–7). Certainly you sinned, as otherwise you would not have suffered misfortune.

395 Likewise, if donkey drivers are asking to purchase grain from someone, and he has none, he may not say to them: Go to so-and-so, as he sells grain, if he knows about him that he never sold grain at all. He thereby causes the donkey drivers and the would-be seller anguish. Rabbi Yehuda says: One may not even cast his eyes on the merchandise for sale, creating the impression that he is interested, at a time when he does not have money to purchase it. Verbal mistreatment is not typically obvious, and it is difficult to ascertain the intent of the offender, as the matter is given to the heart of each individual, as only he knows what his intention was when he spoke. And with regard to any matter given to the heart, it is stated: “And you shall fear your God” (Leviticus 25:17), as God is privy to the intent of the heart.

396 Rabbi Yoḥanan says in the name of Rabbi Shimon ben Yoḥai: Greater is the transgression of verbal mistreatment than the transgression of monetary exploitation, as with regard to this, verbal mistreatment, it is stated: “And you shall fear your God.” But with regard to that, monetary exploitation, it is not stated: “And you shall fear your God.” And Rabbi Elazar said this explanation: This, verbal mistreatment, affects one’s body; but that, monetary exploitation, affects one’s money. Rabbi Shmuel bar Naḥmani says: This, monetary exploitation, is given to restitution; but that, verbal mistreatment, is not given to restitution.

397 The Gemara relates that the tanna who recited mishnayot and baraitot in the study hall taught a baraita before Rav Naḥman bar Yitzḥak: Anyone who humiliates another in public, it is as though he were spilling blood. Rav Naḥman bar Yitzḥak said to him: You have spoken well, as we see that after the humiliated person blushes, the red leaves his face and pallor comes in its place, which is

tantamount to spilling his blood. Abaye said to Rav Dimi: In the West, i.e., Eretz Yisrael, with regard to what mitzva are they particularly vigilant? Rav Dimi said to him: They are vigilant in refraining from humiliating others, as Rabbi Ḥanina says: Everyone descends to Gehenna except for three.

[398] The Gemara asks: Does it enter your mind that everyone descends to Gehenna? Rather, say: Anyone who descends to Gehenna ultimately ascends, except for three who descend and do not ascend, and these are they: One who engages in intercourse with a married woman, as this transgression is a serious offense against both God and a person; and one who humiliates another in public; and one who calls another a derogatory name. The Gemara asks with regard to one who calls another a derogatory name: That is identical to one who shames him; why are they listed separately? The Gemara answers: Although the victim grew accustomed to being called that name in place of his name, and he is no longer humiliated by being called that name, since the intent was to insult him, the perpetrator's punishment is severe.

[399] Rabba bar bar Ḥana says that Rabbi Yoḥanan says:

[400] It is preferable for a person to engage in intercourse with a woman whose married status is uncertain and not humiliate another in public. The Gemara asks: From where do we derive this? The Gemara answers: It is from that which Rava interpreted, as Rava interpreted: What is the meaning of that which is written: "And when I limped they rejoiced and gathered…they tore and did not cease [damu]" (Psalms 35:15)? The term "damu" can also be understood as a reference to blood. Concerning the fasting he undertook to atone for his sin with Bathsheba (see II Samuel, chapters 11–12), David said before the Holy One, Blessed be He: Master of the Universe, it is revealed and known before You that if my tormenters were to tear my flesh, my blood [dami] would not flow to the ground, due to excessive fasting.

[401] And moreover, they torment me to the extent that even at the time when they are engaged in the public study of the halakhot of leprous sores and tents in which there is a corpse, i.e., halakhic matters that have no connection to my sin, they say to me: David, one who engages in intercourse with a married woman, his death is effected with what form of execution? And I say to them: One who engages in intercourse with a married woman before witnesses and with forewarning, his death is by strangulation, but he still has a share in the World-to-Come. But one who humiliates another in public has no share in the World-to-Come. The transgression of you, who humiliate me, is more severe than my transgression.

[402] And Mar Zutra bar Toviyya says that Rav says; and some say Rav Ḥana bar Bizna says that Rabbi Shimon Ḥasida says; and some say Rabbi Yoḥanan says in the name of Rabbi Shimon ben Yoḥai: It is more comfortable for a person to cast himself into a fiery furnace, than to humiliate another in public to avoid being cast into the furnace. From where do we derive this? From Tamar, daughter-in-law of Judah. When she was taken out to be burned, she did not reveal that she was pregnant with Judah's child. Rather, she left the decision to him, to avoid humiliating him in public, as it is written: "And Judah said: Bring her forth, and let her be burnt. When she was brought forth, she sent to her father-in-law, saying: I am pregnant by the man to whom these belong. And she said: Examine these, whose are these, the signet, and the cords, and the staff?" (Genesis 38:24–25).

[403] § Rav Ḥinnana, son of Rav Idi, says: What is the meaning of that which is written: "And you shall not mistreat each man his colleague [amito]" (Leviticus 25:17)? The word amito is interpreted as a contraction of im ito, meaning: One who is with him. With one who is with you in observance of

Torah and mitzvot, you shall not mistreat him. Rav says: A person must always be careful about mistreatment of his wife. Since her tear is easily elicited, punishment for her mistreatment is immediate.

[404] Rabbi Elazar says: Since the day the Temple was destroyed the gates of prayer were locked, and prayer is not accepted as it once was, as it is stated in lament of the Temple's destruction: "Though I plead and call out, He shuts out my prayer" (Lamentations 3:8). Yet, despite the fact that the gates of prayer were locked with the destruction of the Temple, the gates of tears were not locked, and one who cries before God may rest assured that his prayers will be answered, as it is stated: "Hear my prayer, Lord, and give ear to my pleading, keep not silence at my tears" (Psalms 39:13).

[405] And Rav says: Nevertheless, anyone who follows the counsel of his wife descends into Gehenna, as it is stated: "But there was none like Ahab, who did give himself over to do that which was evil in the sight of the Lord, whom Jezebel his wife incited" (I Kings 21:25). Rav Pappa said to Abaye: But don't people say a popular proverb: If your wife is short, stoop and whisper to her and consult with her? The Gemara answers: This is not difficult, as this statement of Rav instructs that one not follow her counsel in general matters; and that proverb instructs that one follow her counsel in household matters. The Gemara presents another version of this distinction: This statement of Rav maintains that one should not follow her counsel in divine matters; and that proverb maintains that one should follow her counsel in general matters.

[406] Rav Ḥisda says: All the gates of Heaven are apt to be locked, except for the gates of prayer for victims of verbal mistreatment, as it is stated: "And behold, the Lord stood upon a wall built with a plumb line, and a plumb line in His hand" (Amos 7:7). God stands with the scales of justice in His hand to determine if one has been subjected to injustice. Rabbi Elazar says: In response to all transgressions, God punishes the perpetrator by means of an agent, except for mistreatment [ona'a], as it is stated: "And a plumb line [anakh] in His hand." The term for mistreatment and the term for plumb line are spelled in a similar manner, indicating that God Himself inflicts retribution.

[407] Rabbi Abbahu says: There are three sins before whose transgressors the curtain [hapargod] between the world and the Divine Presence is not locked; their sins reach the Divine Presence. They are: Verbal mistreatment, robbery, and idol worship. Mistreatment, as it is stated: "And a plumb line in His hand"; robbery, as it is stated: "Violence and robbery are heard in her, they are before Me continually" (Jeremiah 6:7); idol worship, as it is stated: "A people that angers Me before Me continually; that sacrifice in gardens, and burn incense upon bricks" (Isaiah 65:3).

[408] Apropos the topic of how a man should approach his household, Rav Yehuda says: A person must always be careful about ensuring that there is grain inside his house, as discord is found in a person's house only over matters of grain, as it is stated: "He makes your borders peace; He gives you plenty with the finest wheat" (Psalms 147:14). If there is the finest wheat in your house, there will be peace there. Rav Pappa said: This is in accordance with the adage that people say: When the barley is emptied from the jug, quarrel knocks and enters the house.

[409] And Rav Ḥinnana bar Pappa says: A person must always be careful about ensuring that there is grain inside his house, as the Jewish people were characterized as poor only over matters of grain, as it is stated: "And it was, if Israel sowed, and Midian and the children of the east ascended" (Judges 6:3); and it is written: "And they encamped against them and they destroyed the crops of the land"

(Judges 6:4); and it is further written: “And Israel was greatly impoverished due to Midian” (Judges 6:6).

410 And Rabbi Ḥelbo says: A person must always be careful about sustaining the honor of his wife, as blessing is found in a person’s house only because of his wife, as it is stated in allusion to this: “And he dealt well with Abram for her sake, and he had sheep and oxen” (Genesis 12:16). And that is what Rava said to the residents of Meḥoza, where he lived: Honor your wives, so that you will become rich.

411 § Apropos the topic of verbal mistreatment, we learned in a mishna there (Kelim 5:10): If one cut an earthenware oven widthwise into segments, and placed sand between each and every segment, Rabbi Eliezer deems it ritually pure. Because of the sand, its legal status is not that of a complete vessel, and therefore it is not susceptible to ritual impurity. And the Rabbis deem it ritually impure, as it is functionally a complete oven.

412 And this is known as the oven of akhnai. The Gemara asks: What is the relevance of akhnai, a snake, in this context? Rav Yehuda said that Shmuel said: It is characterized in that manner due to the fact that the Rabbis surrounded it with their statements like this snake, which often forms a coil when at rest, and deemed it impure. The Sages taught: On that day, when they discussed this matter, Rabbi Eliezer answered all possible answers in the world to support his opinion, but the Rabbis did not accept his explanations from him.

413 After failing to convince the Rabbis logically, Rabbi Eliezer said to them: If the halakha is in accordance with my opinion, this carob tree will prove it. The carob tree was uprooted from its place one hundred cubits, and some say four hundred cubits. The Rabbis said to him: One does not cite halakhic proof from the carob tree. Rabbi Eliezer then said to them: If the halakha is in accordance with my opinion, the stream will prove it. The water in the stream turned backward and began flowing in the opposite direction. They said to him: One does not cite halakhic proof from a stream.

414 Rabbi Eliezer then said to them: If the halakha is in accordance with my opinion, the walls of the study hall will prove it. The walls of the study hall leaned inward and began to fall. Rabbi Yehoshua scolded the walls and said to them: If Torah scholars are contending with each other in matters of halakha, what is the nature of your involvement in this dispute? The Gemara relates: The walls did not fall because of the deference due Rabbi Yehoshua, but they did not straighten because of the deference due Rabbi Eliezer, and they still remain leaning.

415 Rabbi Eliezer then said to them: If the halakha is in accordance with my opinion, Heaven will prove it. A Divine Voice emerged from Heaven and said: Why are you differing with Rabbi Eliezer, as the halakha is in accordance with his opinion in every place that he expresses an opinion?

416 Rabbi Yehoshua stood on his feet and said: It is written: “It is not in heaven” (Deuteronomy 30:12). The Gemara asks: What is the relevance of the phrase “It is not in heaven” in this context? Rabbi Yirmeya says: Since the Torah was already given at Mount Sinai, we do not regard a Divine Voice, as You already wrote at Mount Sinai, in the Torah: “After a majority to incline” (Exodus 23:2). Since the majority of Rabbis disagreed with Rabbi Eliezer’s opinion, the halakha is not ruled in accordance with his opinion. The Gemara relates: Years after, Rabbi Natan encountered Elijah the prophet and said to him: What did the Holy One, Blessed be He, do at that time, when Rabbi Yehoshua issued his declaration? Elijah said to him: The Holy One, Blessed be He, smiled and said: My children have triumphed over Me; My children have triumphed over Me.

417 The Sages said: On that day, the Sages brought all the ritually pure items deemed pure by the ruling of Rabbi Eliezer with regard to the oven and burned them in fire, and the Sages reached a consensus in his regard and ostracized him. And the Sages said: Who will go and inform him of his ostracism? Rabbi Akiva, his beloved disciple, said to them: I will go, lest an unseemly person go and inform him in a callous and offensive manner, and he would thereby destroy the entire world.

418 What did Rabbi Akiva do? He wore black and wrapped himself in black, as an expression of mourning and pain, and sat before Rabbi Eliezer at a distance of four cubits, which is the distance that one must maintain from an ostracized individual. Rabbi Eliezer said to him: Akiva, what is different about today from other days, that you comport yourself in this manner? Rabbi Akiva said to him: My teacher, it appears to me that your colleagues are distancing themselves from you. He employed euphemism, as actually they distanced Rabbi Eliezer from them. Rabbi Eliezer too, rent his garments and removed his shoes, as is the custom of an ostracized person, and he dropped from his seat and sat upon the ground.

419 The Gemara relates: His eyes shed tears, and as a result the entire world was afflicted: One-third of its olives were afflicted, and one-third of its wheat, and one-third of its barley. And some say that even dough kneaded in a woman’s hands spoiled. The Sages taught: There was great anger on that day, as any place that Rabbi Eliezer fixed his gaze was burned.

420 And even Rabban Gamliel, the Nasi of the Sanhedrin at Yavne, the head of the Sages who were responsible for the decision to ostracize Rabbi Eliezer, was coming on a boat at the time, and a large wave swelled over him and threatened to drown him. Rabban Gamliel said: It seems to me that this is only for the sake of Rabbi Eliezer ben Hyrcanus, as God punishes those who mistreat others. Rabban Gamliel stood on his feet and said: Master of the Universe, it is revealed and known before You that neither was it for my honor that I acted when ostracizing him, nor was it for the honor of the house of my father that I acted; rather, it was for Your honor, so that disputes will not proliferate in Israel. In response, the sea calmed from its raging.

421 The Gemara further relates: Imma Shalom, the wife of Rabbi Eliezer, was the sister of Rabban Gamliel. From that incident forward, she would not allow Rabbi Eliezer to lower his head and recite the taḥanun prayer, which includes supplication and entreaties. She feared that were her husband to bemoan his fate and pray at that moment, her brother would be punished. A certain day was around the day of the New Moon, and she inadvertently substituted a full thirty-day month for a deficient twenty-nine-day month, i.e., she thought that it was the New Moon, when one does not lower his head in supplication, but it was not. Some say that a pauper came and stood at the door, and she took bread out to him. The result was that she left her husband momentarily unsupervised.

422 When she returned, she found him and saw that he had lowered his head in prayer. She said to him: Arise, you already killed my brother. Meanwhile, the sound of a shofar emerged from the house of Rabban Gamliel to announce that the Nasi had died. Rabbi Eliezer said to her: From where did you know that your brother would die? She said to him: This is the tradition that I received from the house of the father of my father: All the gates of Heaven are apt to be locked, except for the gates of prayer for victims of verbal mistreatment.

423 § The Sages taught: One who verbally mistreats the convert violates three prohibitions, and one who oppresses him in other ways violates two.

424 The Gemara asks: What is different with regard to verbal mistreatment, that three prohibitions are written concerning it: “And you shall neither mistreat a convert” (Exodus 22:20); “And when a convert lives in your land, you shall not mistreat him” (Leviticus 19:33); “And you shall not mistreat, each man his colleague” (Leviticus 25:17), and a convert is included in the category of colleague? With regard to one who also oppresses a convert as well, three prohibitions are written: “And you shall neither mistreat a convert, nor oppress him” (Exodus 22:20); “And you shall not oppress a convert (Exodus 23:9); “And you shall not be to him like a creditor” (Exodus 22:24). This last prohibition is a general prohibition, in which converts are included. Consequently, it is not correct that one who oppresses a convert violates only two prohibitions. Rather, both this one, who verbally mistreats a convert, and that one, who oppresses him, violate three prohibitions.

425 It is taught in a baraita that Rabbi Eliezer the Great says: For what reason did the Torah issue warnings in thirty-six places, and some say in forty-six places, with regard to causing any distress to a convert? It is due to the fact that a convert’s inclination is evil, i.e., he is prone to return to his previous way of living.

426 What is the meaning of that which is written: “And you shall not mistreat a convert nor oppress him, because you were strangers in the land of Egypt” (Exodus 22:20)? We learned in a baraita that Rabbi Natan says: A defect that is in you, do not mention it in another. Since the Jewish people were themselves strangers, they are not in a position to demean a convert because he is a stranger in their midst. And this explains the adage that people say: One who has a person hanged in his family [bidyotkei], does not say to another member of his household: Hang a fish for me, as the mention of hanging is demeaning for that family.

427 MISHNA: One may not intermingle produce bought from one supplier with other produce, even if he intermingles new produce with other new produce and ostensibly the buyer suffers no loss from his doing so.

428 And needless to say, one may not intermingle new produce with old produce, in the event that the old produce is superior, as with grains, since intermingling lowers its value.

429 Actually, they said: With regard to wine, they permitted one to mix strong wine with weak wine, because one thereby enhances it. One may not intentionally mix wine sediment with the wine, but one may give the buyer wine with its sediment; the seller is not required to filter the wine.

430 One who had water mix with his wine may not sell it in the store, unless he informs the buyer that it contains water. And he may not sell it to a merchant, even if he informs him of the mixture, as, although he is aware that there is water mixed with the wine, it will be used for nothing other than deceit because the merchant will likely not inform the buyer that it is diluted. In a place where they are accustomed to place water into the wine to dilute it and everyone is aware of that fact, one may place water in the wine.

431 The prohibition against mixing different types of produce applies only to an individual selling the produce of his field. By contrast, a merchant may take grain from five threshing floors belonging to different people, and place the produce in one warehouse. He may also take wine from five winepresses and place the wine in one large cask [pitom], provided that he does not intend to mix low-quality merchandise with high-quality merchandise.

[432] GEMARA: The Sages taught: Needless to say, if the price of the new produce is four se’a for a sela and the price of the old produce is three se’a for a sela, one may not intermingle them together. That is full-fledged deceit, as one is selling inexpensive produce at the price of expensive produce. Rather, even if the price of the new produce is three se’a for a sela and the price of the old produce is four se’a for a sela, one may not intermingle them. This is because in this case the price of the new produce is higher, as people want to age the produce, i.e., new produce is more valuable to those who seek to place it in storage for a lengthy period, although it may be of inferior quality compared to old produce.

[433] The mishna teaches: Actually, they said: With regard to wine, they permitted one to mix strong wine with weak wine because mixing the wine enhances it. Rabbi Elazar said: That is to say, every time a halakha is introduced with the phrase: Actually they said, it is an established halakha with regard to which there is no uncertainty.

[434] Rav Naḥman says: And it is with regard to the period when the wine is among the winepresses, i.e., before the wine ferments, that they taught this halakha. When the wine is still in the process of fermentation, if different wines are mixed and ferment together, this enhances their flavor. By contrast, if they are mixed at a later stage, this will harm their flavor.

[435] The Gemara asks: And today, when people mix old and new wine even when the wine is not among the winepresses, on what basis is mixing permitted? Rav Pappa said: It is because buyers are aware of the potential loss and waive it. Rav Aḥa, son of Rav Ika, said: In accordance with whose opinion is this mishna? It is the opinion of Rabbi Aḥa, as it is taught in a baraita: Rabbi Aḥa permits mixing in a case where the product will be tasted before its purchase. Then there is no deceit, as when the buyer tastes it, he is immediately aware that it is a mixture, and the choice of whether or not to purchase the product is his.

[436] The mishna teaches: And one may not intentionally mix wine sediment with the wine, but one may give the buyer wine with its sediment. The Gemara asks: But didn’t you say in the former clause of the mishna that one may not mix sediment at all? And lest you say: What is the meaning of: He may give the buyer wine with its sediment; it means that he informs the buyer that the wine contains sediment, this suggestion is not tenable. From the fact that the latter clause teaches: One may not sell it in the store unless he informs the buyer and he may not sell it to a merchant even if he informs him, it may be inferred that the former clause is speaking of a situation where one may sell it in the store even if he does not inform the buyer.

[437] Rav Yehuda said: This is what the tanna is saying: One may neither mix sediment remaining from wine that he poured the night before with the wine of the next day, nor the sediment of the next day with the wine of the night before. But he may give the buyer sediment of that wine itself. That is also taught in a baraita: Rabbi Yehuda says: With regard to one who pours wine for another, attempting to pour the liquid while leaving the sediment in the cask, that person may neither mix sediment remaining from wine that he poured the night before with the wine of the next day, nor the sediment of the next day with the wine of the night before. But he may mix the sediment of the night before with the wine poured the night before, and the sediment of the next day with the wine of the next day.

[438] The mishna teaches: One who had water mix with his wine may not sell it in the store, unless he informs the buyer that it contains water. The Gemara relates: They brought wine to Rava from a store. He diluted it with water, tasted it, and it was not tasty. He sent it back to the store, so they

could sell it there. Abaye said to him: But didn’t we learn in the mishna: And he may not sell it to a merchant, even if he informs him? Rava said to him: My dilution of the wine is evident to all, as I add more water than is typically added. And lest you say that the storekeeper will add wine, and sweeten the mixture, and sell it again, when the dilution is no longer evident, if this is a concern, there is no end to the matter. It should be prohibited to sell any wine to a merchant due to the concern lest he engage in deceit in its resale.

439 The mishna teaches: In a place where they are accustomed to place water into the wine to dilute it and everyone is aware of that fact, one may place water in the wine. It was taught: One may dilute the wine by adding water that will constitute one-half, one-third, or one-fourth of the mixture, in accordance with the local custom. Rav says: And it is with regard to the period when the wine is among the winepresses, before the wine ferments, that they taught this halakha. If wine is diluted at a later stage, the dilution will cause the wine to spoil.

440 MISHNA: Rabbi Yehuda says: A storekeeper may not hand out toasted grain and nuts to children who patronize his store, due to the fact that he thereby accustoms them to come to him at the expense of competing storekeepers. And the Rabbis permit doing so. And one may not reduce the price of sale items below the market rate. And the Rabbis say: If he wishes to do so, he should be remembered positively.

441 One may not sift ground beans to remove the waste, lest he charge an inappropriately high price for the sifted meal, beyond its actual value; this is the statement of Abba Shaul. And the Rabbis permit doing so. And the Rabbis concede that one may not sift the meal only from the beans that are close to the opening of the bin to create the impression that the contents of the entire bin were sifted, as this is nothing other than deception. One may neither adorn a person before selling him on the slave market, nor an animal nor vessels that he seeks to sell. Rather, they must be sold unembellished, to avoid deceiving the buyer.

442 GEMARA: The Gemara asks: What is the reason for the opinion of the Rabbis, who permit the free distribution of toasted grain and nuts? It is because the storekeeper can say to his competitors: I hand out nuts; and you hand out jujubes [shiskei]. All merchants are able to hand out goods that will attract children, and consequently this is not unfair competition.

443 The mishna teaches: And one may not reduce the price of items below the market rate. And the Rabbis say: If he wishes to do so, he should be remembered positively. The Gemara asks: What is the reason for the opinion of the Rabbis, who not only condone the practice but even praise the person, saying that he should be remembered positively?

444 The Gemara explains: It is due to the fact that by lowering the price he eases the market rate, i.e., his actions lead to the establishment of a lower market price.

445 The mishna teaches: And one may not sift ground beans to remove the waste and charge a higher price; this is the statement of Abba Shaul. And the Rabbis permit doing so. The Gemara comments: Who are the Rabbis whose opinion is cited in the mishna? It is Rabbi Aḥa, as it is taught in a baraita: Rabbi Aḥa permits mixing, and sifting, and the like, in the case of an item in which the change is obvious.

446 The mishna taught: One may neither adorn a person, nor an animal, nor vessels. The Sages taught: One may neither stiffen the hair of an animal to create the impression that it is more

voluminous than it is, nor inflate innards sold as meat to create the impression that it is a more substantial piece of meat, nor soak meat in water in order to change its color and create the impression that it is a choice cut. The Gemara asks: What is the meaning of: One may not stiffen the hair of an animal? Here, in Babylonia, they explained that it means to feed the animal bran water, which inflates its intestines and causes its hair to stand on end. Ze'eiri said in the name of Rav Kahana: It means scrubbing the hair clean to increase its volume.

447 The Gemara relates: Shmuel permitted sellers to place fringes on a cloak; Rav Yehuda permitted them to clean and adorn ornamented garments; Rabba permitted them to taper linen garments to cause them to appear more fine; Rava permitted them to draw arrows to ornament garments; Rav Pappa bar Shmuel permitted them to draw baskets for ornamentation. The Gemara asks: But didn't we learn in the mishna: One may neither adorn a person, nor an animal, nor vessels? The Gemara answers: This is not difficult, as this series of cases, where the Sages permitted adorning merchandise, are cases of new merchandise. It may be decorated, as doing so merely enhances its intrinsic beauty. That ruling in the mishna, according to which adornment is prohibited, is referring to cases of old merchandise, as the adornment is meant to conceal its flaws.

448 The Gemara asks: Adornment of a person, what is it? The Gemara relates: It is as in that incident involving a certain elderly slave who went and dyed his head and beard black to create a younger impression. He came before Rava and said to him: Purchase me as your slave. Rava said to him that there is a rabbinic adage: Let the poor be members of your household. I follow their advice and therefore do not require a slave. If I need assistance, the paupers who frequent my house can assist me.

449 The slave came before Rav Pappa bar Shmuel, who purchased him. One day Rav Pappa said to the slave: Give me water to drink. The slave went and removed the dye and whitened the hair on his head and his beard. The slave said to Rav Pappa: See that I am older than your father, and I am unfit to serve you. Rav Pappa read about himself: The righteous person is delivered from trouble, and another comes in his stead (see Proverbs 11:8). Rav Pappa applied the verse to the incident of the slave. The righteous person, Rava, was spared the problem of the slave; while another, Rav Pappa bar Shmuel, came in his stead.

Chapter 5

1 MISHNA: The Torah states the prohibition against taking interest: "And if your brother becomes impoverished, and his hand falters with you, then you shall support him; whether a stranger or a native, he shall live with you. You shall not take from him interest [neshekh] or increase [tarbit]; you shall fear your God and your brother shall live with you. You shall not give him your money with neshekh and with marbit you shall not give him your food" (Leviticus 25:35–37). The mishna asks: Which is neshekh, and which is tarbit?

2 Which is the case in which there is neshekh? With regard to one who lends another a sela, worth four dinars, for five dinars to be paid later, or one who lends another two se'a of wheat for three se'a to be returned later, this is prohibited, as it is taking interest [noshekh].

[3] And which is the case in which there is tarbit? It is the case of one who enters into a transaction that yields an increase in the produce beyond his investment. How so? For example, one acquired wheat from another at the price of one kor of wheat for one gold dinar, worth twenty-five silver dinars, with the wheat to be supplied at a later date, and such was the market price of wheat at the time he acquired it. The price of one kor of wheat then increased and stood at thirty dinars.

[4] At that point, the buyer said to the seller: Give me all of my wheat now, as I wish to sell it and purchase wine with it. The seller said to him: Since it is ultimately wine that you want, not wheat, each kor of your wheat is considered by me to be worth thirty dinars, and you have the right to collect its value in wine from me. And in this case, the seller did not have wine in his possession. If wine then appreciates in value, the result will be an interest-bearing transaction, as the buyer collects from the seller wine worth more than the wheat for which he paid.

[5] GEMARA: The Gemara asks: From the fact that in explaining the term tarbit, the tanna sets aside the topic of interest by Torah law, which is interest decided upon at the time of a loan, and instead explicates a case of lending with interest that is prohibited by rabbinic law, one can conclude by inference that by Torah law, neshekh and tarbit are one matter, and there is no halakhic distinction between them. The Gemara asks: But aren't the verses written using the term neshekh for interest that is on a loan of money and tarbit or marbit, which are cognates of the term ribit, for interest that is on a loan of food? This is as the verse states: "You shall not give him your money with neshekh and with marbit you shall not give him your food" (Leviticus 25:37).

[6] The Gemara asks: And can you understand that there is neshekh without tarbit, and tarbit without neshekh? The term neshekh, from a root meaning bite, connotes loss to the borrower, while the term tarbit, literally increase, connotes profit for the lender. The Gemara asks: What are the circumstances where there could be neshekh without tarbit?

[7] If it is in a case where one lends to another one hundred perutot with the agreement to be repaid one hundred and twenty, and initially one hundred copper perutot are worth one-sixth [bedanka] of a dinar, and ultimately, when he pays, one hundred and twenty perutot are worth one-sixth of a dinar, this is not an example of one without the other. Although one might say that there is neshekh, as the lender reduces the borrower's assets since the lender takes in payment from the borrower coins that he did not give him in the loan, and there is no tarbit, as there is no profit for the lender in this transaction, since he lent him one-sixth of a dinar and he received from him one-sixth of a dinar, that is not correct.

[8] The Gemara explains: Ultimately, if you go according to the initial value, when the loan was granted, there is neshekh and there is tarbit, as the borrower agreed to pay more than he received. If you go according to the ultimate value, when the loan was repaid, there is neither neshekh nor is there tarbit, as he repaid only the value he received.

[9] Additionally, what are the circumstances in which there could be tarbit without neshekh? If it is in a case where one lends to another one hundred perutot with the agreement to be repaid one hundred, and initially one hundred copper perutot are worth one-sixth of a dinar, and ultimately, when he is repaid, one hundred perutot are worth one-fifth of a dinar, this is not an example of one without the other.

[10] The Gemara explains: If you go according to the initial value, when the loan was granted, there is neither neshekh nor is there tarbit, as he is repaid only the value that he lent. If you go according to

the ultimate value, when the loan was repaid, there is neshekh and there is tarbit, as the value of one hundred perutot has increased.

[11] Rather, Rava said: You do not find neshekh without tarbit nor tarbit without neshekh, and the verse distinguished between them only so that lending with interest always involves violating two prohibitions.

[12] The Sages taught in a baraita: The verse states: “You shall not give him your money with neshekh and with marbit you shall not give him your food” (Leviticus 25:37). I have derived only that there is a prohibition of neshekh for a loan of money and a prohibition of ribit for a loan of food. From where is it derived that there is neshekh with regard to a loan of food as well? The baraita answers: A different verse states: “You shall not lend with interest [tashikh] to your brother: Neshekh of money, neshekh of food, neshekh of anything that is lent with interest [asher yishakh]” (Deuteronomy 23:20). The baraita continues: From where is it derived that there is ribit with regard to a loan of money? The verse states: “Neshekh of money.”

[13] If the verse is not referring to the matter of neshekh with money, as it is already stated in that same verse: “You shall not lend with interest [tashikh] to your brother,” indicating that taking money as interest is prohibited, apply the expression “neshekh of money” to the matter of ribit, i.e., tarbit with money.

[14] The baraita continues: I have derived a source for this prohibition only with regard to a borrower, for whom it is prohibited to pay interest on a loan. From where is it derived that there is also a prohibition stated with regard to a lender?

[15] The baraita answers: Neshekh is stated with regard to a borrower, and neshekh is stated with regard to a lender. Just as concerning neshekh that is stated with regard to a borrower, you did not distinguish with regard to it between a loan of money and a loan of food, or between whether the interest is forbidden as neshekh or as ribit, so too, concerning neshekh stated with regard to a lender, do not distinguish with regard to it between a loan of money and a loan of food, or between whether the interest is forbidden as neshekh or as ribit. The baraita concludes: From where is it derived to include in the prohibition interest of any sort? The verse states: “Neshekh of anything that is lent with interest.”

[16] Ravina said: An explicit verse is not required, neither to derive neshekh of food nor to derive ribit of money. As, if it were written: You shall not give him your money with neshekh and your food with marbit, juxtaposing neshekh with money alone and marbit with food alone, it would be as you say, that there is a need for the derivation of the baraita. But now that it is written: “You shall not give him your money with neshekh and with marbit you shall not give him your food,” interposing both neshekh and marbit between money and food, read into the verse this interpretation: Your money you shall not give him for neshekh and for marbit; and for neshekh and for marbit you shall not give your food.

[17] The Gemara asks: But isn’t the tanna of the baraita saying that neshekh of food and tarbit of money are derived by means of a verbal analogy: Neshekh is stated with regard to a borrower, and neshekh is also stated with regard to a lender? How can Ravina, an amora, state that the verbal analogy is not needed?

[18] The Gemara answers: This is what Ravina is saying: Had the verse not stated the terms neshekh and tarbit interposed between money and food, I would have said that the halakha that both terms apply to both money and food would be derived by means of a verbal analogy. Now, as the verse is stated in that manner, a verbal analogy is not necessary. The Gemara asks: Rather, why do I need this verbal analogy? The Gemara explains: I need the verbal analogy to teach that "neshekh of anything that is lent for interest" (Deuteronomy 23:20), which is written with regard to a borrower but not written with regard to a lender, applies to a lender as well.

[19] § Rava said: Why do I need it to be that the Merciful One writes a prohibition with regard to interest, a prohibition with regard to robbery (see Leviticus 19:13), and a prohibition with regard to exploitation (see Leviticus 25:14), a transaction where one of the parties overcharged or underpaid? There appears to be one principle underlying all three prohibitions: One must not take possession of another's money in illegitimate ways.

[20] The Gemara explains: They are necessary. As, had the Merciful One written the prohibition only with regard to interest, one could not have derived the other prohibitions from it because it is a prohibition with a novel element that does not appear in other halakhot. This novel element is that the Merciful One prohibited a loan with interest even for the borrower. With regard to the two other prohibitions, there is a prohibition against taking another's money, but there is no prohibition for the victim, who has his money taken.

[21] And had the Merciful One written the prohibition only with regard to robbery, one could not have derived the other prohibitions from it, as perhaps robbery is prohibited only due to the fact that it is an action taken against the will of the victim. But in the cases of exploitation and interest, where there is an element of consent, one would say they are not prohibited.

[22] And had the Merciful One written the prohibition only with regard to exploitation, one could not have derived the other prohibitions from it, as perhaps exploitation is prohibited only due to the fact that the victim does not know that he was the victim of exploitation and therefore cannot waive repayment. In the cases of interest and robbery, the borrower and the victim, respectively, are aware that their money was taken and waiving repayment is possible, so perhaps those actions are not prohibited.

[23] The Gemara suggests: Although no one of these prohibitions can be derived from one of the other prohibitions, perhaps one of them can be derived from the other two. The Gemara clarifies: Which prohibition will you derive from the other two? Let the Merciful One not write the prohibition with regard to interest, and instead derive that prohibition from these two, robbery and exploitation. The Gemara rejects that suggestion: What is notable about these prohibitions? They are notable in that they are transgressed without the consent of the victim. Will you say the same with regard to interest, which the borrower gives with his consent, as he agrees to accept the loan under those conditions?

[24] The Gemara suggests: Let the Merciful One not write the prohibition with regard to exploitation, and instead derive that prohibition from these two, robbery and interest. The Gemara rejects that suggestion: What is notable about these prohibitions? They are notable in that they are not transgressed in the typical manner of buying and selling. Will you say the same with regard to exploitation, which is transgressed in the context of typical buying and selling?

[25] Rather, let the Merciful One not write the prohibition with regard to robbery, and instead derive that prohibition from these two, interest and exploitation. As what refutation will you offer? If you

say: What is notable about interest? It is notable in that the prohibition of interest contains a novel element; the case of exploitation will prove that a novel element is not a factor, as the prohibition against exploitation contains no novel element.

[26] If you say, what is notable about exploitation? It is notable in that in this case, the victim does not know that he was the victim of exploitation and therefore he cannot waive repayment; the case of interest will prove that the inability to waive repayment is not a factor, as the borrower is aware of the interest and able to waive repayment.

[27] The Gemara comments: And the inference has reverted to its starting point. The aspect of this case, interest, is not like the aspect of that case, exploitation, and the aspect of that case, exploitation, is not like the aspect of this case, interest. Their common denominator is that one robs another of money, i.e., takes money from another that is not due to him. I will also bring the prohibition against robbery, which shares that common denominator, and derive it from the other two prohibitions.

[28] The Sages said: Indeed, the prohibition against robbery is superfluous. But if the prohibition against robbery can be derived from the prohibitions against interest and exploitation, why do I need the prohibition written in the Torah with regard to robbery? The Gemara answers: That verse is not written to prohibit a standard case of robbery; rather, it serves to prohibit the action of one who withholds the wages of a hired laborer. In that case, unlike robbery, the employer does not take money from the laborer; he merely fails to pay him his wages.

[29] The Gemara challenges: With regard to one who withholds the wages of a hired laborer, it is explicitly written: “You shall not oppress a hired laborer who is poor and destitute” (Deuteronomy 24:14). There is no need to derive this prohibition from the verse concerning robbery. The Gemara answers: It is written so that withholding the wages of a hired laborer always involves violating two prohibitions.

[30] The Gemara asks: But let us interpret the verse concerning robbery as prohibiting interest or exploitation, and say that it is written so that these prohibitions always involve violating two prohibitions. The Gemara answers: The prohibition against robbery is applied to the case of withholding the wages of a hired laborer because it is a matter derived from its context,

[31] and this prohibition is written in the context of the matter of a hired laborer: “You shall not oppress your neighbor, nor rob him, and the wages of a hired servant shall not abide with you all night until the morning” (Leviticus 19:13).

[32] The Gemara asks: Why do I need the prohibition: “You shall not steal” (Leviticus 19:11), that the Merciful One wrote? This is yet another prohibition against taking money by illegitimate means, and it could be derived from the other prohibitions mentioned previously. The Gemara answers that it is necessary for the Merciful One to write that prohibition for that which is taught in a baraita: “You shall not steal” applies in all circumstances, even if you do so only in order to aggravate the victim; “you shall not steal” applies in all circumstances, even if you do so in order to pay the double payment as a gift to the person from whom you stole.

[33] Rav Yeimar said to Rav Ashi: Why do I need the prohibition that the Merciful One wrote with regard to weights: “You shall do no unrighteousness in judgment, in measure, in weight, or in volume” (Leviticus 19:35)? It is merely another form of robbery. Rav Ashi said to him: It is referring to a seller who buries his weights in salt, in order to lighten them. Rav Yeimar said: That is the same

as full-fledged robbery; therefore, it should not require a separate derivation. Rav Ashi answered: It is written to establish that he violates the prohibition from the moment of the act of burying them. He violates the prohibition even before he actually deceives a buyer with the buried weights.

[34] The Sages taught: The verse states: “You shall do no unrighteousness in judgment, in measure, in weight, or in volume [uvamesura]” (Leviticus 19:35). “In measure”; this is referring to the measurement of land, e.g., this means that in a case where two people are dividing their jointly owned field, one may not measure the land to be given to one during the summer and measure the land to be given to the other during the rainy season, because the length of the measuring cord is affected by the weather conditions. “In weight”; this is referring to the fact that he may not bury his measuring weights in salt. And “in volume”; this teaches that one may not froth the liquid one is selling, creating the impression that there is more liquid in the vessel than there actually is.

[35] The Gemara adds: And are the following matters not inferred a fortiori: And if with regard to the mesura volume, which equals one thirty-third of a log, the Torah was fastidious concerning it that one may not deceive another, it can be inferred a fortiori that with regard to a hin, which equals twelve log, and a half-hin, and a third-hin, and a quarter-hin, and a log, and a half-log, and a quarter-log, which are all much larger volumes, that one may not deceive another.

[36] § Rava says: Why do I need the mention of the exodus from Egypt that the Merciful One wrote in the context of the halakhot of the prohibition against interest (see Leviticus 25:37–38), and the mention of the exodus from Egypt with regard to the mitzva to wear ritual fringes (see Numbers 15:39–41), and the mention of the exodus from Egypt in the context of the prohibition concerning weights (see Leviticus 19:35–36)?

[37] Rava explains: The Holy One, Blessed be He, said: I am He Who distinguished in Egypt between the drop of seed that became a firstborn and the drop of seed that did not become a firstborn, and I killed only the firstborn. I am also He Who is destined to exact punishment from one who attributes ownership of his money to a gentile and thereby lends it to a Jew with interest. Even if he is successful in deceiving the court, God knows the truth. And I am also He Who is destined to exact punishment from one who buries his weights in salt, as this changes their weight in a manner not visible to the eye. And I am also He Who is destined to exact punishment from one who hangs ritual fringes dyed with indigo [kala ilan] dye on his garment and says it is dyed with the sky-blue dye required in ritual fringes. The allusion to God’s ability to distinguish between two apparently like entities is why the exodus is mentioned in all of these contexts.

[38] The Gemara relates: Ravina happened to come to Sura on the Euphrates. Rav Ḥanina of Sura on the Euphrates said to Ravina: Why do I need the mention of the exodus from Egypt that the Merciful One wrote in the context of creeping animals: “Do not make yourselves detestable with all the creeping animals that swarm…for I am the Lord Who brings you up from the land of Egypt” (Leviticus 11:43–45)? Ravina said to him: The Holy One, Blessed be He, said: I am He Who distinguished in Egypt between the drop of seed that became a firstborn and the drop of seed that did not become a firstborn, and I killed only the firstborn. I am also He Who is destined to exact punishment from one who intermingles the innards of non-kosher fish with the innards of kosher fish and sells them to a Jew, who is unable to distinguish between them.

[39] Rav Ḥanina said to him: I was not asking about the very mention of the exodus. Rather, I was asking about the term “Who brings you up” mentioned in that verse; that is what is difficult for me.

What is different here, that the Merciful One wrote: “Who brings you up from the land of Egypt,” as opposed to the other three instances cited by Rava where the exodus is mentioned in the context of mitzvot and prohibitions, where it is written: “Who brought you out”?

[40] Ravina said to him: It is to teach as it was taught in the school of Rabbi Yishmael. As it was taught in the school of Rabbi Yishmael: The Holy One, Blessed be He, said: Had I brought the Jewish people up from Egypt only for this matter, so that they would not become impure by consuming creeping animals, it would be sufficient for Me, as observance of this mitzva elevates their spiritual stature.

[41] Rav Ḥanina said to him: And is the reward for abstaining from consuming creeping animals greater than the reward for observing the halakhot with regard to interest and ritual fringes and weights? Let the Merciful One write: Who brings you up, in the context of those mitzvot as well. Ravina said to him: Even though their reward is not greater, it is more repulsive for Jews to eat creeping animals. Avoiding those animals brings them up, in the sense that it is praiseworthy and enhances the transcendent nature of the Jews.

[42] § The mishna teaches: And which is tarbit? It is the case of one who enters into a transaction that yields an increase in the produce beyond his investment. How so? For example, a case where one acquired wheat from another at the price of one kor of wheat for one gold dinar, with the wheat to be supplied at a later date, and such was the market price of wheat at the time he acquired it. The price of one kor of wheat then increased and stood at thirty dinars. At that point, the buyer said to the seller: Give me all of my wheat now, as I wish to sell it and purchase wine with it. The seller said to him: Since it is ultimately wine that you want, not wheat, each kor of your wheat is considered by me to be worth thirty dinars, and you have the right to collect its value in wine from me. And in this case, the seller did not have wine in his possession. The Gemara asks: Is that to say that all these cases that we said in the mishna until now are not cases of interest?

[43] Rabbi Abbahu says: Until here, i.e., in the first two cases it presents, the mishna is referring to cases of interest by Torah law, and from this point forward the mishna is referring to cases of interest by rabbinic law. If the lender does not explicitly stipulate that the debtor must pay a sum greater than the value of the loan they do not violate the Torah prohibition of interest, but the Sages prohibited doing so. And so says Rava: Until here the mishna is referring to cases of interest by Torah law, and from this point forward the mishna is referring to cases of interest by rabbinic law.

[44] The Gemara comments: In the cases in the mishna cited until here there is a fulfillment of the verse: The wicked may prepare and the righteous shall don (see Job 27:17), which is interpreted as referring to the case of a wicked father who collects interest from borrowers. Upon inheriting the father’s estate, his righteous son is not obligated to return the interest to the borrower. The Gemara asks: Is this verse applicable only in the cases discussed until here, and no further? It is logical that if the heir does not need to return the interest that was prohibited by Torah law, all the more so the heir should not need to return the interest that was prohibited by rabbinic law. Rather, Rava said: Even in the cases discussed until here one can apply the verse: The wicked may prepare and the righteous shall don.

[45] The Gemara comments: Until here the tanna cites cases of fixed interest, i.e., where the amount to be paid as interest was fixed at the time of the loan, which is prohibited by Torah law. From this point

forward the tanna cites cases with only a hint of interest, prohibited by rabbinic law, as there is no fixed sum paid as interest.

[46] Rabbi Elazar says: Fixed interest can be removed from the lender's possession by means of legal proceedings adjudicated by judges. By contrast, in cases of a hint of interest, prohibited by rabbinic law, the money paid cannot be removed by means of legal proceedings adjudicated by judges. Rabbi Yoḥanan says: Even fixed interest cannot be removed by means of legal proceedings adjudicated by judges.

[47] Rabbi Yitzḥak says: What is the reason for the opinion of Rabbi Yoḥanan? It is as the verse states: "He has given forth with neshekh and he took tarbit, shall he live? He shall not live. He performed all these abominations, he shall be executed; his blood shall be upon him" (Ezekiel 18:13). It can be inferred that one who takes interest is subject to death at the hand of Heaven but not to repayment, as the court cannot compel him to repay the interest. Citing a different proof, Rav Adda bar Ahava said that the verse states: "You shall not take from him neshekh or tarbit; you shall fear your God and your brother shall live with you." (Leviticus 25:36). It can be inferred that one who does so is subject to shirking the fear of Heaven, but not to repayment.

[48] Rava said: It can be derived from the verse in Ezekiel itself, not by inference, as it is written: "He shall be executed; his blood shall be upon him" (Ezekiel 18:13). In the verse, lenders who charged interest were juxtaposed with shedders of blood. This teaches: Just as shedders of blood are not subject to repayment, so too, lenders who charge interest are not subject to repayment.

[49] Rav Naḥman bar Yitzḥak said: What is the reason for the opinion of Rabbi Elazar that interest prohibited by Torah law can be reclaimed by means of legal proceedings adjudicated by judges? It is as the verse concerning the prohibition against taking interest states:

[50] "And your brother shall live with you" (Leviticus 25:36), from which it is derived: Return the interest to him so that he may live.

[51] The Gemara asks: And Rabbi Yoḥanan, what does he do with this verse: "And your brother shall live with you"? The Gemara answers: He requires the verse for that which is taught in a baraita: If two people were walking on a desolate path and there was a jug [kiton] of water in the possession of one of them, and the situation was such that if both drink from the jug, both will die, as there is not enough water, but if only one of them drinks, he will reach a settled area, there is a dispute as to the halakha. Ben Petora taught: It is preferable that both of them drink and die, and let neither one of them see the death of the other. This was the accepted opinion until Rabbi Akiva came and taught that the verse states: "And your brother shall live with you," indicating that your life takes precedence over the life of the other.

[52] The Gemara raises an objection from a baraita to the opinion that one is not obligated to return interest that he took: If their father bequeathed them money that he had collected as interest, even though his sons know that the money was collected as interest, they are not obligated to return the money. The Gemara infers: But this indicates that their father himself is obligated to return the money.

[53] The Gemara rejects the inference: By right, it should have said that their father is also not obligated to return the money. But since the tanna wants to teach the latter clause, which states: If their father bequeathed them a cow, or a garment, or any defined item that was stolen property, they

are obligated to return it to its owner due to their obligation to uphold their father’s honor, the tanna also taught the first clause with regard to their obligation, not that of their father.

[54] The Gemara asks: And these children, are they obligated to take action due to the obligation to uphold their father’s honor? Read and apply here the verse: “Nor curse a ruler of your people” (Exodus 22:27), from which it is inferred that this prohibition applies only to one who performs an action becoming of your people. The actions of the father, who lent money with interest, were unbecoming of the Jewish people. Why then, must his sons uphold his honor?

[55] The Gemara explains: It is as Rabbi Pineḥas said in the name of Rava in a different context, that it is referring to a case where the father repented. Here too, it is a case where the father repented, and therefore he was righteous and worthy of respect. The Gemara asks: If he repented, what is the stolen item doing in his possession? The Gemara answers: It is a case where the father did not manage to return the item before he died. Consequently, the children must return the item in order to uphold their father’s honor.

[56] The Gemara raises an objection from a baraita: Concerning robbers and those who lend money with interest, even though they collected the money, they must return it. The Gemara analyzes the language of the baraita: In the case of robbers, what case is there that can be described as: Even though they collected the money? If they robbed, they robbed, and it is imprecise to use the language of collecting money; if they did not rob, do you call them robbers? Rather, say in explanation of the baraita: Robbers; in this context, who are they? They are those who lend with interest, and even though they collected the money, they must return it. Evidently, money collected as interest must be returned.

[57] The Gemara answers: In fact, this issue is a dispute between tanna’im, as it is taught in a baraita: Rabbi Neḥemya and Rabbi Eliezer ben Ya’akov exempt the lender and the guarantor from lashes for violating the prohibition of interest, because although they violated a prohibition, once they have done so they are commanded to arise and take action, and there is a principle that one is not flogged for a transgression that can be rectified by the performance of a mitzva. The Gemara clarifies: What mitzva to arise and take action is there? Is it not due to the fact that we say to them: Arise and return it?

[58] From the opinion of these Sages, it can be derived by inference that the first tanna holds that these people are not subject to the obligation of repayment. Apparently, he holds that there is no mitzva to arise and take action. The Gemara rejects that inference: No, what is the mitzva to arise and take action? It is the mitzva to tear up the promissory note documenting the commitment to pay interest.

[59] The Gemara asks: What is accomplished by tearing up the document? What does this tanna hold? If he holds that the legal status of the debt in a document that is fit to be collected is as though it were already collected, and accordingly, they already performed their transgression by writing the document, then they accomplish nothing by tearing it, as the very act of writing the document is tantamount to collecting the debt. And if the legal status of the debt in a document that is fit to be collected is not as though it were already collected, they have done nothing so long as the interest has not been collected. Either way, tearing up the document changes nothing.

[60] The Gemara answers: Actually, this tanna holds that the legal status of the debt in a document that is fit to be collected is not as though it were already collected, and he teaches us the following principle: That appraisal of an item’s value is a significant matter. If a document was written for a

loan with interest and the debtor’s property was appraised, this is itself a significant matter and punishable with lashes.

61 The Gemara comments: So too, it is reasonable to explain the matter in this way, as we learned in a mishna (75b): And these individuals violate the prohibition of interest: The lender, and the borrower, the guarantor, and the witnesses. The Gemara asks: Granted, with regard to all of them, i.e., the lender, the borrower, and the guarantor, it is understood that they violate the prohibition, as they performed an action. But with regard to the witnesses, what did they do to render themselves liable? Rather, isn’t it correct to conclude from the mishna that the appraisal of an item’s value is a significant matter? Since the mishna states that the witnesses, whose testimony enables appraisal, participate in the transgression, this proves that appraisal is significant. The Gemara affirms: Conclude from the mishna that this is so.

62 § Rav Safra says: According to the opinion that the lender is compelled to return the money paid as interest, these are the rules to be employed: In any case where the obligation recorded in the document is so clear that by the laws of the gentiles, who are not prohibited from collecting interest, one removes the interest from the possession of the borrower to give to the lender, by our Jewish laws one returns the interest from the lender to the borrower. And in any case where the agreement is not unequivocal and by their laws one does not remove the interest from the possession of the borrower to give to the lender, by our laws one does not return the interest from the lender to the borrower.

63 Abaye said to Rav Yosef: And is it an established principle that applies in all cases? But there is the case where one lent a se’a of produce for the return of a se’a of the same type of produce, and the price of the produce went up in the interim, where by their laws one removes the interest from the possession of the borrower to give to the lender, and yet by our laws one does not return the interest from the lender to the borrower, as taking this type of interest is not prohibited by Torah law. Rav Yosef said to him: The gentiles do not consider that transaction a loan. Rather, according to their laws, it entered the possession of the borrower with the status of a deposit, and consequently, returning the produce is not considered repayment of a loan with interest, even though its value is greater than it was at the outset.

64 Ravina said to Rav Ashi: But there is the case of a mortgage without deduction, where the debtor’s field is held by the creditor until the debt is repaid, and while holding the field the creditor is allowed to consume the produce of the field without deducting from the debt the value of the produce he consumed. The consumption of the produce constitutes a type of interest, and in that case, by the laws of the gentiles one removes the interest from the possession of the borrower to give to the lender.

65 And yet, by our laws one does not return the interest from the lender to the borrower. Since the interest was not fixed from the outset, and there is also no certainty that he will consume any produce, this is merely a case of a hint of interest. Rav Ashi said to him: The gentiles do not consider that transaction a loan; rather, they see this as a case where the field came into his possession by means of a transaction in the form of a sale. The field was temporarily sold to the lender, who sells it back to the borrower when the debt is paid.

66 The Gemara asks: But if one is a case of deposit and the other is a case of sale, the principle that begins with: Any case where by their laws, that Rav Safra is saying, what is he coming to teach us?

The Gemara answers that this is what he is coming to teach us: In any case where by their laws one removes the interest from the possession of the borrower to give to the lender, by our laws one returns the interest from the lender to the borrower. And what is that case? It is a case of fixed interest, and it is in accordance with the opinion of Rabbi Elazar.

[67] And as for the statement that in any case where by their laws one does not remove the interest from the possession of the borrower to give to the lender, by our laws one does not return the interest from the lender to the borrower, this is referring to a case of prior interest, i.e., interest paid prior to the granting of a loan in order to induce the lender to grant the loan, and subsequent interest, i.e., a gift given after a loan has been repaid to show thanks to the lender for lending the money. Although paying these types of interest is prohibited, as they are not actually part of the agreement, by our laws one does not compel the lender to return those payments.

[68] § The mishna teaches: How so? For example, one acquired wheat from another at the price of one kor of wheat for one gold dinar, worth twenty-five silver dinars, with the wheat to be supplied at a later date, and such was the market price of wheat at the time he acquired it. The price of a kor of wheat then increased and stood at thirty dinars. At that point, the buyer said to the seller: Give me all of my wheat now, as I wish to sell it and purchase wine with it. The seller said to him: Each kor of your wheat is considered by me to be worth thirty dinars, and you have the right to collect its value in wine from me. And in this case, the seller does not have wine in his possession. The seller is considered to be a borrower with regard to the lender, who is viewed as lending the wheat to the seller. The Gemara asks: And if he does not have any wine, what of it? Why is this factor relevant?

[69] But isn’t it taught in a baraita: When purchasing produce to be collected by the buyer at a later stage, one may not set a price for produce until the market rate is publicized. If the rate has been publicized, one may set a price, despite the fact that the seller is not actually in possession of any such produce, as even though this seller does not have any of that produce, that one, i.e., another seller, does have some of that produce, which the first seller could purchase at the market rate. Evidently, once the market rate is publicized, the transaction is considered a purchase and not a loan with interest, even if the buyer does not receive the produce immediately.

[70] Rabba said: In the mishna, we are dealing with one who comes to incur a debt for their value, i.e., for the value of the wine. If the borrower, i.e., the seller, possessed wine at that time he would have transferred it to the lender, i.e., the buyer, in place of the wheat, and this could have constituted a proper sale. Since he did not possess any wine, he promised it to the seller at a later date for a higher price, and this constituted a loan with interest as opposed to a sale.

[71] And this is as it is taught in a baraita: If a person was owed one hundred dinars by another, and he went and stood by the other’s granary and said to him: Give me my money, as I wish to buy wheat with it. And the debtor said to him: I have wheat in my granary that I will give you; go and calculate for me the amount of wheat to which you are entitled by the current market rate, and I will give you this amount of wheat over the span of a full twelve months, even if the price rises in the interim. Such a practice is forbidden because of interest, as this is not similar to a case where his issar has come into his possession. Since the lender did not give the borrower even a single issar as payment for the wheat, this is not a sale, but a loan with interest.

[72] Abaye said to Rabba: If this transaction is forbidden because it is not similar to a case where his issar has come into his possession, why does the mishna specifically teach the case where he does not

have wine? Even if he does have wine, it would also be forbidden, as he gave no money at the time of the acquisition. Rather, Abaye rejected Rabba's explanation and said: The mishna should be understood like the baraita taught by Rav Safra with regard to the halakhot of interest, which was taught originally in the school of Rabbi Ḥiyya.

[73] As Rav Safra taught a baraita from the school of Rabbi Ḥiyya with regard to interest: There are matters that are intrinsically permitted by Torah law, but are prohibited because they are artifices used to circumvent transgressing the prohibition of interest. How so? If one said to another: Lend me one hundred dinars, and the other said to him: I do not have one hundred dinars but I have wheat worth one hundred dinars that I will give you, and he gave him wheat worth one hundred dinars, and later he went and acquired the wheat back from him for twenty-four sela, the equivalent of ninety-six dinars, this is permitted by Torah law, as it is considered a double transaction since it included first a loan of the equivalent of one hundred dinars, and then the purchase of the wheat at a discounted rate. But it is prohibited to do so by rabbinic law because this is an artifice allowing the circumvention of transgressing the prohibition of interest.

[74] Here too, the mishna is referring to a case where he said to him: Lend me thirty dinars, and the other said to him: I do not have thirty dinars, but I have wheat worth thirty dinars that I will give you. He then gave him wheat worth thirty dinars, and he subsequently went and acquired the wheat back from him for a gold dinar, which is worth twenty-five dinars. In this case, if the borrower has wine that he gives him in place of the thirty dinars, it is produce that the lender takes from him, and therefore we have no problem with it. And if not, since he does not have wine, certainly the taking of money from him has at least the appearance of interest.

[75] Rava said to Abaye: If so, your explanation does not accord with the wording of the mishna, as the mishna states: Give me my wheat, while according to your interpretation it should have said: Give me the value of my wheat. Abaye responds: Emend the text and teach: The value of my wheat. Rava further asked: The phrase: As I wish to sell it, is also imprecise, as it should have said: Which I sold to you. Abaye again suggests: Emend the text and teach: Which I sold to you. Rava raises yet another difficulty concerning the language of the mishna. The tanna states: Your wheat is considered by me to be worth thirty dinars, but while according to your interpretation he had also established the price for him at this amount at the outset. Abaye answers: This is what he is saying to him: The wine should be collected according to the value of your wheat that you calculated for me at thirty dinars.

[76] Rava continued to question the wording of the mishna. It states: And you have the right to collect its value in wine from me, and he does not have wine in his possession. But the tanna taught: At the price of one kor of wheat for one gold dinar, and indeed that is the market price of wheat at the time. Both of these clauses do not accord with Abaye's explanation. Rather, Rava said another explanation. He prefaced it by commenting: When I die, Rabbi Oshaya will come out from the Garden of Eden to greet me,

[77] as I resolve the mishna in accordance with his opinion, expressed in the baraitot he edited.

[78] Rava explains: As Rabbi Oshaya teaches in a baraita: One was owed one hundred dinars by another, and he went and stood by the other's granary and said: Give me my money, as I wish to buy wheat with it, and the other said to him: I have wheat in my granary that I will give you; go and calculate for me the amount to which you are entitled at the current market rate. When the time to sell wheat arrived, the lender said to him: Give me wheat, as I want to sell it and acquire wine with

the money received for it. The borrower said to him: I have wine that I will give you; go and calculate for me the amount of wine to which you are entitled at the current market rate.

[79] The baraita continues: Then the time to sell wine arrived, and the lender said to the borrower: Give me my wine, as I want to sell it and acquire oil with the money received for it. The borrower said to him: I have oil that I will give you; go and calculate for me the amount of oil to which you are entitled at the current market rate. With regard to all such cases, if the borrower has wine and oil, the transaction is permitted, as this is a proper sale. But if he does not have these items it is forbidden. Since he cannot give him the merchandise at the current moment, if its value appreciates in the interim he is considered to have paid an additional sum for the delay of the repayment of the debt. Rava concludes his explanation: And what is the meaning in the mishna of: Acquired? It means that he acquired it as payment for his loan.

[80] Rava said: Conclude from this baraita of Rabbi Oshaya three halakhot: Conclude from it that one may establish repayment of a loan upon produce, meaning that a borrower can promise to pay the lender in produce over the course of a year, based on the market rate at the beginning of the year, and we do not say that this is like a case where his issar has not already come into his possession, as Rabbi Ḥiyya said in the baraita on the previous amud. Since he owns produce it is as though he has provided it at the present time, and the current lack of payment is not significant. Accordingly, one can conclude from it another halakha, that this practice is permitted provided that he has produce in his possession. And further conclude from it that the halakha is in accordance with the opinion of Rabbi Yannai.

[81] This is as Rabbi Yannai says: What difference is it to me if he referred to the produce, and what difference is it to me if he referred to the produce's value? If he stipulated that he would receive a certain amount of produce, he can later take its value in money rather than the produce itself without violating the prohibition of interest.

[82] As it was stated that amora'im disagreed about this issue: Rav says that one may make an arrangement of trust with regard to the delivery of items such as produce, i.e., one may loan the money in advance with the agreement that he will be repaid with produce at a later date, but one may not make an arrangement of trust with regard to money, i.e., one may not loan 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. And Rabbi Yannai says: What difference is it to me if the agreement concerned the produce, and what difference is it to me if it concerned the produce's value? Just as the lender can take the produce and sell it himself, he can likewise accept the value of the produce directly.

[83] The Gemara raises an objection against Rav's opinion from the above baraita: With regard to all of them, if the borrower has the items in his possession, it is permitted, apparently even if he actually pays with something else. Rav Huna says that Rav says: That baraita is stated with regard to a case where the lender pulled the produce itself, thereby performing an act of acquisition. The Gemara questions Rav Huna's statement: If he pulled the produce, does it need to be said? After all, there was a proper act of acquisition. Rather, the baraita is discussing a case where the borrower designated a corner for the lender in which to place the produce that he acquired. For the purposes of this halakha, such an action is sufficient.

[84] And Shmuel said: In accordance with whose opinion is this baraita, which permits the practice if the borrower is in possession of such produce? It is in accordance with that of Rabbi Yehuda, who said that uncertain interest, a transaction that may or may not result in the payment of interest, is permitted. Rabbi Yehuda holds that if at the time of the loan it was not certain that the agreement would result in the paying of interest, then even if it is so that if specific circumstances were to develop there would be interest paid according to the agreement, the transaction is permitted.

[85] As it is taught in a baraita: If one was owed one hundred dinars by another, and the borrower performed a sale of his field for him in order to repay the one hundred dinars, if they agreed that the seller, i.e., the borrower, consumes the produce of the field until the debt is repaid, this is certainly permitted, but if the buyer, i.e., the lender, consumes the produce, it is prohibited, as he is in effect taking the produce as interest while awaiting the payment that he is owed. Rabbi Yehuda says: Even if the buyer consumes the produce, it is permitted.

[86] The tanna relates: Rabbi Yehuda said to the Sages: An incident occurred involving Baitos ben Zunin, who performed a sale of his field on the basis of a directive from Rabbi Elazar ben Azarya, and that was a case where the buyer consumed the produce. The Sages said to the tanna: Will you bring a proof from there? The reverse was the case: It was the seller, not the buyer, who consumed the produce.

[87] The Gemara asks: What is the difference in opinion between the first tanna and Rabbi Yehuda? Abaye said: The difference between them concerns the halakha of uncertain interest. According to the opinion of Rabbi Yehuda, if it is uncertain that a transaction will ultimately involve the payment of interest, it is permitted. Rava said: The difference between them involves the status of interest taken on the condition that it be given back. Rava maintains that Rabbi Yehuda did not mean that the lender can consume the produce without payment, as he must repay the amount he ate if the borrower pays off his debt. The first tanna rules that since the sale is not yet final, his consumption of the produce constitutes interest.

[88] Rava said: Now that Rabbi Yannai is saying

[89] that we say: What difference is it to me if he referred to the produce, and what difference is it to me if he referred to the produce’s value, meaning that we do not require the payment to be in the form of the produce stipulated, we therefore also say: What difference is it to me if he referred to the produce’s value, and what difference is it to me if he referred to the produce, and therefore one may set a price by the market rate. And this is permitted even though he does not have produce at the present moment. Since he could purchase it if he wished it is considered as though he had the produce in his possession, and therefore one may make an agreement with another to provide him with produce at a later date in accordance with the current price.

[90] Rav Pappa, and Rav Huna, son of Rav Yehoshua, raised an objection to the opinion of Rava from the aforementioned baraita, which explicitly teaches: With regard to all of them, if he has the produce in his possession, the transaction is permitted, and if he does not have it, the transaction is prohibited. Rava said to them: The tanna there is referring to a transaction for the repayment of the debt conducted after a loan has been given but before it has been repaid, whereas here Rabbi Yannai is dealing with an actual sale, without any loan at all, and therefore there is no interest involved.

[91] Rabba and Rav Yosef both say: What is the reason that the Sages said one may set a price by the market rate and that one may do so even though he does not have the produce in his possession?

Because the buyer says to the seller: Your favor is taken and thrown on the thorns. In other words, I am deriving no benefit from my transaction with you, as how have you helped me? If I had money in my hands I would buy the produce myself in the towns of Hini and Shili, nearby market towns, at an inexpensive price. Consequently, the acquisition of produce at the current market rate is of no benefit to him.

[92] Abaye said to Rav Yosef: But if that is so, according to this same logic it should be permitted to lend a se'a of produce for a se'a of the same produce, as the lender can say to the borrower: Your favor is taken and thrown on the thorns, since he says to him: I stand to gain nothing from the se'a you will later give me, as the price of my wheat would increase if it were to remain in my granary, and therefore the loan does not benefit me at all, for will the wheat burn in my warehouse [be'akalbai]? Rav Yosef said to him: The two cases are different, as there it is referring to a loan, and consequently there is a concern about interest, whereas here it is a sale.

[93] Adda bar Abba said to Rava: But with regard to establishing the repayment of the loan upon produce valued at the market rate, the buyer does stand to gain from the agreement, as, if he would have to go to acquire produce elsewhere, he would have to give a dinar to a broker, and therefore he gains a dinar from the early payment. Rava said to him: The case is one where the buyer also gives the seller the broker's fee. Rav Ashi said: There is generally no need to add this fee, as a person's dinars serve as a broker for him. One who has ready cash has no need for the services of a broker.

[94] § The Gemara addresses a related issue. Rabba and Rav Yosef both say: One who gives money in advance to purchase produce at the advance price that is in effect shortly after the harvest but before the market price is set must present himself at the granary when the seller is threshing his produce.

[95] The Gemara asks: For what reason is he required to be there? If it is in order to acquire the produce, he does not acquire it by merely being present there, as the acquisition is not completed until he pulls the actual produce. And if it is in order for the seller to accept upon himself, in the event that he reneges on the transaction, the curse of: He Who exacted payment from the people of the generation of the flood, and from the people of the generation of the dispersion, will in the future exact payment from whoever does not stand by his statement (see 44a), even if the buyer does not present himself there the seller also accepts upon himself the curse of: He Who exacted payment. This curse is in effect for anyone who reneges on a transaction after the money has been paid.

[96] The Gemara explains: Actually, the reason he must go to the granary is for the seller to accept upon himself the curse of: He Who exacted payment, for the following reason: One who gives money in advance to purchase produce at the advance price gives it to two or three different sellers, in order to ensure that he will collect a profit. Consequently, if he presents himself to the seller when he is threshing his produce, the seller relies upon him, as he knows the transaction will proceed. But if the buyer does not present himself to the seller when he is threshing his produce, the seller could say to him: I said to myself that you must have found better produce than mine, and you took that produce. Since the seller is unsure if the transaction will be completed, he may change his mind and sell to a different buyer.

[97] Rav Ashi said: Now that you have said that the reason is due to the seller's relying upon him, it can be concluded that the buyer does not have to go to the seller's granary in order to convince him that he intends to uphold the transaction. Rather, even if the buyer finds the seller in the marketplace

and says to him that he will not retract his offer to buy the produce, the seller will likewise rely upon him.

98 § Rav Naḥman said: The principle with regard to the halakhot of interest is: Any payment for his waiting, meaning any additional sum added in consideration of the fact that the lender delays claiming his money, is forbidden. And Rav Naḥman also said: In the case of this one who gives money to a wax seller to purchase loaves of wax from him, and loaves of wax go at the current rate of one dinar for four loaves, and the seller said to him: I will give you wax in the future at the rate of five loaves for each dinar if you pay me now in advance, if the seller has wax with him at the time of the transaction, it is permitted to sell at a discounted rate because he is in need of cash. But if the seller does not have wax with him, it is forbidden, as the extra loaf given is interest.

99 The Gemara asks: Isn't this obvious? It is clearly interest. The Gemara answers: No, it is necessary for a case where the seller has credit in the town, and therefore he could receive wax from others. It is necessary lest you say: Since he has credit in the town and could receive wax now, this should be similar to a case where he said: Give me produce until my son comes, or: Until I find the key, and therefore it is permitted to give him money, as this is not considered a loan (see 75a). Rav Naḥman therefore teaches us that since the loaves of wax still lack collection, i.e., the seller does not actually own them, they are considered as though they were not in existence, which means the reduction in price is classified as interest.

100 And Rav Naḥman said: In the case of this one who borrowed coins from another, and when he later counted them he found an additional amount of money, above the sum they had agreed upon, if the addition was within the range that a person can make a mistake, the assumption is that the lender erred in his calculation, and therefore the borrower is obligated to return the extra coins to him. But if not, if the difference was so large that it could not have been the result of a simple mistake, it must only be that the lender has given him a gift.

101 The Gemara inquires: What are the circumstances where the additional amount would be within the range that one can make a mistake? Rav Aḥa, son of Rav Yosef, said:

102 For example, if the money was given in units of tens or fives, it can be assumed that the owner of the money counted the coins in groups of tens or fives and erred in his count.

103 Rav Aḥa, son of Rava, said to Rav Ashi: And if the one who gave the money is a harsh person, who is not accustomed to giving gifts, what is the halakha? Should it be assumed that he made a mistake? Rav Ashi said to him: Perhaps that person once robbed the recipient, and now he included in the calculation the amount he stole, in order to return the stolen money without informing him of the theft. As it is taught in a baraita: One who robs another and then returns the stolen money by including it in the calculation of money paid for another item has fulfilled his obligation to return the stolen money.

104 Rav Aḥa, son of Rava, asked Rav Ashi: And if the giver was a person from the outside, with whom the recipient had never conducted business, what is the halakha? Should it be assumed that the additional money was given in error? Rav Ashi said to him: Perhaps another person, an acquaintance of the giver's, robbed the recipient and said to the giver: When so-and-so borrows money from you, include it in the calculation. It is possible that the one who robbed the recipient chose this manner of restoring the latter's money in order to be spared any shame.

105 § Rav Kahana said: I was sitting at the far end of Rav’s house of study, and I heard him say: Gourds, gourds, but I did not know what he was saying, as I did not hear the entire discussion. After Rav arose and left, I said to the students: What is this statement concerning gourds, gourds, that Rav was saying?

106 They said to me: This is what Rav was saying: If someone gave money to a gardener to purchase gourds from him, and they were going for the price of ten gourds of the length of a span, i.e., the distance between the thumb and the little finger, for a dinar, and the gardener said to the buyer: If you pay me the money now, I will give you gourds a cubit in length at a later point in time, the halakha depends on the circumstances. If gourds of this larger kind are in the possession of the seller, this type of sale is permitted. If they are not in his possession, it is prohibited, as, if he gives him larger gourds at a later date for the price of small gourds, this constitutes interest.

107 The Gemara asks: Isn’t this obvious? What is the novelty in Rav’s statement? The Gemara answers: The statement is necessary, lest you say: Since they increase in and of themselves it is permitted, as the gardener does not perform any action, but simply waits for the gourds to grow larger before supplying them. Rav therefore teaches us that this is also classified as interest.

108 The Gemara asks: In accordance with whose opinion did Rav rule? He ruled in accordance with the opinion of this tanna, as it is taught in a baraita: With regard to one who went to milk his goats, or shear his sheep, or extract the honey from his hives, if another found him and the farmer said to him: Whatever milk my goats produce is sold to you, or whatever wool will be sheared from my sheep is sold to you, or whatever honey will be extracted from my hive is sold to you, this is permitted. It is permitted despite the fact that the farmer did not specify precisely how much he is selling, and the buyer may receive more of the product than the current market value would dictate due to his paying for it in advance, as he may also receive less of the product than the current market value would dictate.

109 The baraita continues: But if the farmer said to him: Such and such an amount of milk from what my goats produce is sold to you, or such and such an amount of wool from what will be sheared from my sheep is sold to you, or such and such an amount of honey from what will be extracted from my hive is sold to you, a transaction of this kind is prohibited, as the farmer is selling him more of the product than the current market value would dictate due to his paying for it in advance. The Gemara states its question: And one sees in this baraita that even though these products increased in value in and of themselves, since they are not in existence at the time of the sale, the practice is forbidden.

110 The Gemara records another version of this discussion: There are those who say that Rava said: The halakha is that since the sold items grow by themselves it is permitted, as it does not constitute interest. The Gemara raises a difficulty: But isn’t it taught in a baraita that if he specifies: Such and such an amount, it is forbidden?

111 The Gemara answers that there is a difference between the two cases: There, with regard to milk and wool, they do not increase in and of themselves. This is evident from the fact that if they remove this milk from the goat, other milk replaces it. Therefore, the milk or wool that is generated after the sale is not an extension of the milk or wool that was present at the time of the sale. Conversely, here, in the case of the gourds, they increase in and of themselves, as the same gourds continue to grow. This is evident from the fact that when they remove this gourd from the ground, no other will replace

it. Consequently, if he sells him gourds now, any additional growth belongs to the buyer, as the gourds are in his possession from the moment of acquisition.

[112] § Abaye said: It is permitted for a person to say to another: Take these four dinars for the future delivery of a barrel of wine; if it sours, it is in your possession and you are responsible, but if it appreciates or depreciates in value, it is in my possession, as I accept any loss that results from a change in price. Rav Sherevya said to Abaye:

[113] This transaction is close to a gain and far from a loss for the seller, as he accepts upon himself the risk that the wine may go sour. An arrangement of this sort constitutes interest by rabbinic law. Abaye said to him: Since the buyer accepts upon himself the potential loss if the price depreciates, it is considered a transaction that is close to both this and that, as there is the possibility of both gain and loss. The transaction is therefore permitted.

[114] MISHNA: One who lends another money may not reside in the borrower's courtyard free of charge, nor may he rent living quarters from him at less than the going rate, because this is interest. The benefit he receives from living on the borrower's property constitutes the equivalent of an additional payment as interest on the loan.

[115] GEMARA: Rav Yosef bar Minyumi says that Rav Naḥman says: Even though the Sages said that one who resides in another's courtyard without his knowledge does not have to pay him rent if the owner of the courtyard does not suffer any loss from the arrangement, nevertheless, if he lent money to the owner of a courtyard and then resides in his courtyard, the lender must pay him rent. The Gemara poses a question: What is Rav Naḥman teaching us by this statement? We learn this explicitly in the mishna: One who lends money to another may not reside in the borrower's courtyard free of charge, nor may he rent living quarters from him at less than the going rate, because this is interest.

[116] The Gemara refutes this claim: If this halakha is learned from the mishna alone, I would say that this matter applies only to a situation with a courtyard that stands to be rented out and a man who usually rents a place of residence that would otherwise need to find a place to reside. But with regard to a courtyard that does not stand to be rented out and a man who does not usually rent a place of residence, as he has another place where he could reside, the owner of the courtyard appears to have lost nothing and the resident appears to have gained nothing, so you might say that he should not have to pay at all. Rav Naḥman therefore teaches us that even in that case he must pay rent in order to prevent the appearance of interest.

[117] There are those who say a different version of this discussion: Rav Yosef bar Minyumi says that Rav Naḥman says: Even though the Sages said that one who resides in another's courtyard without his knowledge does not have to pay him rent, if the courtyard owner says to another: Lend me money and you may reside in my courtyard, the lender must pay him rent.

[118] The Gemara analyzes the difference between the two versions. According to the one who said that the lender must pay rent to the courtyard owner if he lent him money without the courtyard owner's stipulating any conditions, all the more so would he hold that the lender must pay rent to the courtyard owner if the courtyard owner explicitly stated: Lend me money and you may reside in my courtyard, as this indicates a condition obligating the borrower to pay interest. According to the one who said that the arrangement is forbidden if he says: Lend me money and you may reside in my courtyard, it is forbidden only in such a case. But if he merely lent him money without any

stipulation about the courtyard, it is not forbidden. What is the reason for the more lenient ruling? Since initially he did not lend him the money with this intention, we have no problem with it, as it is possible that there is no connection between the loan and his residing in the courtyard.

[119] The Gemara relates: Rav Yosef bar Ḥama, Rava's father, would seize the slaves of people who owed him money, and he would work them against the will of their owners. Rava, 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: I maintain that the halakha is in accordance with the opinion of Rav Naḥman, as Rav Naḥman said: 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.

[120] Rava said to him: I will say that Rav Naḥman said this with regard to specific slaves, such as his slave Dari, who only dances among the wine barrels [khuvei] and does not perform any labor. Did he say this concerning other slaves? All other slaves perform labor, and their labor is worth more than their board. His father said to him: I maintain that the halakha is in accordance with this statement said by Rav Daniel bar Rav Ketina that Rav says, as he says: One who seizes another's slave and has him perform labor is exempt from paying the master for the labor of the slave,

[121] as it is satisfactory for the master that the work habits of his slave not be undone.

[122] Rava 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: Even though the Sages said that one who resides in another's courtyard without his knowledge does not have to pay him rent, nevertheless, if he lent a courtyard owner money and then resides in his courtyard, the lender must pay him rent. Rav Yosef bar Ḥama said to him: I retract my opinion, and I will no longer seize the slaves of my debtors.

[123] § Abaye said: In the case of this one, who was owed a dinar of interest by another, and wheat was going for the price of four se'a [gerivei] for a dinar in the market, and the borrower gave the lender five se'a of wheat as the interest payment, when we, the court, remove the interest the lender took from the borrower, we remove only four se'a, worth one dinar, from the lender. As the other, additional se'a is a discount he granted him, it is merely a favor, not counted as part of the interest. Rava said: We take all five se'a from him, as all of the wheat initially came into his possession in the form of interest, and therefore it is all classified as interest.

[124] And Abaye said: In the case of this one, who was owed four dinars of interest by another, and the borrower gave him a cloak as payment for it, when we take the interest from the lender we take four dinars from him, but we do not take the actual cloak from him, as the giving of the cloak is considered a sale. Rava said: We take the cloak from him. What is the reason for this? So that people should not say that the cloak so-and-so is wearing is a cloak procured as interest.

[125] Rava further said: Consider the case of this one, who was owed twelve dinars of interest by another, and the lender rented a courtyard from the borrower that was generally rented for ten dinars, but he rented it to him with the price inflated to twelve dinars. The borrower agreed to forgo the entire rental payment, thereby effectively repaying the twelve dinars of interest. When we take the interest from the lender we take twelve dinars from him to pay for the rental, as this was the amount of interest he is considered to have collected from him.

[126] Rav Aḥa of Difti said to Ravina: But let the lender say to the borrower: If I were to rent it now, I would pay not twelve dinars, but only ten. As when I rented it from you at the higher price it was because I profited from it by not having to pay for it, but now that I am not profiting, I will rent it as everyone else rents, for ten. The Gemara responds: This claim is rejected, as we say to him: You considered and willingly accepted it for the price of twelve dinars.

[127] MISHNA: One may increase the price of rent to be received at a later date instead of at an earlier one, but one may not similarly increase the price of a sale. How so? If a courtyard owner rented his courtyard to a renter, and the owner said to the renter: If you give me the payment now, the rental is yours for ten sela a year, but if you pay on a monthly basis it will cost a sela for each month, equaling twelve sela a year. Such a practice is permitted, despite the fact that he charges more for a monthly payment. If a field owner sold his field to a buyer and said to him: If you give me the payment now, it is yours for one thousand dinars, but if you wait and pay me at the time of the harvest, it is yours for twelve hundred dinars, this transaction is prohibited as interest.

[128] GEMARA: The Gemara poses a question: What is different in the first clause of the mishna, and what is different in the latter clause? Why is the additional charge for later payment permitted in the case of rent but prohibited in the case of a sale? Rabba and Rav Yosef both say: The halakha is that the obligation to pay a rental fee is incurred only at the end of the rental period, and therefore, in this case, since its time to be claimed had not yet arrived at the beginning of the rental, the early payment is not considered payment for waiting. Rather, the opposite is the case: This higher price is the value it is worth, and that which he says to him: If you give me payment now it is yours for ten sela a year, is a discount that he offers him for the early payment, and therefore it is not interest.

[129] By contrast, in the latter clause, since it is a sale, and the owner of the field wants to take the money from now, if he agrees to a later payment at a higher price, this is therefore considered payment for waiting, and it is forbidden. Rava said: The Sages examined this matter closely and established that this halakha is derived from the verse that states: “Like a hired laborer, year by year” (Leviticus 25:53). It is derived from this verse that the obligation to pay the rental fee of this year is incurred only in the following year.

[130] § The mishna teaches: If the field owner said: But if you wait and pay me at the time of the harvest, the field is yours for twelve hundred dinars, this is prohibited. Rav Naḥman said: Tacit interest [tarsha] is permitted. In other words, one may make a contract for a sale with a later payment date at an increased price, as long as he does not specify that the higher price is due to the delay but merely states a price and a date.

[131] Rami bar Ḥama raised an objection to Rav Naḥman, and some say it was Rav Ukva bar Ḥama who raised the objection to Rav Naḥman: The mishna states: But if you wait and pay me at the time of the harvest, the field is yours for twelve hundred dinars, this is prohibited. Rav Naḥman said to him: There is a difference between the two cases. There, in the case of the mishna, he fixed the price for him as interest, as he explicitly stated that there was an additional cost for a later payment, whereas here, in the case concerning which I stated my ruling, he did not fix it for him as interest, but merely quoted a higher price.

[132] Rav Pappa said: My tacit interest arrangement that I offer customers, where I sell my liquor at the times when the market price is low and agree to have the buyer pay me for it later on when the market price is higher, is permitted. What is the reason for this? My liquor would not be lost were I to

store it for a while, and I do not need money at the present time. I could therefore simply hold it to sell at a higher price later. I sell it early because it is I who am performing a beneficial matter for the customer, by selling it to him earlier without demanding immediate payment, and this is not interest.

[133] Rav Sheshet, son of Rav Idi, said to Rav Pappa: What does the Master see to indicate that you should follow yourself, i.e., consider this matter from your perspective, and therefore conclude that it is permitted because you are not earning interest? You could equally follow their side, and consider the matter from the perspective of your customers, as, if they had money available they would buy liquor at the current price, but now that they have no money available they buy it in accordance with the future, more expensive rate. Consequently, they are actually paying interest in exchange for the delay in payment. Rav Pappa did not respond.

[134] Rav Ḥama said: My tacit interest arrangement is certainly permitted. He would contract to sell merchandise in a location where its price was low while setting the price according to the more expensive rate in effect in a different location. Those who would purchase the merchandise from him would then take the merchandise to the other location to sell at the highest price, while Rav Ḥama would accept upon himself a certain measure of responsibility for the risks incurred during transport. This deal is considered a sales partnership, not interest.

[135] What is the reason for this? Rav Ḥama said: It is convenient for them that the merchandise remains established in my domain, as anywhere that they go, the authorities leave them alone with regard to taxes and other people maintain the market for these sellers. The merchants selling Rav Ḥama's wares received preferential treatment, as Rav Ḥama was a scholar from the house of the Exilarch, whose members would receive assistance from all. The higher price they paid was in consideration for these advantages; it was not payment for waiting.

[136] The Gemara summarizes the rulings in a number of the cases discussed above: And the halakha is in accordance with the opinion of Rav Ḥama, that his type of tacit interest agreement is permitted. And the halakha is in accordance with the opinion of Rabbi Elazar, that fixed interest can be reclaimed in court. And the halakha is in accordance with the opinion of Rabbi Yannai, who says: What difference is it to me if he referred to the produce, and what difference is it to me if he referred to the produce's value? In other words, if one gave an item or money to another as payment of his loan, this is considered a sale without interest.

[137] MISHNA: If one sold another a field and the buyer gave him some of the money, and the seller said to him: Whenever you wish, bring the outstanding money and take your field at that point, this is prohibited. If one lent money to another on the basis of the borrower's field serving as a guarantee, and said to him: If you do not give me the money now and instead delay your payment from now until three years have passed, the field is mine, then after three years, the field is his. This is permitted even if the field is worth more than the amount of the loan. And this is what Baitos ben Zunin would do, with the consent of the Sages, when he lent money.

[138] GEMARA: The ruling of the mishna is unclear, as it requires clarification: In a sale such as this, when the buyer has made only a partial payment, who enjoys the profits of this field in the interim period, until the entire transaction is complete? Rav Huna says: The seller enjoys the profits until he receives the full payment, while Rav Anan says: In the meantime they deposit the profits in escrow with a third party until the transaction is finalized. The Gemara comments: And Rav Huna and Rav Anan do not disagree. This one is referring to a case where the seller says: When you bring all the

money you will acquire the field, whereas that one is referring to a case where he says at the time of the transaction: When you bring all the money you will acquire it from now.

[139] The Gemara relates: Rav Safra taught the following halakhot of interest as a baraita of the school of Rabbi Ḥiyya: Sometimes they are both permitted to enjoy the profits of the field, as this does not constitute interest at all; sometimes they are both prohibited from doing so. And sometimes it is permitted for the seller to enjoy the profits of the field but it is prohibited for the buyer to do so; and sometimes it is permitted for the buyer to enjoy the profits of the field and it is prohibited for the seller to do so.

[140] When Rav Safra taught this baraita, Rava answered after him, in explanation: Sometimes they are both permitted to benefit from the field. For example, if the seller said to him: Acquire the field for yourself in accordance with the measure of your money, he effectively acquires the field incrementally in small portions, which is certainly permitted. Sometimes they are both prohibited from benefiting from the field. For example, if the seller said to him: When you bring the money you will acquire it all from now, if the seller enjoys the profits until the remainder of the money is paid, he has clearly taken interest. If the buyer does not make the final payment, the field will remain the property of the seller and his partial payment will be returned, and the field will be considered a loan given to the seller. If the buyer enjoys the profits of the field in the interim, he will have taken interest.

[141] Rava continues: Sometimes the seller is permitted to benefit from the field and the buyer is prohibited from benefiting from it, i.e., the transaction is considered interest from the perspective of the buyer but not the seller. For example, if the seller said to him: When you bring the money you will acquire the field. And sometimes the buyer is permitted to benefit from the field and the seller is prohibited from benefiting from it. For example, if the seller said to him: Acquire it from now, and the money you still owe me will be considered a loan in your possession. In this case, if the seller enjoys the profits he benefits from the extended payment of the loan.

[142] The Gemara poses a question: Who is the tanna who taught that they are both prohibited from benefiting from the field if he says: When you bring the money you will acquire it from now? Rav Huna, son of Rav Yehoshua, says that the opinion of this tanna is not in accordance with the opinion of Rabbi Yehuda. As, if it is in accordance with the opinion of Rabbi Yehuda, doesn’t Rabbi Yehuda say that uncertain interest is permitted? In this case as well, it is uncertain whether the arrangement will result in the payment of interest, as it depends on whether or not the rest of the payment is given.

[143] § It is taught in a baraita: If a borrower pledged a house to the lender or pledged a field to him as a guarantee for the loan, and the lender said to the borrower: When you want to sell the house or the field, you must sell them only to me for this specified monetary value, it is prohibited, as the selling of the field for a low price is considered interest paid in exchange for the granting of the loan. But if he said: You must sell them to me according to their value at the time of the sale, this is permitted.

[144] The Gemara asks: Who is the tanna who taught that if he said: You must sell them only to me for this specified monetary value, it is prohibited? Rav Huna, son of Rav Yehoshua, said that it is not in accordance with the opinion of Rabbi Yehuda. As, if it is in accordance with the opinion of Rabbi Yehuda, doesn’t Rabbi Yehuda say that uncertain interest is permitted? The interest in this case is uncertain, as there is no guarantee that the sale will ever be implemented.

145 If one sold another a house or sold him a field, and said to the buyer: When I have money, give the property back to me in exchange for the return of the money that you paid for it, it is prohibited, as this transaction is essentially a loan, with the buyer enjoying the profits of the field in the interim. But if the buyer said to him of his own accord: When you have money I will return the property to you, this is permitted. The Gemara again asks: Who is the tanna who taught this ruling? Rav Huna, son of Rav Yehoshua, said that it is not in accordance with the opinion of Rabbi Yehuda. As, if it is in accordance with the opinion of Rabbi Yehuda, doesn't Rabbi Yehuda say that uncertain interest is permitted?

146 The Gemara asks: What is different in the first clause and what is different in the latter clause? Why does it matter who stated the condition? Rava says: The first clause is referring to a situation where the seller did not tell the buyer that the decision to return the field will be of the buyer's own accord, but made it a condition of the sale. Consequently, the seller always retains the option to return the money and recover his field, which means it was essentially a loan with the temporary use of the field serving as a substitute for interest. Conversely, in the latter clause, it is referring to a situation where the buyer said he would return the field of his own accord. Since the buyer can choose to keep the field, it is a proper sale.

147 § The Gemara relates: There was a certain man who sold land to another without a guarantee that if the field is repossessed, the seller will compensate the buyer for his loss. He observed that the buyer was distressed, as he was concerned that the field might have been designated as a pledge to a creditor and would be taken from him, which would cause him to lose his investment. The seller said to the buyer: Why are you distressed? If the creditor seizes the field from you, I will pay you from my best-quality land, and I will also provide compensation for your investment in the improvement of the field, and in addition, I will give you the value of any produce taken from you.

148 Later, the legal status of this promise was called into question. Ameimar said:

149 These are merely words of enticement [pittumei millei] designed to encourage the buyer, but they are not part of a legal contract and therefore do not obligate the seller. Rav Ashi said to Ameimar: What is the reason for this? Since the buyer is the one who needs to stipulate this condition but he neglected to do so, and here it was the seller who stipulated the condition, is that why you said that these are merely words of enticement?

150 But according to this reasoning, consider the baraita, as it teaches that if the buyer says: When you have money I will give the property back to you, this is permitted. Now in this case it is the seller who needs to stipulate this condition, but the seller did not stipulate it and it was the buyer who stipulated it. Accordingly, they should likewise be regarded as words of enticement.

151 And we said concerning the baraita: What is different in the first clause and what is different in the latter clause? And Rava says that the latter clause is referring to a situation where the buyer said he would return the field of his own accord. Rav Ashi infers: The reason the condition is invalid is that the buyer said to him that he would return the field of his own accord. But if he did not say to him that he would return the field of his own accord, we would not say that these are merely words of enticement, even though the statement was made by the buyer about himself, and not as a condition by the seller.

[152] Ameimar said to him: In fact, any condition stated by the wrong person is invalid, but it was stated in the baraita that whenever the buyer states such a condition, he is considered like one who said that he would return the field of his own accord.

[153] § The Gemara relates: There was a certain person on his deathbed who wrote a bill of divorce for his wife in order to exempt her from the obligation of ḥalitza in the event of his death, and he moaned and sighed at the time, in distress over having to divorce her. She said to him: Why do you sigh? If you recover from this illness, I am yours, as I will marry you again. The Gemara discusses the legal validity of this promise. Rav Zevid said: These are merely words of enticement designed to encourage him to grant the divorce, but they do not actually obligate the wife to remarry him if he lives.

[154] Rav Aḥa of Difti said to Ravina: And even if they were not merely words of enticement, but she had made an actual condition upheld by an oath or an act of acquisition, what of it? Is it her prerogative to stipulate a condition concerning her bill of divorce? It is not in her power to do so, as it is his right to establish such a condition, and since he failed to do so explicitly, any condition she accepts upon herself is of no consequence. The Gemara answers: This statement of Rav Zevid is necessary, lest you say that he himself relied upon her condition when he decided to give her the bill of divorce, and therefore it is as though he stipulated the condition. Rav Zevid therefore teaches us that this is not the case.

[155] § The mishna teaches: If one lent money to another on the basis of his field serving as a guarantee, and he said to borrower: If you do not give me the money from now until three years have passed, your field is mine, then if his money is not returned within three years, the field is his. Rav Huna says: If the lender stated the condition at the time of the giving of the money, he has acquired it all, meaning that if the borrower fails to pay the debt, the entire field is transferred to the lender. But if the lender stated his condition at some point after the giving of the money, he has acquired only a portion of the field corresponding to the money that he lent. And Rav Naḥman says: Even if the lender stated his condition after the giving of the money, he has acquired it all.

[156] The Gemara relates: Rav Naḥman performed an action in the court of the Exilarch in accordance with his statement that even if the lender states his condition after the loan is granted, the lender acquires the entire field if the loan isn’t repaid within the specified time period. The case then came before Rav Yehuda, who tore up the lender’s deed of ownership of the field, claiming it was invalid. The Exilarch said to Rav Naḥman: Rav Yehuda tore up your document, i.e., he overruled your decision. Rav Naḥman said to him: Did a child tear it up? A great man tore it up; he must have seen in it some reason to invalidate it, and that is why he tore it up.

[157] There are those who say a different version of this exchange, according to which Rav Naḥman said to him: A child tore it up, i.e., there is no need to take his opinion into consideration, as everyone is like a child relative to me with regard to monetary laws. Rav Naḥman was the greatest expert of his generation with regard to monetary matters, and therefore he could discount the opinions of others.

[158] After examining the matter again, Rav Naḥman retracted his words and then said the opposite of his initial ruling: Even if the lender stated his condition at the time of the giving of the money, he has not acquired anything. Rava raised an objection to Rav Naḥman from the mishna, which teaches: If one lent money to another on the basis of the borrower’s field serving as a guarantee, and said to

him: If you do not give me the money now and instead delay your payment from now until three years have passed, the field is mine, then after three years, the field is his. Evidently, a condition of this kind is valid.

159 Rav Naḥman said to him: I used to say that a transaction with inconclusive consent [asmakhta] effects acquisition, meaning that any obligation one accepts to serve as a penalty over and above the value of what he actually owes is nevertheless binding. But Minyumi said that an asmakhta does not effect acquisition, and the transaction under discussion is an asmakhta. Now that he convinced me that his opinion is correct, I have retracted my previous opinion.

160 The Gemara asks: But if so, the mishna is difficult according to Minyumi. The Gemara answers: If you wish, say that the mishna is in accordance with the opinion of Rabbi Yosei, who said that an asmakhta effects acquisition, but his is a minority opinion.

161 If you wish, say instead that the mishna is referring to a case where the borrower said to the lender: If I do not repay you within three years, you will acquire the field from now, and they performed a formal act of acquisition. Since an act of acquisition was performed at the time, this is a proper sale and not an asmakhta.

162 Mar Yanuka and Mar Kashisha, the younger and elder sons of Rav Ḥisda, said to Rav Ashi: This is what the Sages of Neharde'a say in the name of Rav Naḥman: With regard to this asmakhta described in the mishna, it effects acquisition at its proper time, but it does not effect acquisition not at its proper time.

163 Rav Ashi understood them to be saying that the lender acquires the field only when the loan is due, and he said to them: This statement seems to teach no novel ruling, as the same is true of every matter: It effects acquisition at its proper time, but it does not effect acquisition not at its proper time.

164 Rav Ashi suggests: Perhaps you meant to say this: If the borrower encountered the lender within its time, i.e., before the payment of the loan was due, and told him to acquire the field, the lender acquires the field, as it is assumed that the borrower was sincere. But if the borrower encountered the lender after its time, i.e., when the payment of the loan was due, and told the lender to acquire the field, he does not acquire it. What is the reason for this? The borrower says this to the lender out of shame with regard to his failure to pay the debt, but he did not really intend for him to acquire the field.

165 The Gemara comments: But this is not so, as the halakha is that the lender does not acquire the field even if the borrower stated this within its time. And as for the fact that the borrower told him to acquire it, he told him this only because he thinks: This will ensure that when the time for payment arrives, he will not come and disturb me. In other words, he is trying to buy time until he can repay the loan, but he was not sincere in his statement that the lender may acquire the field.

166 Rav Pappa says: With regard to this asmakhta, sometimes it effects acquisition and sometimes it does not effect acquisition. How so? If the lender encountered the borrower while the borrower was drinking beer, it effects acquisition, as, if the borrower agreed to transfer ownership of his field when he did not appear to be in financial stress, such as when he was enjoying a drink, he assumedly did so with full acceptance of the consequences, and therefore the transaction is valid. By contrast, if the lender encountered the borrower when he was searching for money with which to repay the loan, his agreement does not effect acquisition, as it is clear the borrower made the statement under duress.

[167] Rav Aḥa of Difti said to Ravina: In the case where the lender encountered the borrower while he was drinking beer, perhaps he was drinking to neutralize his fear, and he really was under financial pressure. Or, perhaps someone else promised him money, and therefore he remains in a precarious position even though he can repay the debt, which would again mean that his promise is merely an asmakhta. Rather, Ravina said that there is a different distinction: If the borrower is particular about the money, i.e., if he is unwilling to sell his property at less than its market value, the lender has certainly acquired the field, as the borrower is clearly not in such a precarious financial position, and he is therefore assumed to have willingly stated his agreement to give the field to the lender.

[168] Rav Aḥa of Difti said to Ravina: Even in that case, perhaps the borrower thinks that he ought to present himself as particular about the price of his property in order that the price of his other lands not be lowered. If people know that he is in need of money they will pressure to him to lower the price, and therefore he acts as though he is particular about the price, but in reality he did not wish to sell the property at all. Rather, Rav Pappa said that there is a different distinction: If he is particular about any other land he owns and does not want to sell it even at its market rate, he is clearly not suffering from financial problems, and in that case the creditor certainly acquires the field.

[169] And Rav Pappa said: Even though the Sages said that an asmakhta does not effect acquisition, and therefore even if he stipulated that the lender can collect the debt by seizing land, the lender does not acquire that land, nevertheless, the land is considered to be set aside as designated repayment [apoteiki] for the lender to collect repayment from it up to the amount of money owed.

[170] Rav Huna, son of Rav Natan, said to Rav Pappa: Did the borrower say to the lender: Acquire it for the sake of debt collection? Since the borrower did not specify that transferring ownership of the field was in place of the payment of the debt, his statement is considered an asmakhta, and the field is not set aside as designated repayment. Mar Zutra, son of Rav Mari, said to Ravina: And if he had said to him: Acquire it for the sake of debt collection, would the lender then acquire it? Ultimately, it is an asmakhta, and the halakha is that an asmakhta does not effect acquisition.

[171] The Gemara poses a question: But in that case, what is the designated repayment spoken of by Rav Pappa? According to Mar Zutra’s analysis, it makes no difference whether or not he said it was set aside as designated repayment of the loan. The Gemara explains: Rav Pappa is referring to a case, for example, where the borrower said to the lender: Not only will I give you the land if I fail to repay the loan, but even if I do pay you will receive payment only from this land alone, as I will pay off my debt to you by giving you land from this field. In that case the asmakhta is negated, while the promise of repayment from the land remains intact.

[172] § The Gemara relates: There was a certain man who sold land to another with a property guarantee, meaning that in the event that land is seized by the seller’s creditors, the seller will reimburse the buyer his purchase money. The buyer said to him: If your creditors seize the land from me, will you allow me to collect that which is owed to me from the most superior quality of the superior-quality land that you have? The seller said to him: I will not allow you to collect from the most superior quality of my superior-quality land, as I want to keep those before me. But I will allow you to collect from other superior-quality land I have. Ultimately, creditors seized the field from the buyer, and in the meantime a flood came and flooded the seller’s most superior quality of his superior-quality land.

[173] As his remaining superior-quality land was now the best he had, the seller was unwilling to give them to the buyer and sought to repay him with intermediate-quality land, in accordance with the standard halakha concerning reimbursement to a buyer. Rav Pappa thought to say: Since the seller said to the buyer that he could collect from his superior-quality land, and this superior-quality land is intact, the seller must give it to him, in accordance with his promise.

[174] Rav Aḥa of Difti said to Ravina: But let the seller say to the buyer: When I said to you that I would allow you to collect from my superior-quality land, that was when the most superior quality of my superior-quality land was intact. But now my superior-quality land stands for me in place of the most superior quality of the superior-quality land I had before, and I am not obligated to give you the very best of my property.

[175] The Gemara relates: Rav bar Shabba owed money to Rav Kahana. Rav bar Shabba said to him: If I do not repay you by such and such a date, you can collect the debt from this wine. Rav Pappa thought to say: When we said that an asmakhta does not effect acquisition, this matter applies only to land, which does not stand to be sold, i.e., which is not typically bought and sold on the market, and therefore the promise is invalid, as he did not genuinely intend to give it to him. But in the case of wine, since it does stand to be sold, it is considered like money, and therefore he can claim the debt from wine, as he can claim the debt from any other item with monetary worth.

[176] Rav Huna, son of Rav Yehoshua, said to Rav Pappa: This is what we say in the name of Rabba: Any statement including a condition introduced with the word: If, does not effect acquistion. Any agreement that does not involve a definitive commitment but does obligate one in the event of a particular outcome has the status of an asmakhta and does not effect acquisition, as the one setting the condition did not really intend to fulfill the commitment.

[177] § Rav Naḥman said: Now that the Sages have said that an asmakhta does not effect acquisition, in a case such as that in the mishna, when one promised another land for the repayment of a debt, if the lender in fact took it, the land must be returned and the value of any produce the creditor consumed from this land must also be returned. The Gemara poses a question: Is this to say that Rav Naḥman maintains that mistaken forgiveness of payment is not valid forgiveness, meaning that if one forgoes repayment of a loan of a certain amount of money in error, he can change his mind? In this case, the borrower had thought that the lender had acquired the land, and he therefore allowed him to consume the produce.

[178] But it was stated that amora’im disputed this very issue: If one sells the fruit of a palm tree to another before the fruit ripens, Rav Huna says: He can retract and cancel the sale until the fruits have come into the world, as the fruit is not yet in existence. But once they have come into the world, even if they are still unripe, he cannot retract, as once the fruits that are being acquired exist, the sale has gone into effect. And Rav Naḥman says: He can retract even once they have come into the world, as one cannot transfer ownership of an entity that has not yet come into the world, and the actual transaction was performed before the fruits existed.

[179] And Rav Naḥman said: I concede that if the buyer seized the fruit and consumed it, we do not take its value from him. The reason is that since the seller initially accepted the transaction, although it involved a legal error, it can be assumed that he decided to waive his rights to the fruit and allowed the other to take it. Consequently, it can be demonstrated that Rav Naḥman holds that mistaken forgiveness is forgiveness. The Gemara rejects this proof: There, the discussion involves a sale, with

regard to which it can be said that the seller waived his rights to the fruit. Here, it is referring to a loan, and not requiring the lender to reimburse the borrower for the produce consumed is considered a form of interest.

180 Rava said:

181 I was sitting before Rav Naḥman when he said that mistaken forgiveness is valid, and I wanted to raise an objection to him from the halakha of exploitation, and he observed me, anticipated my objection, and showed me that he was correct based on the halakha of a sexually underdeveloped woman who is incapable of bearing children [ailonit]. The Gemara explains: Rava wanted to ask: But there is the case of exploitation, where the price paid in a sale was in excess of the market value (see 50b), which is a case of mistaken forgiveness at the time of the sale, and yet it is not considered forgiveness. The seller must return the excess money paid. And he observed me and showed me the halakha of an ailonit. Doesn't the case of an ailonit involve mistaken forgiveness, and yet it is valid forgiveness?

182 Rava explains: As we learned in a mishna (Ketubot 100b): In the case of a minor girl married off by her mother or brother who refuses to continue living with her husband, and in the case of a woman who is a secondary forbidden relative, and in the case of an ailonit, each of these women is not entitled to payment of a marriage contract, and they are not entitled to remuneration for the produce that the husband consumed from her property while they were together, and they are not entitled to sustenance, and they are not entitled to their worn clothes that were brought into the marriage as part of their dowry and became worn out during the marriage. The ailonit granted the rights to the profits the husband earned from her property while under the mistaken premise that she was married. Yet after the marriage was determined to have been contracted in error, the husband does not have to return these profits.

183 The Gemara comments: But that is not so; the halakha of exploitation is not a refutation of Rav Naḥman's opinion, nor does the case of a sexually underdeveloped woman support his opinion, as there are differences between the cases.

184 The Gemara clarifies: Exploitation is not a refutation of his opinion, as the buyer does not know that there is exploitation at the time of the sale that would enable him to forgive him the amount he was overcharged, and therefore there is no forgiveness in this case at all. Nor does the case of a sexually underdeveloped woman support his opinion, as it is amenable to her for her husband to receive the profits in order that she receive the name of a married woman. She wants to be known as a woman who was once married, and therefore she willingly relinquishes her rights to the profits from her property during her marriage even if it will be found to have been contracted in error. There is no mistaken forgiveness in that case.

185 § The Gemara relates: There was a certain woman who said to a certain man: Go purchase land for me from my relatives. He went and purchased land for her. The relative who sold her the property said to the man acting as her agent: If I will have money in the future, will you give the field back to me? The agent said to him: You and she [venavla] are relatives, and I assume that you will be able to come to an arrangement between the two of you.

186 The Gemara discusses the halakhic significance of this response. Rabba bar Rav Huna said: In the case of any expression such as: You and she are relatives, that the agent says, the seller relies on

the assumption that he will be able to come to an agreement with his relative, and therefore he does not conclusively resolve to enable the other to acquire the field.

187 The Gemara comments: In that case, the land itself must be returned to its owner, but what is the halakha with regard to the produce consumed by the buyer in the interim? Is it deemed fixed interest, prohibited by Torah law, and can it be removed from the buyer by means of legal proceedings adjudicated by judges? Or perhaps it is considered like a hint of interest, prohibited by rabbinic law, and therefore it cannot be removed from the buyer by means of legal proceedings adjudicated by judges?

188 Rabba bar Rav Huna said: It stands to reason that it is like a hint of interest, and it cannot be removed from the buyer by means of legal proceedings adjudicated by judges. And Rava similarly said: It is like a hint of interest, and it cannot be removed from the buyer by means of legal proceedings adjudicated by judges.

189 Abaye said to Rava: With regard to a mortgage, if the borrower pledged a field to the lender, who worked the field and consumed its produce during the term of the loan without any agreement allowing him to do so, what is the halakha? There, in the previous case, what is the reason it is merely a hint of interest? Is it because the seller did not fix a particular sum for the buyer as interest? Here too, the lender did not fix a particular sum for the borrower, and accordingly, this would also be merely a hint of interest. Or perhaps the key issue is that there, it is a sale, whereas here, it is a loan, with regard to which there is a greater concern about interest.

190 Rava said to him: There, what is the reason it is merely a hint of interest? It is considered a hint of interest because the seller did not fix a particular sum for the buyer as interest. Here too, the lender did not fix a particular sum for the borrower, and therefore this is not fixed interest.

191 Rav Pappi said: Ravina performed an action with regard to a case like this, and he calculated and removed from the lender the value of the produce he had consumed in the interim. This decision was not in accordance with the opinion of Rabba bar Rav Huna.

192 Mar, son of Rav Yosef, said in the name of Rava: With regard to this following type of mortgage, in which the lender holds part of the borrower’s land and may consume its produce, the halakha depends on the local custom. In a place where the custom is that the borrower can repay the loan at any time and the court removes the lender from the land once the loan is repaid, then once the lender consumed a measure of produce equivalent to the amount of money that he lent, we remove him from the land at that point, as the produce consumed is considered repayment of the loan.

193 If the lender consumed a measure of produce worth more than the value of the loan, we do not remove the value of the excess produce from him, as that which he consumed is already gone. And similarly, we do not calculate any extra produce as payment from one document to another. If the same borrower owed the lender an additional sum from another debt recorded in a different document, we do not consider the additional produce he consumed as part of the payment for the second document; rather, each loan is treated on its own terms.

194 And if the field belonged to orphans, once the lender consumed a measure of produce equivalent to the amount of money he was owed, we remove him from the field. And if he consumed a measure of produce worth more than the value of the loan, we take the additional amount from him; and we do calculate extra produce as payment from one document to another. The reason is that the owner of

the field generally forgives payment for the extra produce the lender consumed, but minor orphans are too young to forgive a debt, and the case is therefore judged according to the letter of the law.

195 Rav Ashi said: Now that you have said that if he consumed more than the value of the loan we do not take it from him, as it is considered merely a hint of interest, it follows that if he consumed a measure of produce equivalent to the amount of the money owed him, we also do not remove him from the land without the borrower's paying him money. What is the reason for this? To remove him from the land without the borrower's paying him money is like taking money from him, and this consumption of the produce is only a hint of interest, and the halakha is that a hint of interest cannot be removed by legal proceedings adjudicated by judges.

196 The Gemara relates: Rav Ashi performed an action in a case of this kind even involving minor orphans,

197 as though they were adults. Even if the lender consumed produce equivalent to the amount of the debt, Rav Ashi would not collect the value of the produce from him, as this is merely a hint of interest and therefore it cannot be claimed in court.

198 § Rava, son of Rav Yosef, says in the name of Rava: With regard to this following type of mortgage, in which the lender holds part of the borrower's land and may consume its produce, the halakha depends on the local custom. In a place where the custom is that the borrower can repay the loan at any time and the court removes the lender from the land, the lender may consume the produce of the land only with a deduction in the amount of the loan granted to the borrower, equivalent in value to that of the produce consumed by the lender. And a Torah scholar [tzurva miderabbanan], who must be especially careful with regard to his conduct, may not consume the produce even with a deduction in the amount of the loan. The Gemara poses a question: But if so, in what manner may he consume the produce? The Gemara answers: By a fixed payment, the details of which the Gemara will soon explain.

199 The Gemara asks: This works out well according to the one who says that a fixed payment is permitted, but according to the one who says that a fixed payment is forbidden, what is there to say? As it was stated: With regard to a fixed payment, Rav Aḥa and Ravina disagreed: One said that a fixed payment is permitted, and one said a fixed payment is forbidden. The Gemara clarifies: What are the circumstances of this fixed payment? The Gemara explains: One case of a fixed payment is where the lender says to the borrower: For a period of up to five years, I will consume the produce of the field without a deduction in the amount of the loan; from that point forward I will appraise for you the value of all the produce I consume and subtract this sum from the debt.

200 There are those who say a different version of this discussion: Any consumption of produce by the lender without a deduction in the amount of the loan is prohibited as interest. And what are the circumstances of a permitted fixed payment? When the lender says to the borrower: For a period of up to five years I will consume the produce with a fixed deduction in the amount of the loan; from this point forward I will appraise for you the value of all the produce I consume and deduct the sum from the loan.

201 The Gemara comments: The one who prohibits the practice according to the first version permits the practice described in the second. The Gemara asks: But according to the one who also prohibits the practice described in the second version, how is it permitted to consume the produce of a mortgaged field? The Gemara replies: It is permitted in a case like that of a mortgage according to

the custom in Sura, a city in Babylonia, in which this is written in the loan document: Upon the completion of these years, during which the lender may consume the produce of the field, this land shall leave his possession without money and return to the owner, as the entire amount of the loan will have been repaid by means of the consumption of the produce.

202 Rav Pappa and Rav Huna, son of Rav Yehoshua, both say: With regard to this type of mortgage, the halakha depends on the local custom. In a place where the custom is that the borrower can repay the loan at any time and the court removes the lender from the land, the land is not considered his property at all, and therefore another creditor cannot collect a debt owed by the lender by repossessing it; and if the lender dies, his firstborn son does not receive a double portion of it as part of his inheritance, as it did not belong to his father; and the Sabbatical Year cancels a debt of this kind, because it is not viewed as having already been collected.

203 But in a place where they do not remove him from the land before the appointed time even if the debt is paid, then the land has been temporarily transferred to him, and therefore a creditor can collect a debt owed by the lender by repossessing it, and his firstborn receives a double portion of it, and the Sabbatical Year does not cancel the debt.

204 And Mar Zutra said in the name of Rav Pappa: With regard to this type of mortgage, the halakha depends on the local custom. In a place where the custom is that the borrower can repay the loan at any time and the court removes the lender from the land, they remove him even from dates he has already harvested and spread out on the mats. But if he has lifted them and placed them in the baskets [besisanei], he has thereby acquired them, and they are his. And according to the one who says that when an act of acquisition is performed by means of placing items in the buyer’s vessels that are located in the seller’s domain the buyer has acquired the items, even if he did not lift them while they were in the baskets, he acquired them when they were placed on the mats.

205 § The Gemara discusses other halakhot of mortgages. It is obvious that if the loan was given in a place where they generally remove the lender from the field upon the repayment of the debt, but upon lending the money, the lender said: I will not be removed, his stipulation is respected, as he said that he will not be removed, and he gave him the money only subject to this condition. But if the loan took place in a place where they generally do not remove him, and he said: I will be removed when the money is returned, what is the halakha? Is it necessary to perform a formal act of acquisition with him to formalize this commitment, or is it not necessary, as his statement alone is binding?

206 Rav Pappa said: It is not necessary to perform an act of acquisition with him. Rav Sheshet, son of Rav Idi, said: It is necessary to perform an act of acquisition with him. The Gemara concludes: And the halakha is that it is necessary to perform an act of acquisition with him.

207 The Gemara addresses another case. If the borrower said to the lender: I will go to get the money to repay you, the lender may not consume any more of the produce, as this statement is sufficient to remove him from the property. But if he said: I am going to make an effort to get the money, amora’im engaged in a dispute concerning the halakha. Ravina said: The lender may continue to consume the produce until the borrower actually brings the payment, as he cannot be certain the borrower will manage to get the money. And Mar Zutra, son of Rav Mari, said: He may not consume the produce. The Gemara concludes: And the halakha is that he may not consume the produce.

208 The Gemara relates: Rav Kahana, and Rav Pappa, and Rav Ashi would not consume the produce of mortgaged fields even with a deduction in the amount of the loan, as they were concerned about

the possible violation of the prohibition of interest. Ravina would consume this produce with a deduction in the amount of the loan.

[209] Mar Zutra said: The explanation for the practice of the one who does consume the produce with a deduction in the amount of the loan is just as it is in the case of an ancestral field, i.e., a field that one inherits from his ancestors within his family holdings in Eretz Yisrael. The Torah states that one who consecrates his ancestral field can redeem it from the Temple treasury in return for one sela, which is four dinars, for each year remaining until the Jubilee (see Leviticus 27:16–19). The comparison is as follows: With regard to an ancestral field, is it not the case that even though he consumes abundant produce over the course of the years, nevertheless, the Merciful One states in the Torah

[210] that he redeems it at four dinars a year, despite the fact that the produce is worth more? Here too, it is no different. Since he established the deduction of a fixed sum that he cannot be sure he will receive, the practice is permitted, even if he in fact profits from the arrangement.

[211] And the one who prohibits this arrangement could have said to you that the halakha with regard to an ancestral field is discussing consecrated property and the Merciful One established redemption for it, on the basis of which the Sages determined the full redemption. Here, by contrast, it is a loan, and therefore it has the appearance of interest.

[212] Rav Ashi said: The elders of the town of Mata Meḥasya told me: An unspecified mortgage [mashkanta] is for a year. The Gemara poses a question: What is the practical difference resulting from this ruling? The Gemara explains: It means that if the lender consumed its produce for a year, the borrower can then remove him; but if not, the borrower cannot yet remove him, as an unspecified mortgage does not last less than this period of time.

[213] And Rav Ashi said: The elders of Mata Meḥasya told me: What is the meaning of the word mashkanta? It is referring to the fact that it resides [shekhuna] with him. The Gemara again asks: What is the practical difference resulting from his statement? The Gemara answers: It is relevant for the halakha of one whose field borders the field of his neighbor. Since the mortgaged field resides with him, it is considered his property to a certain extent, and therefore he is granted the right to purchase a neighboring field before an outside party does so.

[214] Rava said: The halakha is not in accordance with those who approve of the tacit interest agreement of Rav Pappa, nor in accordance with those who approve of the documents of Meḥoza, nor in accordance with those who approve of the tenancies of Neresh.

[215] The Gemara clarifies these statements: The halakha is not in accordance with those who approve of the tacit interest agreement of Rav Pappa; this is referring to the tacit interest agreement of Rav Pappa (65a). Rav Pappa would sell liquor and accept delayed payment at a higher price, and believed this to be permitted since he did not gain anything from the arrangement.

[216] What are the documents of Meḥoza? In Meḥoza they would lend money to someone for him to use in a joint business venture, and add the profits to the principal, as though the transaction were already completed, and they would write the full sum owed, including the lender’s share of the profits, in the document. The reason it is prohibited to do this is that who says there will be any profit? It is possible that the borrower will suffer a loss or earn less than expected, and he will eventually be paying interest if he pays the full amount recorded in the document.

217 Mar, son of Ameimar, said to Rav Ashi: Father would do so, i.e., he would add the profits to the sum of the loan contract, and when they came before him and told him they had not earned enough profit he would believe them and reduce the debt to the amount they had actually earned. Rav Ashi said to him: This works out well while the lender is still here, but if he dies and the document comes before the orphans, what would happen in that case? Unaware that profits have been added to the document, the orphans would demand the entire sum, which would constitute interest. The Gemara comments: This innocent observation of Rav Ashi's was "like an error that proceeds from a ruler" (Ecclesiastes 10:5), and Ameimar died shortly afterward.

218 The Gemara addresses the final ruling. What are the tenancies of Neresh? In the town of Neresh they would write a document in this manner: So-and-so has mortgaged his land to so-and-so, and the borrower then went and leased it back from him for a fee that was added to the payment of the loan. This transaction is problematic. When did the lender acquire it, such that he can subsequently transfer it back to the borrower? As he is not the actual owner of the field, the money for the lease is actually payment for the delay in repaying the loan, and therefore this arrangement is considered interest.

219 The Gemara comments: And nowadays, when we write a document in this manner: We acquired the property from him and we waited a while and then the borrower went and leased it back for such and such a price, a formula that states that the lender has acquired the field and may now lease it to others, which is utilized so as not to lock the door in the face of potential borrowers, it is permitted, as it does not have the appearance of a loan with interest. The Gemara concludes: But this is not correct, as even if the field is in his possession, since he has not acquired it properly, it is considered interest.

220 MISHNA: One may not establish a deal with a storekeeper for half the profits. It is prohibited for one to provide a storekeeper with produce for him to sell in his store, with half the profits going to the lender. In such an arrangement, the storekeeper himself is responsible for half of any loss from the venture, effectively rendering half of the produce as a loan to the storekeeper. The lender remains responsible for the other half of any loss, and the storekeeper provides a service by selling his produce for him. This service, if provided free of charge, is viewed as interest paid for the loan, and is prohibited. And similarly, one may not give a storekeeper money with which to acquire produce for the storekeeper to sell for half the profits. These activities are both prohibited unless the owner gives the storekeeper his wages as a salaried laborer hired to sell the produce, after which they can divide the remaining profits.

221 One may not give eggs to another to place chickens on them in exchange for half the profits, and one may not appraise calves or foals for another to raise them for half the profits. These activities are both prohibited unless the owner gives the other wages for his toil and the cost of the food he gives to the animals in his temporary care. All this applies when the lender establishes a fixed minimum profit he insists on receiving regardless of what happens to the animals.

222 But one may accept calves or foals to raise as a joint venture for half of the earnings, with one side providing the animals and taking full responsibility for losses, and the other providing the work and the sustenance, and the one raising them may raise them until they reach one-third of their maturation, at which point they are sold and the profits shared. And with regard to a donkey, it can be raised in this manner until it is large enough to bear a load.

223 GEMARA: The Sages taught: When the mishna states that the owner must pay the manager of the venture as a salaried laborer, it means he must pay him as an idle laborer. The Gemara poses a question: What does it mean to pay someone as an idle laborer?

224 Abaye says: It means that he is paid as a laborer who is idle from that typical labor of his from which he is kept idle. In other words, he must receive the amount of money that an individual would be willing to accept to refrain from his current occupation and engage in an easier task.

225 The Gemara comments: And it is necessary for the tanna to teach us both halakhot, that of a storekeeper who was given produce to sell as well as one who was given money to buy the produce. As had he taught only the halakha of a storekeeper who receives produce to sell, I would say that it is specifically a storekeeper for whom it is enough to receive his wages as an idle laborer, because his toil is not great, as the produce is already prepared and he merely has to sell it. But in the case of one who was given money with which to acquire produce, whose toil is great, as he must find the produce in the market and bring it back to his store, I might say that it is not sufficient for him to be paid as an idle laborer.

226 And conversely, had the tanna taught only the halakha of one who receives money with which to acquire produce, I would say it is in the case there that he requires payment as an idle laborer, because his toil is great, but with regard to a storekeeper, whose toil is not great, I would say that any amount is enough for him; that, for example, even if the one providing the produce only immersed his bread in brine with the storekeeper, or only ate one dried fig with him, this is sufficient to count as his wages, i.e., providing the bit of brine or a fig is sufficient to account for the storekeeper’s labor. It was therefore necessary for this halakha to be stated with regard to both cases.

227 § Parenthetically, the Gemara lists the terms: How many goats, and chickens, we add; this constitutes a mnemonic device for the following discussions.

228 The mishna teaches that one may not enter into a joint venture with a storekeeper unless he gives him his wages. The Sages taught in a baraita: How much is his wage? What is the minimum amount he must be paid to avoid the prohibition of interest? It is permitted whether it is a lot or a little, in accordance with the agreement between them; this is the statement of Rabbi Meir. Rabbi Yehuda says: Even if he only immersed his bread in brine with him, or only ate one dried fig with him, this is sufficient for his wage. Rabbi Shimon ben Yoḥai says: He must give him his full wage, i.e., as a laborer.

229 The Sages taught: One may not appraise animals, i.e., one may not give his animals to someone else to raise after appraising their worth, in exchange for half the profits, neither goats, nor sheep, nor anything else that does not produce revenue while it eats. In other words, one may not enter into an agreement that any increase in value over and above the original appraisal of the animals will be shared between the owner and the one raising the animals. Since the animals do not produce revenue for the one raising them, his caring for the animal on behalf of the owner is tantamount to paying interest, as in the mishna.

230 Rabbi Yosei, son of Rabbi Yehuda, says: One may appraise goats for another to raise in this manner, because they produce milk, and one may appraise sheep for another to raise in this manner, because they are shorn for their wool, and they also have their wool removed when they are washed in water, and they are plucked of their wool by means of thorns, and the one who raises them can collect this wool. Consequently, the milk and wool generate revenue for the one raising them, and

this can serve as a wage to avoid the prohibition of interest. And the same applies to a chicken, because it produces eggs while it eats.

231 The Gemara asks a question: And as for the first tanna, how does he respond to this claim? Does he claim that shearing and milk do not provide the payment of the wage for his toil and for the animal's food? The Gemara answers: If the arrangement allows him to keep the sheared wool and milk, everyone agrees that this is sufficient to avoid the prohibition of interest. When they disagree, it is with regard to a case when he receives only the whey [benasyovi], i.e., the water left from the milk, and the pluckings [vetoteri] from the goats.

232 The Gemara clarifies the dispute: The first tanna holds in accordance with the opinion of Rabbi Shimon ben Yoḥai, who says that he gives him his full wage. Since the value of the whey and pluckings is less than a full wage, his receiving them does not suffice to replace his wage. Rabbi Yosei, son of Rabbi Yehuda, holds in accordance with the opinion of his father, who says that even if he only immersed his bread in brine with him, or only ate one dried fig with him, this is his wage, as there is no demand that his wages be commensurate with his toil.

233 The Sages taught: A woman may rent out to another woman a chicken to sit on the eggs belonging to the renter in exchange for two of the chicks hatched from the eggs. But with regard to a woman who said to another: The chicken is mine and the eggs are yours, and you and I shall share the chicks, i.e., my chicken will sit on your eggs until they hatch, Rabbi Yehuda permits this practice, and Rabbi Shimon prohibits it. He holds that since the owner of the chicken is responsible for half of the loss to the eggs, therefore part of this venture is a loan. As she is not being paid for her efforts, it is considered interest.

234 The Gemara asks: And as for Rabbi Yehuda, does he not require one to pay at least a minimal amount of the wage for the toil of the one caring for the chicken and the chicken's food? The Gemara answers: There are unfertilized eggs, from which no chicks will hatch. Such eggs are retained by the owner of the chicken, and therefore she does receive some benefit.

235 The Sages taught: In a place where people are accustomed to add the wages of a porter for carrying a young animal on his shoulders to the money paid, the owner of the animal must add it to the overall sum, and one may not deviate from the regional custom. Rabban Shimon ben Gamliel says: One may appraise a calf that grows up with its mother for another to raise, and a foal that grows up with its mother for another to raise, as part of a single venture and split the profits, but one does not add to the wages for his toil, and this applies even in a place where they have the custom to add the wages of a porter to the money paid.

236 The Gemara asks: But as for Rabban Shimon ben Gamliel, does he not require that one pay at least a minimal amount for the wage for the toil of the one caring for the animals and the animals' food? The Gemara answers: There is the animals' dung, which is of some benefit to the one who raises the animals. The Gemara asks: And how does the other Sage respond to this claim? The Gemara replies: He maintains that he declares the dung ownerless, as he does not consider this important enough to retain. Consequently, this does not qualify as compensation paid to the one raising the young animal.

237 Rav Naḥman said: With regard to these joint ventures involving animals, the halakha is in accordance with the opinion of Rabbi Yehuda; and the halakha is in accordance with the opinion of

Rabbi Yosei, son of Rabbi Yehuda; and the halakha is in accordance with the opinion of Rabban Shimon ben Gamliel.

238 The Gemara relates: A business document emerged concerning the sons of Rav Ilish, as it was a venture entered into by their late father, in which it was written that Rav Ilish and his partner will share one-half of the profit and one-half of the loss. Rava said: Rav Ilish was a great man, and therefore he would not feed people with something forbidden. In other words, he certainly would not have involved himself in a joint venture through which someone would have earned money by means of interest, and an arrangement of this kind appears to constitute interest. Consequently, no matter what, there must have been some mistake with regard to this document. If the actual condition stated that one party would receive one-half of the profit, the other party must have agreed to accept upon himself two-thirds of the loss,

239 or it must have been that the other party accepted one-half of the loss and that Rav Ilish was entitled to two-thirds of the profit. Either way, the disparity in the terms served as payment to Rav Ilish for his effort, removing any concern about violation of the prohibition of interest.

240 Rav Kahana said: I said this halakha before Rav Zevid of Neharde’a and he said to me: Why is it certain that the document included all the details of the transaction? Perhaps Rav Ilish immersed his bread in brine together with the other party? According to the opinion of Rabbi Yehuda, this would suffice to avoid the prohibition of interest, and Rav Naḥman says: The halakha is in accordance with the opinion of Rabbi Yehuda. Rav Kahana said to Rav Zevid: It was not stated by Rav Naḥman that the halakha is in accordance with the opinion of Rabbi Yehuda, but rather it was stated that a single opinion is common to three Sages: Rabbi Yehuda; Rabban Shimon ben Gamliel; and Rabbi Yosei, son of Rabbi Yehuda. This does not establish the halakha in accordance with their statements, but on the contrary, they all hold one common opinion that is not accepted as the halakha.

241 The Gemara comments: This too stands to reason, as, if you do not say so, why did Rav Naḥman list them individually and say: The halakha is in accordance with the opinion of so-and-so, and the halakha is in accordance with the opinion of so-and-so? Instead let Rav Naḥman say simply: The halakha is in accordance with the opinion of Rabbi Yehuda, as he is the most lenient of all of them, and their rulings can be derived from his. Since Rav Naḥman did not state this, it is reasonable to say that he was not issuing a ruling in accordance with their opinion, but simply clarifying that these three opinions are actually one.

242 § Rav says: If one says to another: I am giving you a calf to fatten, and let us divide the profit between us when it is sold, and the surplus over one-third of its current value is your wages, meaning that they will split the profits up to one-third of the value of the calf, and any additional profits will belong exclusively to the one who fattened the animal and serve as his wages, this arrangement is permitted, because the one fattening the calf is compensated for his efforts, and there is therefore no interest on the part that is a loan. And Shmuel says: It is not permitted, because if there is no surplus over one-third and he goes home empty-handed, he will have worked for free, and this is considered interest. Rather, Shmuel says: The owner of the calf must set aside a dinar for the other, to compensate him for his efforts in the event that there is no surplus over one-third.

243 The Gemara asks: And does Rav hold that he is not required to set aside a dinar for him? But doesn’t Rav say a different way to structure such an arrangement, that the head of the calf is given to the fattener, i.e., they may divide most of the profits evenly, but the head of the calf is given as a

supplement to the one who does the fattening? What, is it not that he said to him: The surplus over one-third is your wages, and according to Rav the calf’s owner must nevertheless also give him the head in case there is no surplus?

244 The Gemara refutes this: No, Rav was referring to a case where the owner of the calf said to him: Either he will receive the surplus over one-third, or the head of the calf will serve as wages to the fattener. Or if you wish, say instead: When Rav says that if the owner said to him: The surplus over one-third is your wages it is permitted, this was a case where the one fattening the calf already had his own animal to fatten, as people say in a common adage: Mix food for an ox, mix for oxen, meaning that since he already has to prepare food for one ox, it is not a big inconvenience and expense for him to add food for an additional ox, so the surplus over one-third is sufficient to compensate him.

245 The Gemara relates: Rav Elazar of Hagronya purchased an animal, and gave it to his sharecropper to fatten it, and gave him the head as his wages and gave him one-half of the profits. The sharecropper’s wife said to him: If you would have participated with him in the purchase of the animal he would have given you the tail also. The next time, the sharecropper went and purchased the calf with Rabbi Elazar, and Rabbi Elazar gave him one-half of the tail and then said to him: Let’s divide the head. The sharecropper said to him: Now will you not also give me as you did initially? Before, when I was not a partner in the animal but accepted it only in order to fatten it, you gave me the entire head. Now that I am a partner with you, are you going to give me only one-half of the head?

246 Rabbi Elazar said to him: Until now the money was mine, and had I not given you a little more value as compensation for your efforts, it would have appeared to be like interest. But now that we are partners, what can you say? That you must exert a little more effort than I do to take the animal in and out of the pasture? As people say in a common adage: An ordinary sharecropper subjugates himself to the owner to bring him pasture. Sharecroppers are accustomed to expending extra effort on behalf of the owner of the field. Therefore we are equal partners and divide everything.

247 The Sages taught: With regard to one who appraises an animal for another to raise, how long is the other obligated to care for it if they did not stipulate this explicitly? Sumakhos says: For female donkeys, eighteen months; for flocks of sheep or goats, twenty-four months. And if one of them comes to divide, i.e., if he wishes to sell the animal and divide the profits, within the time, i.e., before the time for taking care of it has ended, the other can prevent him from doing so, but the effort involved in the care of the animal for this year is not comparable to the care of another year.

248 The Gemara asks: With regard to the word but that was said here, what is it saying? It does not seem to belong in the statement. Rather, the text must be corrected as follows: Because the care of this year is not comparable to the care of another year. The profits are not necessarily divided evenly during the entire time of the animal’s growth, and therefore either party can insist that the contract be carried through to the end of the specified period.

249 It is taught in another baraita: With regard to one who appraises an animal for another to raise, for how long is the latter obligated to care for the offspring that are born to it? For a species of small animals, he is obligated to care for the offspring for thirty days, and for a species of large animals, fifty days. Rabbi Yosei says: For a species of small animals, he is obligated to care for the offspring for three months, as it requires a lot of care. The Gemara asks: What is the meaning of: A lot of care?

It means that due to the fact that its teeth are thin, its food has to be cut up for it, which is not necessary for a species of large animals. From this point forward, the one raising the animal takes one-half of the offspring as his share, since one-half of the animal is his, and he takes one-half of one-half of the other's share of the offspring, i.e., one-fourth of the total, as wages for caring for the animal and raising it.

250 The Gemara relates: Rav Menashya bar Gadda accepted an animal to raise, and of the offspring he took his one-half and one-half of the other's one-half. This matter came before Abaye. Abaye said to Rav Menashya bar Gadda: Who divided it for you? Since he did this on his own, there is a concern that he may not have divided it fairly. And furthermore, this place is a place where it is customary for the one raising the animal to raise the offspring, and we learned in a mishna (69b): In a place where it is customary to raise the offspring, they should be raised by the one raising the mother, and not divided between them.

251 The Gemara relates: There were these two Samaritans who entered into a joint venture with each other. One of them went and divided the money without the knowledge of the other. They came for judgment before Rav Pappa. Rav Pappa said to the plaintiff: What difference is there, meaning: What did you lose? This is what Rav Naḥman said: Money is considered as though it were already divided. It is not viewed as a single sum.

252 The next year these same two purchased wine together, and the other one arose and divided the wine without the knowledge of the other. And again, they came for judgment before Rav Pappa. Rav Pappa said to the defendant: Who divided it for you? You did not act properly since you did not get your partner's permission to divide the wine. The Samaritan said to him: I see that the Master pursues me in order to harass me, since last year, when we came with what appears to be essentially the same case, you gave a different ruling in favor of the other. Rav Pappa said:

253 In a case like this it is certainly necessary to inform the litigant of the reasons for the decision. Although a judge is not always obligated to explain the reasons for his decision to the litigants, in a case like this, where there is room for suspicion, he must. Rav Pappa explained: Last year, when the other individual divided money, did he take the good coins and leave the deficient ones?

254 The Samaritan said to him: No, he simply divided the money without any particular consideration, and that was acceptable, as there is no difference between one coin and another. Rav Pappa said to him: With regard to wine, everyone knows that there is wine that is sweet and there is wine that is not sweet, so it is not equitable to simply divide the barrels evenly. Therefore, I ruled that you were not entitled to divide the wine without your partner's knowledge.

255 The Gemara now returns to discuss the matter itself: Rav Naḥman said: Money is considered as if it were already divided and there is no need to actually divide it in the presence of both of them. The Gemara comments: This matter applies when he divided between good dinars and good dinars, or heavy dinars and heavy dinars, as then there is no need for evaluation. But if some of the coins were good and some were heavy, it is not permitted for him to divide them without informing the other party, as either one may have a preference for a particular type of coin.

256 § The Gemara relates: Rav Ḥama would rent out dinars at a rate of one peshita, i.e., one-eighth of a dinar, per day for a dinar. He viewed this as rental of an item for use rather than as a loan. Ultimately, all of Rav Ḥama's money was lost as divine punishment for violating the prohibition of interest (see 71a). The Gemara explains: He did this because he thought: In what way is it different

from the rental of a hoe? He viewed the money as an item that can be rented for a fee. But that is not so, as the hoe returns to its owner as is, and its depreciation is known, but the dinars do not return as is, as a borrower does not return the same coins he borrowed, and their depreciation is not known. Therefore, this cannot be called a rental; it is a loan with interest.

257 Rava said: It is permitted for a person to say to another: Here are four dinars; go and lend money to so-and-so. Even though the lender earns a profit from the loan, it is not prohibited because the Torah prohibited only interest that comes directly from the borrower to the lender, but not that which comes via a third party. And Rava said: It is permitted for a person to say to another: Take four dinars for yourself and tell so-and-so to lend me money. The Gemara explains: What is the reason for this? It is permitted because he takes payment for talking to the lender, as these four dinars are a fee for the brokerage in arranging the loan.

258 This is similar to this situation where Abba Mar, son of Rav Pappa, would take pans of wax from wax manufacturers and tell his father: Lend them money. The Sages said to Rav Pappa: The Master's son consumes interest, since the wax he receives is payment of interest for the loan. Rav Pappa said to them: We may consume any interest of this kind. It is totally permitted, as the Torah prohibited only interest that comes directly from the borrower to the lender. Here, he takes payment for talking, and this is permitted.

259 MISHNA: One may appraise a cow or a donkey or any item that generates revenue while it eats and give it to another to feed it and take care of it in exchange for one-half the profits, with the one who cares for the animal benefiting from the profits it generates during the period in which he raises it. Afterward, they divide the profit that accrues due to appreciation in the value of the animal and due to the offspring it produces. In a place where it is customary to divide the offspring immediately upon their birth, they divide them, and in a place where it is customary for the one who cared for the mother to raise the offspring for an additional period of time before dividing them, he shall raise them.

260 Rabban Shimon ben Gamliel says: One may appraise a calf together with its mother or a foal with its mother even though these young animals do not generate revenue while they eat. The costs of raising the young animal need not be considered. And one may inflate [umafriz] the rental fee paid for his field, and he need not be concerned with regard to the prohibition of interest, as the Gemara will explain.

261 GEMARA: The Sages taught: One may inflate the rental fee paid for his field, and he need not be concerned with regard to the prohibition of interest. How so? In the case of one who rents a field from another for the price of ten kor of wheat per year, and the renter says to the owner: Give me two hundred dinars as a loan and I will use it to cultivate the field and equip it by fertilizing it and hiring people to work in it, and then I will pay you twelve kor per year in addition to returning your two hundred dinars, this is permitted, as the two hundred dinars are viewed as a joint investment in improving the field, with the owner providing the capital and the renter providing the labor. The higher rental fee is therefore paid for a higher-quality field, and not as interest on the loan.

262 But one may not inflate the rental fee paid for a store or a ship. The renter cannot borrow money from the owner to purchase merchandise to sell in the store or transport in the ship and in return increase the rental fee. That is considered a loan with interest.

263 Rav Naḥman says that Rabba bar Avuh said: There are times when one may inflate the rental fee paid for a store, such as in a case where one needs money in order to paint a design on its walls, or in the case of a ship, where one needs money to fashion a new sail [iskarya]. The Gemara explains: It is permitted when the money is borrowed to invest in a store in order to paint a design on its walls, because people will want to come to the more attractive store to purchase, and the profits are thereby increased. Similarly, it is permitted when the money is to be used for a ship to fashion a sail, because the profits from the use of the ship are greater since the sail is improved. Therefore, in these cases the arrangement is an investment, similar to the case of the field, and not interest.

264 Since the subject of a ship was raised, the Gemara mentions a related statement of Rav. Rav said: For a ship, it is permitted to conduct a transaction where someone pays rent for the use of the ship and is also liable to pay for any damage caused to the ship. Rav Kahana and Rav Asi said to Rav: If he receives rent, then he should not receive payment for damage, and if he receives payment for damage, then he should not receive rent, as, if the ship is the responsibility of the renter, it is a loan, and if he pays rent for such a loan, it is interest. Rav was silent, and it appeared that he could not answer this question.

265 Rav Sheshet said: What is the reason that Rav was silent? Did he not hear that which is taught in a baraita: Even though the Sages said that one may not accept a guaranteed investment [tzon barzel] from a Jew, meaning one may not accept from a Jew animals to raise and receive one-half of the profits while also accepting full responsibility to pay the initial value of the animals in the event there is a loss, as this arrangement is deemed a loan with interest, but one may accept a guaranteed investment from gentiles, because there is no prohibition against paying them interest. But nevertheless, the Sages said: If one appraised a cow for another to raise and to divide the profits, and the one accepting the cow said to the cow’s owner: Your cow is evaluated for me at thirty dinars if I do not return it to you, and I will pay you a sela per month for the use of it, this is permitted, because he did not make it a matter of lending money.

266 The Gemara asks rhetorically: And did he not make it a matter of lending money? He most certainly did, as he obligated himself to pay for the cow if he does not return it, making the transaction into a loan, and therefore the payment of a sela per month should constitute interest. Rav Sheshet said: It means that he did not make it a matter of lending money while the cow was alive, meaning that he did not obligate himself to return this specific sum to him if the value of the cow decreased, but rather agreed to pay the set payment of thirty dinars only after its death. Therefore, the transaction was not a loan and the monthly payment is not interest. According to this baraita, the halakha should be the same in the case of a ship.

267 Rav Pappa said: In fact, the halakha is that in the case of a ship it is permitted to collect rent and payment for damage.

268 And the men of pitch [benei kufera], i.e., sailors, are accustomed to paying rent at the time of pulling and paying for damage at the time of breakage. The Gemara asks: Is that to say that this matter depends on custom? Is there no halakha with regard to this issue? The Gemara answers: Because the baraita taught this, it is an acceptable custom and therefore permitted.

269 § Rav Anan says that Shmuel says: It is permitted to lend with interest money belonging to orphans. Since the orphans are minors and exempt from mitzvot, the prohibition against taking interest does not apply to them. Rav Naḥman said to him: Because they are orphans we may feed

them prohibited items? In harsher language, he added: Orphans that consume that which is not theirs will follow their deceased parent to the graveyard. It cannot be that this was Shmuel's intention. Therefore, Rav Naḥman said to Rav Anan: Say to me now, what was the actual incident? What exactly did you hear Shmuel say?

[270] Rav Anan said to him: There was a certain kettle that belonged to the children of Mar Ukva, who were minor orphans, and this kettle was in the house of Mar Shmuel, who would rent it out on behalf of the orphans. Mar Shmuel would weigh it and then give it out, and when the renter returned it Mar Shmuel would weigh it and take it back, and he would take a rental fee for use of the kettle and would also take payment for depreciation of the kettle due to the reduction in the weight of the metal. In general, the halakha is that if he takes a rental fee, he should not take payment for depreciation, and if he takes payment for depreciation, this means the kettle was a loan, and therefore he should not take a rental fee, as by taking both, it is interest. Nevertheless, Mar Shmuel did so with the kettle belonging to Mar Ukva's children, which means he rendered it permitted for the orphans to take interest.

[271] Rav Naḥman said to him: There is no proof from a case like this, as even for bearded ones, i.e., adults, it is permitted to act in this manner, as the owners accept upon themselves the depreciation of the copper, as the more the copper is burned, the more the value of the pot is diminished. Since this is so, the renters pay for the visible depreciation as measured by the reduction in the weight of the vessel, and therefore this arrangement is certainly permitted.

[272] Rabba bar Sheila says that Rav Ḥisda says, and some say that Rabba bar Yosef bar Ḥama says that Rav Sheshet says: It is permitted to lend the money of orphans to be invested in a business venture that is close to profit and far from loss. Since this is only a hint of interest (see 64b), the relevant prohibition is a matter of rabbinic law, and the Sages rendered it permitted in the case of minor orphans, in order that their inheritance be preserved for them.

[273] The Sages taught: If there is a joint venture in which the conditions for the investor are close to profit and far from loss, then the investor is a wicked person, as this is similar to a loan with interest. If the conditions for the investor are close to loss and far from profit, then he is a pious person, as he accepts additional restrictions upon himself in order to be absolutely sure he is not taking interest. If it is close to this and to that or far from this and from that, this is the quality of every person who acts in accordance with halakha.

[274] Rabba said to Rav Yosef: When we are entrusted with this money belonging to orphans, what do we do with it? What is the halakhically appropriate way to manage these funds on behalf of the orphans so that they do not squander or lose their inheritance? Rav Yosef said to him: We set up a special court that holds the money for them, and we instruct the court to give it to them dinar by dinar, according to their needs. Rabba said to him: But if the estate is managed in that manner, the principal, meaning the estate itself, will be depleted, and therefore the court will not be acting as suitable guardians for the orphans, as they will not be properly administering their estate.

[275] Rav Yosef said to him: What does the Master do in such a case? Rabba said to him: We look for a man who has scraps of gold, and we purchase the gold from him and then we give it back to him in a joint business venture with terms that are close to profit and far from loss. The Gemara explains what Rabba says: We specifically buy scraps of gold, but we do not buy a specific item, meaning a

finished gold item, as perhaps it is a deposit in the possession of the one holding it and the owner will come and provide distinguishing marks and take it, and then the orphans will suffer a loss.

276 Rav Ashi said: This works out well if a man is found who has scraps of gold. But if no man is found who has scraps of gold, shall the money of the orphans be depleted? There is a possibility that the extra precaution taken to avoid the appearance of interest may lead to a loss for the orphans. Rather, Rav Ashi said: We look for a man whose properties are quiet, meaning that there is no claim disputing his ownership of them, and who is a trustworthy individual who listens to and obeys the laws of the Torah and is not subject to excommunication by the Sages, meaning that he is known as one who obeys the court's instructions willingly without having to be coerced, and we give him this money in court as a joint business venture with terms that are close to profit and far from loss, and in this way the orphans' money can be invested in a safe and profitable manner.

277 MISHNA: One may not accept from a Jew sheep to raise or other items to care for as a guaranteed investment, in which the terms of the transaction dictate that the one accepting the item takes upon himself complete responsibility to repay its value in the event of depreciation or loss, but receives only part of the profit. This is because it is a loan, as the principal is fixed and always returned to the owner, and any additional sum the owner receives is interest. But one may accept a guaranteed investment from gentiles, as there is no prohibition of interest in transactions with them.

278 And one may borrow money from them and one may lend money to them with interest. And similarly, with regard to a gentile who resides in Eretz Yisrael and observes the seven Noahide mitzvot [ger toshav], one may borrow money from him with interest and lend money to him with interest, since he is not a Jew. Also, a Jew may serve as a middleman and lend a gentile's money to another Jew with the knowledge of the gentile, but not with the knowledge of a Jew, i.e., the middleman himself, as the Gemara will explain.

279 GEMARA: With regard to the ruling that a guaranteed investment is considered a loan with interest, the Gemara asks: Is this to say that the guaranteed investment stands in the possession of the recipient, i.e., the recipient is viewed as its owner? And the Gemara raises a contradiction from a mishna (Bekhorot 16a): In the case of one who accepts from gentiles an animal as a guaranteed investment, the offspring are exempt from the halakhot of a firstborn. This exemption apparently proves that the sheep still legally belong to the gentile owner.

280 Abaye said: This is not difficult. That case, referring to the mishna in Bekhorot, is where the gentile owner of the sheep accepts upon himself the responsibility for losses due to an accident or depreciation in the market value, and that is why the sheep are considered to still belong to him. And this case, referring to the mishna here, is where the owner did not accept upon himself responsibility for losses due to an accident or depreciation. Therefore, the guaranteed investment stands in the possession of the recipient.

281 Rava said to Abaye: If the owner accepted upon himself responsibility for losses due to an accident or depreciation, can you call it a guaranteed investment? This case is not a guaranteed investment, as the owner is not guaranteed to receive what he had given, but rather it is a type of joint business venture that is permitted between two Jews.

282 Rava continues: And furthermore, even if one will grant that this arrangement can be called a guaranteed investment, there is another difficulty. Instead of the tanna teaching in the latter clause of the mishna: But one may accept a guaranteed investment from gentiles, let the tanna distinguish

within the case itself, that of accepting a guaranteed investment from a Jew. He should have taught: In what case is this statement, i.e., that one may not accept from a Jew sheep to raise or other items to care for as a guaranteed investment, said? It is said in a case when the owner did not accept upon himself responsibility for losses due to an accident or depreciation, but if the owner accepted upon himself responsibility for losses due to an accident or depreciation, one may well enter into such an arrangement.

283 Rather, Rava rejected this explanation and said: Both this case in the mishna here and that case with regard to the firstborn animal are discussing a situation where the owner did not accept upon himself responsibility for losses due to an accident or depreciation. And with regard to the firstborn, this is the reason that the offspring are exempt from the halakhot of a firstborn: Since, if for some reason the recipient does not give the money due to the gentile, the gentile will come and seize the animal, and if he does not find the animal he will seize the offspring; this means that the hand of a gentile is in the middle, i.e., the gentile has some degree of ownership of the bodies of the offspring.

284 And there is a halakha: In every case where the hand of a gentile is in the middle, the animal is exempt from the halakhot of a firstborn. By contrast, in the case of the mishna concerning the halakhot of interest, the animal is entirely in the possession of the recipient.

285 § Apropos the discussion concerning the halakhot of interest, the Gemara cites several aggadic statements on the subject. The verse states: “He who augments his substance by interest [beneshekh] and increase [vetarbit] gathers it for him who has pity on the poor” (Proverbs 28:8). The Gemara asks: What is the meaning of the phrase “him who has pity on the poor”? How does this money ultimately reach someone who has pity on the poor? Rav said: This is referring to one such as King Shapur, for ultimately the money will reach the king, who provides for the poor from the possessions of the one who lends with interest.

286 Rav Naḥman said: Rav Huna said to me that this verse is necessary only to state that even interest that a Jew took from a gentile will ultimately reach the government treasury, and the one who took it will not be successful. Rava raised an objection to the statement of Rav Naḥman: The verse states: “Unto a gentile tashikh” (Deuteronomy 23:21), which indicates that it is permitted for a Jew to take interest from a gentile, as what is the meaning of “tashikh”? Doesn’t it mean the same as tishokh, take interest, thereby teaching that one may take interest from a gentile? The Gemara refutes this claim: No, it means to pay interest, meaning that you must pay him interest.

287 The Gemara asks: Is it not sufficient without this? In other words, can the verse actually require Jews to borrow money from a gentile and to pay him interest? This cannot be. The Gemara answers: It does not mean that borrowing money with interest is a mitzva; rather, the verse mentions paying interest to a gentile in order to exclude your brother, to teach that although one may pay interest to a gentile, one may not pay interest to a Jew.

288 The Gemara challenges this explanation of the verse: The prohibition against paying interest to your brother is written explicitly in the continuation of that same verse in Deuteronomy: “Unto your brother you shall not lend with interest.” Consequently, there is no need to learn this halakha from an inference. The Gemara responds: It is necessary in order to teach that if one pays interest to a Jew he violates both the positive mitzva to pay interest to a gentile but not to a Jew, and the prohibition against paying interest to a Jew.

[289] Rava raised an objection to the statement of Rav Naḥman based on another difficulty in the mishna, which teaches: One may borrow money from them and one may lend money to them with interest. And similarly, with regard to a ger toshav, one may borrow money from him and lend money to him with interest, since he is not a Jew. The mishna indicates that a Jew may lend money with interest to a gentile ab initio. Rav Ḥiyya, son of Rav Huna, said: This ruling of the mishna is necessary only

[290] to teach that one may lend money with interest to a ger toshav only to the extent required to provide a livelihood to the lender, but not to do so as a regular business.

[291] Ravina said: Here in the mishna we are dealing with Torah scholars, for whom it is permitted to lend money to a gentile with interest. The Gemara explains: What is the reason the Sages decreed that one should not lend money to a gentile with interest? The reason is that perhaps the Jew will learn from the gentile's actions. Continuous interactions with gentiles for the sake of financial dealings may have a negative influence on a Jew. And since in this case the lender is a Torah scholar, he will not learn from the gentile's actions.

[292] There are those who teach that which Rav Huna said in connection with that which Rav Yosef taught: The verse states: "If you lend money to any of My people, even to the poor person who is with you" (Exodus 22:24). The term "My people" teaches that if one of My people, i.e., a Jew, and a gentile both come to borrow money from you, My people take precedence. The term "the poor person" teaches that if a poor person and a rich person come to borrow money, the poor person takes precedence. And from the term: "Who is with you," it is derived: If your poor person, meaning one of your relatives, and one of the poor of your city come to borrow money, your poor person takes precedence. If it is between one of the poor of your city and one of the poor of another city, the one of the poor of your city takes precedence.

[293] The Master said above: If one of My people and a gentile come to you for a loan, My people take precedence. The Gemara asks: Isn't this obvious? Is there any reason to think that a gentile would take precedence over a Jew? Rav Naḥman said that Rav Huna said to me: It is necessary only to teach that even if the choice is to lend money to a gentile with interest or to a Jew for free, without interest, one must still give preference to the Jew and lend the money to him, even though this will entail a lack of profit.

[294] It is taught in a baraita: Rabbi Yosei says: Come and see the blindness in the eyes of those who lend money with interest. If a person calls another a wicked person in public, the other becomes insulted and he harasses him in all aspects of his life because he called him by this disgraceful name. But they who lend with interest bring witnesses and a scribe [velavlar] and a pen [vekulmos] and ink and write and sign a document that testifies: So-and-so denies the existence of the God of Israel, as the very fact that he lent with interest in defiance of the Torah is tantamount to a denial of the existence of God.

[295] It is taught in a baraita: Rabbi Shimon ben Elazar says: Concerning anyone who has money and lends it without interest, the verse says about him: "He who has not given his money with interest and who has not taken a bribe against the innocent, he who does these shall never collapse" (Psalms 15:5). From this statement, the opposite can also be inferred: You learn from this that concerning anyone who lends his money to others with interest, his property, i.e., his financial standing, collapses. The Gemara asks: But we see people who do not lend money with interest and

nevertheless their property collapses. Rabbi Elazar says: There is still a difference: Those who do not lend money with interest collapse but then ultimately rise, but these, who lend with interest, collapse and do not rise again.

[296] Referring to the subject of honest people who collapse temporarily, it is said: “Why do You observe the treacherous, and remain silent while the wicked swallows the one who is more righteous than he?” (Habakkuk 1:13). Rav Huna says about this verse: One who is more righteous than he, he swallows for the moment, but he does not swallow a completely righteous person at all.

[297] § The Gemara returns to the clarification of the mishna, which mentioned the subject of a gentile who resides in Eretz Yisrael and observes the seven Noahide mitzvot [ger toshav]. It is taught in a baraita: Rabbi Yehuda HaNasi says: With regard to the convert that is mentioned concerning the sale of a Hebrew slave and the ger toshav that is mentioned concerning interest, I do not know what the meaning of each of these references is.

[298] The Gemara explains: The convert that is mentioned concerning the sale of a Hebrew slave is referring to the following, as it is written: “If your brother waxes poor with you and is sold unto you” (Leviticus 25:39), and it was expounded in a baraita: And not only will he be sold to you, a born Jew, but he will be sold even to a convert, as it is stated: “And sells himself to a stranger [leger]” (Leviticus 25:47).

[299] And this sale to a ger is referring to a sale not only to a righteous convert [leger tzedek], but even to a ger toshav, as it is stated: “And sells himself to a stranger who is a settler [leger toshav]” (Leviticus 25:47). With regard to the continuation of the verse: “Or to an offshoot of a stranger’s family,” this is referring to a gentile, i.e., he will reach a state where he has no choice but to sell himself to a gentile. When it states: “Or to an offshoot of a stranger’s family,” this is referring to one sold for idol worship itself, i.e., he is forced to sell himself as a slave to work in a temple of idol worship.

[300] The Gemara clarifies the baraita. The Master said: And not only will he be sold to you, a born Jew, but he will be sold even to a convert, as it is stated: “And sells himself to a stranger.” Is this to say that a convert may acquire a Hebrew slave? The Gemara raises a contradiction from a baraita: A convert cannot be acquired as a Hebrew slave, and a woman or a convert may not acquire a Hebrew slave.

[301] The Gemara explains the baraita. A convert cannot be acquired as a Hebrew slave, as we require the fulfillment of the verse: “Then he shall go out from you, he and his children with him, and shall return to his own family” (Leviticus 25:41), and a convert is not able to do this, since upon conversion the convert severs his relationship with his gentile family, and he therefore has no family. The baraita teaches: And a woman or a convert may not acquire a Hebrew slave. With regard to a woman, the reason is that it is not proper conduct, since people may say that she is purchasing him to engage in sexual intercourse with him. With regard to a convert as well, it is learned as a tradition: Only one who can be acquired as a Hebrew slave can acquire a Hebrew slave, and one who cannot be acquired as a Hebrew slave cannot acquire a Hebrew slave. Since a convert cannot be acquired as a Hebrew slave, he also cannot acquire one.

[302] Rabbi Yehuda HaNasi’s question was that since it has been established that a convert may not acquire a Hebrew slave, why was he mentioned in the verse? Rav Naḥman bar Yitzḥak said: He cannot acquire a Hebrew slave and have his halakha be like that of a Jew who owns a Hebrew slave,

but he can acquire a Hebrew slave and have his halakha be like that of a gentile who owns a Hebrew slave.

303 This is as it is taught in a baraita: A Hebrew slave who had his ear pierced by his own request in order to remain a slave after his six-year period of servitude was over, and therefore is emancipated only during the Jubilee Year, and also a Hebrew slave who was sold to a gentile, does not serve his master's son and does not serve his master's daughter after his master's death, but rather is emancipated. The same halakha would apply to a Hebrew slave sold to a convert, whose status in this respect is similar to that of a gentile.

304 The Master said above: And a woman or a convert may not acquire a Hebrew slave. The Gemara suggests: Let us say that this baraita is not in accordance with the opinion of Rabban Shimon ben Gamliel. As it is taught in a baraita: A woman may acquire maidservants but may not acquire male slaves, in order to preserve standards of modesty. Rabban Shimon ben Gamliel says: She may also acquire male slaves. The Gemara rejects this suggestion: Even if you say that this baraita is in accordance with the opinion of Rabban Shimon ben Gamliel, it is not difficult. Here, where it is prohibited, the ruling is stated with regard to a Hebrew slave, and there, where Rabban Shimon ben Gamliel renders it permitted, the ruling is stated with regard to a Canaanite slave.

305 The Gemara explains the difference: A Hebrew slave is regarded as discreet in her eyes, and since she trusts that a Hebrew slave will not reveal their actions to others if they engage in sexual intercourse, it is prohibited for her to acquire a male Hebrew slave. By contrast, a Canaanite slave is regarded as indiscreet in her eyes, so she will be deterred from transgressing with him.

306 The Gemara asks: But this seems to contradict the baraita that Rav Yosef teaches: A widow may not raise a dog, due to suspicion that she may engage in bestiality, and she may not allow a student of Torah to dwell as a lodger in her home. Granted, it makes sense that it is prohibited for her to have a student of Torah lodging in her home, as he is regarded as discreet in her eyes. But concerning a dog, since it would follow her around afterward if she would engage in bestiality with it, she is afraid to sin with it. Therefore, it should be permitted for her to raise it. The Sages say in response: Since it will also follow her around if she throws it a piece of meat [umtza], people will say: It is following her due to the meat she threw to it, and they will not suspect her of sinning. Consequently, she will not be deterred from transgressing.

307 The Gemara discusses Rabbi Yehuda HaNasi's second difficulty: The ger toshav that was mentioned concerning interest, what is it? What was Rabbi Yehuda's difficulty? As it is written: "And if your brother waxes poor, and his means fail with you, then you shall strengthen him, as a stranger and a resident [ger vetoshav] shall he live with you. You may not take interest or increase from him, but fear your God, and your brother should live with you" (Leviticus 25:35–36). This indicates that interest may not be taken from a ger toshav. And the Gemara raises a contradiction from the mishna: One may borrow money from them, i.e., from gentiles, and lend money to them with interest, and similarly, one may borrow money from and lend money to a ger toshav with interest.

308 Rav Naḥman bar Yitzḥak says: Is it written: Do not take from them? No, it is written: "Do not take from him," in the singular, and it means: Do not take interest from a Jew.

309 With regard to this verse the Sages taught: "You may not take interest or increase from him," but you may become a guarantor for him for a transaction involving interest.

[310] The Gemara asks: You may become a guarantor for whom? If we say it means a guarantor for a Jew who lends money to another Jew with interest, that is difficult. But this would be contradicted by that which the Sages taught in a mishna (75b): These are the ones who transgress a prohibition: The lender and the borrower, the guarantor and the witnesses. It is prohibited to serve as a guarantor for such a loan.

[311] Rather, it must mean that one may serve as a guarantor for a gentile who lends to another Jew with interest. This is also difficult, since the law of the gentiles is that he goes after the guarantor to collect the money without trying to collect first from the borrower. Under gentile law, it is the responsibility of the guarantor to pay the lender and to then retrieve the money from the borrower. Consequently, when this occurs, the guarantor is considered to have borrowed money from the gentile and lent it himself to the Jew, with the result that the guarantor is the one who takes the interest from the borrower, which is prohibited.

[312] Rav Sheshet said: The case is that the gentile accepted upon himself to have this transaction judged by the laws of the Jews, so that he may not claim repayment from the guarantor. The Gemara asks: If the gentile accepted upon himself to have this transaction judged by the laws of the Jews, he should also not take interest, since that is prohibited by Jewish law. In response, Rav Sheshet said: He accepted upon himself the laws of the Jews with regard to this, the procedural matter with regard to the method of collection, but he did not accept upon himself the laws of the Jews with regard to that, the prohibition against taking interest.

[313] § The mishna teaches: A Jew may serve as a middleman and lend a gentile's money to another Jew with the knowledge of the gentile, but not with the knowledge of a Jew, i.e., the middleman himself. The Sages taught in a baraita: A Jew may lend a gentile's money as a middleman to another Jew with the knowledge of the gentile, but not with the knowledge of a Jew. How so? In the case of a Jew who borrowed money with interest from a gentile and then wanted to return it to him, but at that point another Jew found the borrower and said to him: Since you do not need this money anymore and I do need it, give it to me and I will pay you with the addition of interest in the same way that you pay the gentile, this is prohibited, since this is interest paid to a Jew. But if the borrower presented the second Jew to the gentile and the gentile agreed to this arrangement, it is permitted.

[314] The baraita continues: And similarly, if a gentile borrowed money with interest from a Jew and then wanted to return it to him, and another Jew found the gentile and said to him: Give it to me and I will pay you interest in the same way that you pay the Jewish lender, this is permitted, since he pays interest to a gentile and not to a Jew. But if the gentile borrower presented the second Jew to the Jew who lent him the money and the Jewish lender agreed to this arrangement, it is prohibited.

[315] The Gemara discusses the baraita: Granted, the latter clause of the baraita, which says that it is prohibited for a Jew to pay the gentile borrower when the Jewish lender is aware of the transaction, can be explained as a stringency due to concern about the prohibition of interest, but in the first clause the Jewish lender presents the Jewish borrower to the gentile before handing him the money, and the fact that this is permitted indicates that he acts as the gentile's agent, not on his own. But since the halakha is that there is no agency for a gentile, this means that the Jew is the one who takes the interest from the second borrower. Why, then, does the baraita permit it?

[316] Rav Huna bar Manoaḥ said in the name of Rav Aḥa, son of Rav Ika: Here we are dealing with a case where the gentile said to the Jew when he returned the money: Place it upon the ground and be

dismissed, and afterward the other Jew went and took it. Therefore, the loan was transacted directly between the second Jew and the gentile. The Gemara asks: If that is so, what is the purpose of stating it? In this scenario it is obvious that there are two separate loans and the first Jewish lender has nothing to do with the loan to the second. This is certainly permitted.

317 Rather, Rav Pappa said: It must be speaking about a case where the gentile took the money from the first Jew and gave it to the second Jew by hand. The Gemara asks: But still, what is the purpose of stating it? In this case also, the second loan is clearly transacted directly with the gentile lender. The Gemara answers: Lest you say: The gentile himself, when he does this, he gives it with the knowledge of the Jew, as he trusts the second borrower due to the mediation of the first, and therefore one might have thought he is deemed involved in the loan. To counter this, the baraita teaches us that this is not the case.

318 Rav Ashi said: It is possible to explain the baraita in a different way. When we say that the halakha is that there is no agency for a gentile, this matter applies concerning the separation of teruma, the portion of produce designated for a priest. It is in this context that the halakha that there is no agency for a gentile is derived, but concerning the rest of the halakhot of the Torah, there is agency for a gentile.

319 The Gemara comments: And this opinion of Rav Ashi is an error, since what is different about teruma that a gentile cannot be appointed an agent? As it is written concerning teruma: “So you also shall set apart a gift unto the Lord of all your tithes” (Numbers 18:28); once the verse states “you,” the addition of the word “also” in the phrase “you also” serves to include an agent. The Sages additionally derive: Just as you, those who appoint agents, are members of the covenant, i.e., Jews, so too, your agents must be members of the covenant. A gentile cannot separate teruma even if appointed as an agent by a Jew.

320 The Gemara continues: The concept of agency with regard to the rest of the halakhot of the Torah is also a matter we learn through tradition by a derivation from teruma, as this is the source for the halakha that the legal status of one’s agent is like that of himself. Therefore, the same halakhot apply to agency in all matters. Rather, it must be concluded that the opinion expressed by Rav Ashi is an error.

321 There are those who say a different version of this discussion: Rav Ashi said: When we say that there is no agency for a gentile, this matter applies concerning them serving as agents for us, but we can be agents for them. With regard to this comment it was said: And this opinion of Rav Ashi is an error, as what is different that they cannot serve as agents for us? As it is written concerning teruma: “So you also shall set apart a gift unto the Lord of all your tithes” (Numbers 18:28). Once the verse states “you,” the addition of the word “also” in the phrase “you also” serves to include your agents. The Sages also derive: Just as you, those who appoint agents, are members of the covenant, i.e., Jews, so too, your agents must be members of the covenant.

322 The Gemara continues: Therefore, we also cannot serve as agents for them, because the same principle is said: Just as you, those who appoint the agents, are children of the covenant, so too, all who appoint agents must be members of the covenant. Rather, it must be concluded that this opinion expressed by Rav Ashi is an error.

323 Ravina says another answer: Granted, a gentile is not included in the category of agency. But he has the power, by rabbinic law, to acquire an item through an act of acquisition performed by

another. This is similar to the halakha concerning a Jewish minor. As with a minor, is it not the case that even though he is not included in the category of agency,

[324] nevertheless, he has the power, by rabbinic law, to acquire an item by means of an act of acquisition performed by another? Here, also, it is not different; the Jew can perform an act of acquisition on behalf of the gentile even though there is no agency for gentiles.

[325] The Gemara rejects this comparison: But that is not so. A minor Jew will eventually reach the stage of eligibility for agency, but a gentile will not reach eligibility for agency. Consequently, the Sages did not establish the power for gentiles to acquire an item by means of an act of acquisition performed by a Jew.

[326] § The Sages taught: In the case of a Jew who borrowed money with interest from a gentile, and the gentile lender established the interest as a loan for the Jewish borrower, i.e., he added the amount of interest to the principal and consolidated it into a single debt, and then the gentile converted, the halakha depends on the circumstances. If the gentile established it as a loan for him before he converted, he may collect the principal from the borrower and he may also collect the interest. Since it had already been consolidated into a single debt, it is as though he already collected the interest while he was still a gentile. But if he established it as a loan for him after he converted, he may collect the principal but may not collect the interest, as it still had the status of interest when he became a Jew.

[327] And similarly, in the case of a gentile who borrowed money with interest from a Jew and the Jewish lender established the interest as a loan for the gentile borrower, and then the gentile borrower converted, if he established it as a loan before he converted, the Jew may collect the principal and may also collect the interest. If he established it as a loan for the gentile after he converted, he may collect the principal but may not collect the interest, as it still had the status of interest when he became a Jew.

[328] The baraita continues: Rabbi Yosei says: If a gentile borrowed money with interest from a Jew and converted, whether in this circumstance or whether in that circumstance, i.e., regardless of when the lender consolidated the interest and principal into a single debt, the Jewish lender may collect the principal and he may also collect the interest. Rava says that Rav Ḥisda says that Rav Huna says: The halakha is in accordance with the opinion of Rabbi Yosei. Rava says: What is the reasoning behind the opinion of Rabbi Yosei? What is the justification for collecting interest from a Jew? It is in order that people will not say: This individual converted due to concern for his money. People will suspect that he converted in order to avoid paying the interest.

[329] § The Sages taught: In the case of a promissory note in which the details of a loan with interest were written, we penalize the lender, and therefore he may not collect the principal and may not collect the interest; this is the statement of Rabbi Meir. And the Rabbis say: He may collect the principal but he may not collect the interest. The Gemara asks: With regard to what principle do they disagree? The Gemara explains: Rabbi Meir holds: We penalize him with regard to that which is permitted due to that which is prohibited, and the Rabbis hold: We do not penalize him with regard to that which is permitted due to that which is prohibited.

[330] We learned in a mishna elsewhere (Shevi’it 10:5): Antedated promissory notes, in which the date written in the document is earlier than the date the loan was actually transacted, are not valid, but postdated promissory notes are valid. The Gemara asks: Why are antedated documents not valid?

Granted, they cannot be used to collect from the first date, the date written in them, because this could cause loss to people who purchased land from the borrower in the time between the date written on the promissory note and the time the loan was actually granted. The land they purchased would be subject to a lien when it fact it should not be. But at least they should be able to be used to collect from the second date, when the loan was actually granted.

331 Rabbi Shimon ben Lakish says: This mishna is subject to dispute, and it is taught in accordance with the opinion of Rabbi Meir, who said that the lender is penalized with regard to that which is permitted due to that which is prohibited. Here too, since he wrote an incorrect date, the entire document is invalidated as a penalty. And Rabbi Yoḥanan says: You may even say that this halakha is in accordance with the opinion of the Rabbis, as here there is a rabbinic decree invalidating the document lest he collect from the first date. If the document is not invalidated, the lender will depend on it and will come to collect repayment according to the date written on it.

332 The Gemara relates: There was a certain man who mortgaged his orchard to another as security for a loan, and the lender consumed the produce of the orchard for three years. At the end of this time the lender said to the borrower: If you sell me the orchard, that is good. But if not, I will hide the document of the mortgage and I will say: It is purchased, and that is why it is in my possession, meaning I will claim I purchased the field and lost the deed. Since the land has been in my possession for three years I do not have to bring any other proof, as the halakha is that after three years of use of a field there is a presumption of ownership for the one who uses it (see Bava Batra 29b).

333 When the borrower saw that he could not protect himself against the ruse, he devised a scheme: He went and transferred ownership of the field to his minor son by means of a deed of gift, and afterward sold the field to the lender. Subsequently, he demanded that the sale be annulled, since when he sold the field, it was not his.

334 The Gemara clarifies the halakha: The sale was certainly not a sale, since the field was not his to sell, but the question is: Are the dinars that the buyer paid similar to a loan with a promissory note, and therefore the buyer can collect the money he paid even from liened property that has been sold? Or perhaps it is similar to a loan by oral agreement, and therefore he cannot collect it from liened property that has been sold. Abaye said: Is this question not the same as that of Rabbi Asi? As Rabbi Asi says:

335 In the case of a debtor who admits that he wrote a promissory note, the creditor is not required to ratify it in court in order to collect the debt, and he can therefore use the document to collect the debt even from liened property that has been sold. In the present case as well, the seller admits that he received the money; therefore the document of sale should enable the buyer to collect his money from liened property.

336 Rava said to him: Are these cases comparable? There, the matter detailed in the document may be written, as it is a substantive matter; the document attests to true events and it is therefore possible to use the promissory note to collect the debt. But here, the matter detailed in the document may not be written, as the entire sale was not genuine since it was done against the will of the seller. Consequently, this document is completely invalid and cannot be used to collect from liened property.

[337] Mareimar sat and stated this halakha. Ravina said to Mareimar: But if Rava’s answer is accepted, then with regard to that which Rabbi Yoḥanan said concerning an antedated loan document, that there is a rabbinic decree invalidating the document lest he collect from the first date, let us say that there is a better rationale, as Rava stated: The antedated document is invalid, as it may not be written. Mareimar said to him: How can these cases be compared? There, in the case of the antedated document, granted, it may not be written from the first date, but it may be written from the second date. Here, it may not be written at all.

[338] The Gemara further asks: But how does one understand that which is taught in a baraita: What is the case in which one appropriates property for the enhancement of land? It is a case where one robbed another of a field and sold it to another and that buyer enhanced it, and it is appropriated by the court from his possession. When the buyer collects payment from the robber, he collects the principal, i.e., the money he paid for the field itself, even from liened property that the robber had sold in the interim, and he collects the value of the enhancement from the robber’s unsold property. Let us say there also that this illegal sale of the field was a transaction that may not be written, and therefore he should not be allowed to collect even the principal from liened property.

[339] The Gemara refutes this suggestion: How can these cases be compared? There, in the case of the field purchased from a robber, the deed of sale is meaningful either according to the one who says that it is preferable for the robber not to be called a robber by the buyer, or according to the one who says that it is preferable for the robber to maintain his reliability, i.e., to be considered an honest person; and therefore, the robber will appease the owner of the field by paying him for it and will attempt to ratify his document so that it is valid. But here, where the one who sold the field under duress intends to remove the buyer from it, will he then ratify his document?

[340] MISHNA: One may not set a price with a buyer for the future delivery of produce until the market rate is publicized, as, if he is paid for supplying produce at a later date in advance of the publication of the market rate for that type of produce, he may set a price that is too low. The money paid in advance is deemed a loan, and if the initial payment was lower than the later market value, delivery of the produce will constitute interest on the loan. Once the market rate is publicized, the seller may set a price, even if the produce is not yet in his possession. The reason for this is that even though this one, i.e., the seller, does not have any of the produce, that one, someone else, has it, and the seller could theoretically acquire the produce now at the price he set.

[341] If the seller was first among the reapers, having harvested his crop before the market rate was set, he may set a price with a buyer as he wishes for a stack of grain that is already in his possession, or for a large basket of grapes prepared for pressing into wine, or for a vat [hama’atan] of olives prepared for pressing into oil, or for the clumps [habeitzim] of clay prepared for use by a potter, or for plaster nearing the end of the manufacturing process at the point after he has sunk it, i.e., baked it, in the kiln. Although the market rate has yet to be set, the seller may nevertheless set a price now for their eventual delivery.

[342] The mishna continues: And he may set a price with a buyer for manure on any of the days of the year, as the manure will certainly be available and it is therefore viewed as if it is ready. Rabbi Yosei says: One may set the price of manure only if he already had a pile of manure in his dunghill to which the sale can immediately be applied, but the Rabbis permit it in all cases.

[343] And one may also set a price with a buyer at the highest rate, i.e., a large amount of produce sold for the lowest price, stipulating with the seller that the sale price match the lowest market rate for this product during the course of the year. Rabbi Yehuda says: Even if he did not set a price with him beforehand at the highest rate, the buyer may say to the seller: Give me the produce at this rate or give me back my money. Since he did not formally acquire the produce, if the price changed he may withdraw from the transaction.

[344] GEMARA: Rabbi Asi says that Rabbi Yoḥanan says: One may not set a price for the future delivery of produce at the current market rate because the market is not sufficiently stable. Rabbi Zeira said to Rabbi Asi: Does Rabbi Yoḥanan state this ruling even with regard to the rate of this large central market [dormus]? Rabbi Asi said to him: Rabbi Yoḥanan stated this ruling only with regard to the small-town markets, since their rates are not fixed, as smaller markets have greater sensitivity to fluctuations in price.

[345] The Gemara asks: And according to what we thought initially, that Rabbi Yoḥanan stated this ruling even with regard to this large central market, but then there is a difficulty with the mishna, which teaches: One may not set a price with a buyer for the future delivery of produce until the market rate is publicized. By inference, once the market rate is publicized, one may set a price. If Rabbi Yoḥanan’s ruling applies even to large central markets, how can you find these circumstances? The Gemara answers: The mishna may be speaking about wheat that comes from large warehouses and from ships, as their rate lasts longer, since this merchandise comes to market in very large quantities.

[346] § The Sages taught: One may not set a price with a buyer for the future delivery of produce until the market rate is publicized. Once the market rate is publicized, the seller may set a price, even if the produce is not yet in his possession. The reason for this is that even though this one, the seller, does not have any of the produce, that one, someone else, has it, and the seller could theoretically acquire the produce now at the price he set. If the new grain was selling at the rate of four se’a for a sela and the old grain was selling at three, one may not set the price according to the price of the new grain until the market rate is publicized both for the new and for the old grain. By the time payment is made, the new grain will not be entirely new and its price will be the same as that of the old grain.

[347] Similarly, if the produce sold by gleaners who gather wheat from various fields, the quality of which is low, is selling at the rate of four se’a of wheat for a sela and that of every other person is selling at the rate of three se’a of wheat for a sela, one may not set a price at the gleaners’ rate until the market rate is publicized both for wheat sold by a gleaner and for wheat sold by an ordinary seller.

[348] Rav Naḥman said: One may set a price for gleaners to deliver produce in the future at the gleaners’ rate. Rava said to Rav Naḥman: What is different about a gleaner, who you hold can immediately set his price at the gleaners’ rate? As, if he has no produce he can borrow it from another gleaner, and therefore it is viewed as though it were in his possession. A homeowner as well should be able to set a price at the gleaners’ rate, as, if he has no grain he can borrow from a gleaner. Rav Naḥman said to him: It is degrading for a homeowner to borrow from a gleaner. Consequently, there is a need to establish a market rate for ordinary sellers. And if you wish, say instead: One who gives money to a homeowner to buy his grain gives the money in return for quality produce, and he does not want the inferior produce the homeowner could borrow from gleaners.

[349] Rav Sheshet says that Rav Huna says: One may not borrow produce based on the market rate, meaning that one may not purchase produce on credit with an agreement to pay for it later at the future market price, even though there is grain sold at this price in another location. Rav Yosef bar Ḥama said to Rav Sheshet, and some say that it was Rav Yosei bar Abba who said to Rav Sheshet: And did Rav Huna say this? But didn't it occur that the Sages asked Rav Huna: With regard to those students of Torah who borrow food in the month of Tishrei and pay for it in Tevet at the rate in effect then, is this permitted or prohibited? Rav Huna said to them: There is wheat in the town called Hini and there is wheat in the town called Shili, and if the students want to they can buy wheat there and pay the lender immediately, and since they can pay at any time, it is permitted.

[350] The Gemara answers: Initially, Rav Huna thought that one may not borrow produce in this manner, but when he heard that Rabbi Shmuel bar Ḥiyya says that Rabbi Elazar says: One may borrow produce in this manner, he retracted his previously stated opinion and he also said that one may borrow produce in this manner.

[351] The Sages taught: With regard to one who transports a package of goods from one place, where he bought it inexpensively, to another place, where the price is higher, in order to sell it at a profit, and another found him on the way and said to him: Give me the package, and I will pay you in the manner that they pay you in that place to which you are going,

[352] then, if the package remains in the possession of the seller, i.e., the seller accepts upon himself responsibility for any accidental damage that occurs along the way, it is permitted, as the transaction is not a loan. But if it is in the possession of the buyer, meaning that the buyer accepts responsibility for accidental damage, then the transaction is prohibited, as it is considered a loan with interest.

[353] With regard to one who transports produce from one place to another place, if another finds him and says to him: Give the produce to me now and I will repay you with produce that I have in that place to which you are going, then, if he actually has produce in that place, it is permitted, but if not, it is prohibited. But donkey drivers who transport merchandise from one place to another may accept money and set prices in a place where goods are sold at expensive prices according to the rate in effect in another place, where goods are sold at inexpensive prices, and need not be concerned, as this practice is permitted.

[354] The Gemara asks: What is the reason this is permitted? Rav Pappa says: It is satisfactory to them to sell merchandise at a discounted rate, because by doing so the gates to the new market are opened for them, as in this way they begin to do business in this area and gain new customers. Rav Aḥa, son of Rav Ika, said: It is satisfactory to them because the prices are reduced for them in the places where they make their purchases. Since the sellers there hear that the donkey drivers will need to resell the merchandise at a lower price, the sellers give a discount to the donkey drivers. According to either opinion, the donkey drivers provide the additional produce to the customer not as interest on the loan but as a discount to promote their business.

[355] The Gemara asks: What is the difference between these two reasons to allow this practice? The Gemara answers: The difference between them concerns a merchant who is new in the area. According to the one who holds that the reason he may sell the produce is in order to open the market for him, it applies especially to a merchant in this situation. But according to the one who holds that the reason is that he can procure his merchandise inexpensively, the sellers will not believe him if he is new to his trade, and they will not sell it to him at a discount.

[356] The Gemara relates: In Sura, four se’a of wheat were going for a sela, and in the nearby town of Kafri they were going for six se’a for a sela. Rav gave money to donkey drivers to purchase wheat in Kafri and accepted upon himself responsibility for any accident that might happen on the way, rendering it permitted for him to set a price according to the rate in effect in Kafri, and he accepted five se’a of wheat for one sela from them. The Gemara challenges: Since he accepted responsibility for damage that might occur as a result of an accident, the produce was his at the time it was purchased, and therefore there was no loan. Consequently, he should have accepted six se’a for a sela. The Gemara explains: An important person is different, as he has to be more stringent with himself and more careful to avoid the appearance of interest.

[357] Rabbi Asi asked Rabbi Yoḥanan: What is the halakha about doing so with metal scraps [bigerutaot]? Is it permitted to make an agreement to purchase metal scraps at the low rate in effect elsewhere, just as it is permitted with wheat and other produce? Rabbi Yoḥanan said to him: Rabbi Yishmael, son of Rabbi Yosei, wanted to do so with linen garments and Rabbi Yehuda HaNasi did not allow him to do so. There are those who say a different version of this exchange: Rabbi Yehuda HaNasi wanted to do so with metal scraps, and Rabbi Yishmael, son of Rabbi Yosei, did not permit him to do so.

[358] With regard to one who wants to purchase the produce of an entire orchard, in advance of the harvest, at a cheaper price, Rav prohibits this practice and Shmuel permits it. The Gemara explains: Rav prohibits it because in the future the produce will be worth more, so it appears that the seller is paying interest to the buyer for waiting before receiving the produce, and that has the appearance of interest. And Shmuel permits it, as, since there can be spoilage in the produce of the orchard and the buyer took upon himself responsibility for any losses, it does not appear that the seller is paying interest to the buyer for waiting before receiving the produce, as the buyer may either gain or lose.

[359] Rav Shimi bar Ḥiyya said: Rav concedes to Shmuel that an arrangement like this would be permitted in a case where one arranges to purchase young oxen at a later date, as their loss is likely to be great. Since it is common for one to incur a discernible loss when raising oxen, as some may die, this arrangement is regarded as an investment.

[360] Shmuel said to those who purchase branches of grapevines and pay in advance for the vine shoots that will be harvested later: Since the risk in this transaction is small, it has the appearance of interest and therefore you should turn over a bit of the land yourselves, i.e., perform some labor in farming the orchard, so that you acquire some of the land itself for yourselves, and by doing this you become partners with the owner. And this action is necessary because if you do not do this it will be like a loan for you and it will be prohibited for you to accept the branches.

[361] Similarly, Rava said to those who guard fields [bagei] until the harvest is complete and receive their wages from the crops when the harvest is over: Go out and turn over some of the crops in the threshing floor, and thereby assist the owners in their work in order that the wages for your hire are not payable until that time. If you assist in the actual farming work, the halakhic period of your employment will continue until the processing of the grain is complete, and according to the halakha that the obligation to pay a person’s wage is incurred only at the end of the period for which he was hired, it is then that the owners make a reduction for the guards by giving them the crops at a reduced rate, and it is not payment of interest for delaying the wages that they should have been paid earlier. Consequently, such an arrangement is permitted.

362 The Rabbis said to Rava: The Master, meaning Rava, consumes interest. They explained: Everyone else who leases his field to a sharecropper receives four kor of grain as payment, and the owners accept this payment and remove the sharecropper from the field in the month of Nisan. But the Master waits until the month of Iyar and then takes six kor from them. Consequently, they accused Rava of accepting an additional payment for waiting an extra month to take back his field.

363 Rava said to them: On the contrary, you are the ones who are acting unlawfully, as in truth all of the land is liened to the sharecropper until he finishes working it and harvests all that he can from it. If you remove sharecroppers from the field in Nisan you cause them to lose a great deal, as they do not have enough time to harvest all the produce from the field. I wait for them until Iyyar, and in this way I enable them to profit a great deal. Consequently, I act in accordance with halakha and receive a suitable payment for leasing the field for the proper length of time, whereas you deprive the sharecroppers of what is due to them, even though you receive less direct remuneration.

364 The Gemara relates: A certain gentile mortgaged a house to Rav Mari bar Raḥel for a loan that Rav Mari had provided him. Afterward, the gentile sold the house to Rava. Rav Mari waited for twelve months of the year to pass, took the amount of money necessary to pay rent for the house and brought it to Rava, who was now the owner of the house. Rav Mari said to Rava: This fact that I did not bring the rental fee for the house to the Master until now is because an unspecified mortgage is in effect for a period of one year. If that gentile wanted to remove me from the house by paying back the loan, he could not remove me from it until now. Consequently, the house actually belonged to me for that year, and I was not required to pay rent. Now, since the gentile can remove me from the house by repaying the loan, the house belongs to you. Therefore, let the Master now take the rental fee for the house for the coming year.

365 Rava said to him: Had I known that this house was mortgaged to the Master, I would not have purchased it at all, as I would have given you the chance to purchase it first. Now, therefore, I will act toward you according to the law of the gentiles, as I assumed the rights previously held by the gentile. According to gentile law, as long as the borrower does not remove the lender by paying back the money, he also does not take a rental fee for the house, as there is no prohibition against a gentile paying or receiving interest. Therefore, I too will not take a rental fee for the house from you until I remove you by forcing the gentile to pay the money that is owed to you.

366 The Gemara relates: Rava of Barnish said to Rav Ashi: The Master sees the Sages who consume interest, as they give people money for wine in the month of Tishrei, and they select the wine later, in the month of Tevet. Had they taken the wine immediately upon payment, there is a chance that it would have spoiled. Now, in return for paying for the wine in advance, they receive the benefit of guaranteeing that the wine they receive will not be spoiled. Rava of Barnish understood that this benefit, received in exchange for advance payment, is a form of interest.

367 Rav Ashi said to him: They too gave the money at the outset for wine, but they did not give it for vinegar. That which was wine at the outset is still wine, and that which became vinegar was vinegar when they paid for it but they did not know it. It was at that time of selection that they merely selected the wine that they had paid for previously. Since they agreed to buy wine, not vinegar, the benefit of actually receiving wine does not constitute interest.

368 The Gemara relates: Ravina would give money in advance to the people of the fortress [akra] at the river Shanvata in order to buy wine to be supplied after the grape harvest, and when they supplied

the wine they would pour an extra jug [kufita] of wine for him as a gift, although there was no stipulation between them requiring this. Ravina came before Rav Ashi to ask whether this involved interest. Ravina said to him: Is it permitted to do this? Rav Ashi said to him: Yes, it is permitted, as they forgo payment for the extra wine to your benefit in order to maintain good relations with you. Since the additional wine is not provided as consideration for the advance payment, there is no problem of interest.

369 Ravina said to him: But the land is not theirs. The people of the fortress at Shanvata worked land belonging to others who abandoned their fields because they could not pay the real estate taxes. The people of the fortress paid the taxes and were therefore able to use the fields. Ravina was concerned that perhaps they did not own the grapes and were therefore unable to forgo payment for the additional amount as it did not belong to them. Rav Ashi said to him: The land is liened to the king as payment for the taxes [letaska], and the king says: Whoever pays the tax may consume the produce of the land. Consequently, the ones who pay the taxes have ownership of the wine by dint of the law of the kingdom.

370 The Gemara relates that Rav Pappa said to Rava: Let the Master see these Sages who pay money for the tax [akarga] on behalf of other people and afterward make them work more than is reasonable for the amount of money they paid. Rava said to him: Now, if I were dead I could not say the explanation of this matter to you, so it is good that you asked me while I am still alive, as I know that this is what Rav Sheshet said: The document [moharkayyhu] of servitude of these people lies in the treasury of the king, i.e., all of his subjects are considered his servants, and the king said: The one who does not pay the head tax shall serve the one who does pay the head tax, and consequently, by dint of the law of the kingdom they can have them work as much as they want.

371 The Gemara relates: Rav Se’oram, the brother of Rava, would forcefully seize people who were not acting properly and have them carry Rava’s sedan chair. Rava said to him: You acted correctly, as we learn: If you see a Jew who does not behave properly, from where is it derived that you are permitted to have him work as a slave? The verse states: “Of them you may take your slaves forever; and over your brothers” (Leviticus 25:46). It is derived from the conjunctive “and” linking the two clauses of the verse that there are circumstances where it is permitted to treat a fellow Jew as if he were a slave. One might have thought that this is the halakha even if a Jew acts properly. To counter this, the verse states in the continuation: “And over your brothers the children of Israel you shall not rule, one over another, with rigor.”

372 Rav Ḥama said: With regard to one who gave money to another to purchase wine for him, and the other, i.e., the agent, was negligent and did not purchase it for him, the agent must pay the one who gave him the money according to the going rate of wine in the port city of Zolshefat, where the main wine market was located, and he must purchase the wine according to the price in that market even if it is more expensive than the amount he was given initially.

373 Ameimar said: I said this halakha before Rav Zevid of Neharde’a, and when he heard it he said: When Rav Ḥama said this, he said that statement in a case where the buyer asked the agent to purchase wine without specification concerning exactly which wine he wanted. But if he said to the agent: Buy this specific wine for me, the agent who neglected to buy the wine is not obligated to buy it at a higher price later, as when he was sent to buy it initially, who says that the owner would have sold it to him? The one who gave the money to the agent was aware of the fact that the agent may not

be able to successfully purchase that specific wine. Consequently, the obligation of the agent is simply to return the money, and nothing may be added to that sum, due to the prohibition of interest.

374 Rav Ashi said: Even if he asked the agent to buy wine without specification, the agent is also not obligated to buy wine later for more than the amount he was given. What is the reason for this? The implicit obligation that the agent accepted upon himself, to pay the one who hired him with wine of a higher value than the amount of money he received, is a transaction with inconclusive consent [asmakhta], as any situation where one will have to pay more money than he received is similar to the payment of a fine, and the acceptance of an asmakhta does not effect acquisition, as his acceptance is assumed to be insincere.

375 The Gemara asks: And according to Rav Ashi, in what way is this case different from that which we learned in a mishna (104a) concerning a rental agreement for land, in which a sharecropper agreed to cultivate a field in return for a share of the produce and wrote: If I let the field lie fallow and do not cultivate it, I will pay with the best-quality produce? In that case, the sharecropper agreed to pay the amount he caused the owner to lose due to his lack of activity, and it was not ruled an asmakhta. The Gemara answers: There, the matter is in his power, as he can decide whether to work the field or not to work it.

376 By contrast, here, the matter is not in his power to determine whether or not to buy the wine, as perhaps the owner will not sell it to him.

377 § Rava said: In the case of these three people who gave money to one individual in order for him to purchase an item for them and he purchased the item for only one of them, he has actually purchased it for all of them. All three share ownership of that which was purchased, and the one for whom the item was purchased does not have any additional claim on the merchandise. And we said this ruling only when the agent did not wrap up and seal each person’s money separately but rather put all of the money in one bundle. But if he wrapped up and sealed each person’s money separately and spent the money of only one of them, he purchased the item only for the one for whom he purchased it, and he did not purchase the item for those for whom he did not purchase it.

378 Rav Pappi said in the name of Rava: In this case of labeling an item with a marker [situmta], which was commonly used to indicate that specific merchandise had been sold, even though the buyer had not yet paid and the item was still located in the seller’s warehouse, the labeling effects acquisition of the merchandise for the buyer. The Gemara asks: With regard to what halakha was this said? What is the significance of this acquisition? Rav Ḥaviva said: It means to actually effect acquisition, in other words, that the merchandise belongs to the buyer for all intents and purposes.

379 But the Rabbis said: It effects acquisition only concerning a case where one of the parties withdraws from the transaction and is required to accept upon himself the curse of: He Who exacted payment from the people of the generation of the flood, and from the people of the generation of the dispersion, i.e., that of the Tower of Babel, will in the future exact payment from whoever does not stand by his statement (see 44a). The court does not force the parties to complete the transaction but applies the curse to the one who withdraws for his lack of integrity.

380 The Gemara concludes: And the halakha is that a marker effects the acquisition of the item only in that one who withdraws from the transaction is required to accept upon himself the curse: He Who exacted payment. But in a place where the custom is that it actually effects the acquisition of the item, it actually effects acquisition of it, as the halakha recognizes the legitimacy of the local custom.

[381] § The mishna teaches that if the seller was first among the reapers, he may set a price with the buyer only when the produce he has is ready for delivery. Rav says: If only two actions needed to complete the labor to prepare the produce were lacking, he may set a price, as the produce is viewed as if it had already been prepared. But if three actions were lacking, he may not set a price, as the item is still not considered prepared, and the setting of a price in advance creates a concern of interest. And Shmuel says: If the actions needed to complete the labor are to be performed by human hands, then even if one hundred actions were lacking, he may set a price, but if the necessary actions must be accomplished by the hand of Heaven, then even if one action is lacking, he may not set a price.

[382] The Gemara challenges Rav's opinion. We learned in the mishna that he may set a price on a stack of grain. But there are still several actions that are lacking: Placing it in the sun to dry, and threshing, and winnowing. There are three actions that are lacking, and yet the mishna rules that he may set a price. The Gemara responds: The mishna is discussing a case where he already placed it in the sun and it dried. Consequently, there are only two actions that are lacking.

[383] The Gemara asks: And according to Shmuel, who says: If the actions remaining are to be accomplished by the hand of Heaven even if only one action is lacking he may not set a price, how does he explain the mishna? In the case of the mishna the produce is lacking winnowing, which is done by the hand of Heaven, since winnowing can be done only when there is wind. The Gemara answers: It is possible to winnow with sieves when the wind is not blowing. Although this is done only in exigent circumstances, since it is possible to perform the action entirely by human hands, it is permitted to set a price.

[384] The mishna teaches that one may set a price for a large basket of grapes. Based on this, the Gemara challenges the opinion of Rav: But there are still several actions that are lacking: Warming in a stack, bringing the grapes to the winepress, treading upon them, and drawing the wine out into the pit where it is stored. The Gemara answers: This can be explained as Rabbi Ḥiyya teaches, concerning a difficulty raised from the next clause of the mishna, that the mishna is not discussing setting a price on olives immediately after they were picked but rather for a stack [hakomer] of warmed olives, and here also, it is speaking about a price for a stack of warmed grapes.

[385] The Gemara challenges: But there are three actions that are lacking. The Gemara explains: The mishna is discussing a place where the local custom is that the one who purchases the grapes is the one who draws the wine out of the winepress. Consequently, there are only two actions remaining to complete the labor before the merchandise will be ready for purchase.

[386] The mishna teaches that one may set a price for a vat of olives. Based on this, the Gemara challenges the opinion of Rav: But there are still several actions that are lacking: Warming the olives in a stack, bringing the olives to the olive press, pressing them, and drawing the oil out into the pit where it is stored. The Gemara answers: Rabbi Ḥiyya teaches a baraita with a different version of the statement, which reads: For a stack of olives that has already been warmed. The Gemara challenges: But there are three actions that are lacking: Bringing the olives to the olive press, pressing them, and drawing the oil. The Gemara explains: The mishna is discussing a place where the local custom is that the one who purchases the olives is the one who draws the oil.

[387] The mishna teaches that one may set a price for the clumps of clay prepared for use by a potter. Based on this, the Gemara challenges the opinion of Rav: Why is this permitted? But there are still

several actions that are lacking: Rolling them out to the proper size, drying them, putting them into the kiln, burning them, and removing them from the kiln. The Gemara answers: The mishna is discussing a case where they were already rolled and dried. The Gemara challenges: But there are three actions that are lacking. The Gemara explains: The mishna is discussing a place where the local custom is that the one who purchases the clumps of clay is the one who removes them from the kiln.

388 The mishna teaches that one may set a price for plaster after he has sunk it in the kiln. Based on this, the Gemara challenges the opinion of Rav: Why is this permitted? But there are still several actions that are lacking: Burning it, and removing it from the kiln, and grinding it. The Gemara answers: The mishna is discussing a place where the local custom is that the one who purchases the plaster is the one who grinds it. The Gemara asks: And according to the opinion of Shmuel, who says that if all actions that remain are to be done by human hands even if one hundred actions are lacking one may set a price, why do I need the statement that this applies only after he has sunk it in the kiln? The Gemara answers: Say: When it is fit to be sunk in the kiln.

389 § The mishna teaches that one may set a price for the clumps of clay prepared for use by a potter. The Sages taught: One may not set a price for the clumps of clay prepared for use by a potter until they are fully formed; this is the statement of Rabbi Meir. Rabbi Yosei says: In what case is this statement said? It is said with regard to white earth from which superior clay pottery is made, but with regard to the simple and inexpensive black earth, from which ordinary clay pottery is made, such as that of Kefar Ḥananya and its environs, or that of Kefar Shiḥin and its environs, one may set a price immediately, since even if this one does not have any in his possession, that one does have it, as black earth is a common commodity.

390 The Gemara relates: Ameimar gave money to a seller of clumps of clay only from the time that the clay was brought into his house. In accordance with whose opinion did he act? If he acted in accordance with the opinion of Rabbi Meir, doesn't Rabbi Meir say that one may not set a price until they are fully formed, but there is no need to wait until the merchandise is delivered to his house? And if he acted in accordance with the opinion of Rabbi Yosei, doesn't Rabbi Yosei say that one may set a price at any time, as even though this one does not have any, that one does have it? The Gemara answers: Actually, he ruled in accordance with the opinion of Rabbi Yosei, but in Ameimar's locale earth suitable for making clay was scarce, so much so that even black clay was not common. Consequently, if the clay was brought into his house, he relied on this and gave the seller the money, but if not, he did not rely on it.

391 § The mishna teaches that one may set a price with him for manure on any of the days of the year, and that Rabbi Yosei permitted this only if he already had a pile of manure in his dunghill, whereas the Rabbis permitted it in all cases. The Gemara asks: The statement of the Rabbis is identical to the statement of the first tanna, so what is the reason to repeat it? Rava said:

392 The practical difference between them is with regard to the rainy season. According to the first tanna one may set a price for the future delivery of manure at any point in the year, including the rainy season, but according to the Rabbis one may not arrange for the delivery during the rainy season, because manure is not commonly available then.

393 § The mishna teaches: One may set a price at the highest rate, meaning he may set a price for the future delivery of produce and stipulate that if the market rate falls below the agreed-upon price, he will purchase the product according to the lowest price in effect in the market at any point during the

year, which is the price that will provide the highest amount of merchandise for the amount he agreed to pay.

394 The Gemara relates: There was a certain man who gave money to sellers to buy jewelry for his betrothed's dowry [linduneya] on behalf of his father-in-law, as his intended father-in-law made him an agent to buy the jewelry for part of the dowry. The betrothed man stipulated with the sellers that they would provide the jewelry in time for the wedding. Ultimately, the jewelry for the dowry became less expensive, as the price fell. The betrothed man wanted to retract his commitment to buy the jewelry at the higher price. The parties came before Rav Pappa for a ruling. Rav Pappa said to the betrothed man: If you set a price with the seller to buy the jewelry at the highest rate, i.e., the largest amount of jewelry for the price you are willing to pay, then take the jewelry at the present price. But if not, take it at the price that you set initially.

395 The Sages said to Rav Pappa: And if he did not set a price at the highest rate, must he take the merchandise at the price he set initially? This is a case where he paid money, and giving money alone does not effect acquisition. Rav Pappa said to them: I did not mean that it was an actual acquisition; rather, I also agree that giving money does not effect acquisition. What I said was with regard to accepting upon himself the curse: He Who exacted payment. If the betrothed man set a price at the highest rate the buyer is in the right, and if so, the seller is the one who retracted, and therefore the seller accepts upon himself the curse: He Who exacted payment. But if the betrothed man did not set a price at the highest rate, then the betrothed man, i.e., the buyer, is the one who retracted, and therefore the buyer accepts upon himself the curse: He Who exacted payment.

396 Ravina said to Rav Pappa: From where do you know that the ruling of the mishna, i.e., that if he did not set a price according to the highest rate he must acquire the merchandise at the price he set initially, is in accordance with the opinion of the Rabbis who disagree with Rabbi Shimon and who say that giving money does not effect acquisition? And even so, they hold that if he set a price at the highest rate, he takes it at the current price, and if he did not set a price at the highest rate, he takes it at the price he set initially.

397 Perhaps the ruling of the mishna is in accordance with the opinion of Rabbi Shimon, who says that giving money effects acquisition, and therefore if he set a price at the highest rate, he takes it at the current price, and if he did not set a price at the highest rate, he takes it at the price he set initially, since giving money effects acquisition. But according to the opinion of the Rabbis, whether he set a price at the highest rate or did not set a price at the highest rate, he takes it at the current price, because a person's intention is always to acquire merchandise at the least expensive price.

398 Rav Pappa said to him: Say that Rabbi Shimon said his ruling that giving money effects acquisition in a case where there was one price, i.e., the price did not change in the meantime. Did he say his ruling where there were two prices? Certainly Rabbi Shimon will concede that the buyer can withdraw from the sale if the market price changes. As, if you do not say so, then the curse: He Who exacted payment, will not apply to the buyer under any circumstances according to the opinion of Rabbi Shimon.

399 And if you would say: Indeed, the curse: He Who exacted payment, never applies to a buyer according to the opinion of Rabbi Shimon, isn't it taught in a baraita: Rabbi Shimon says: Even though the Sages said that when one party takes possession of a garment, the other party acquires a gold dinar, but when one party takes possession of a gold dinar, the other party does not acquire a

garment, in any case, that is what the halakha would be. But the Sages said with regard to one who withdraws from a transaction where one party performed an act of acquisition by pulling the gold dinar into his possession: He Who exacted payment from the people of the generation of the flood, and from the people of the generation of the dispersion, and from the inhabitants of Sodom and Gomorrah, and from the Egyptians in the Red Sea, will in the future exact payment from whoever does not stand by his statement.

400 Rav Pappa clarifies: What is the meaning of: In any case? Does it not mean that there is no difference whether it is the buyer and there is no difference whether it is the seller who withdraws from the sale, that either way he accepts upon himself the curse: He Who exacted payment? Rather, it must be that when Rabbi Shimon is saying that giving money effects acquisition, he is referring to a case where there was one price, but in a case where there were two prices he did not say it.

401 Rav Aḥa, son of Rava, said to Rav Ashi: But let Rav Pappa derive this halakha in the case of the dowry employing a more straightforward reasoning: The father-in-law initially made the betrothed man an agent, and since he was an agent, the father-in-law could say to him: I sent you to act for my benefit, not to my detriment. Purchasing the jewels at a more expensive price is to the detriment of the father-in-law, and therefore the agency and the sale itself are nullified. Rav Ashi said to him: It is speaking here about a case where the father-in-law did not actually make him an agent. Rather, the betrothed man was a merchant who buys and sells merchandise. The father-in-law understands that he engages in commerce and that he will not always profit from his trading.

402 MISHNA: A person may lend wheat to his sharecroppers in exchange for wheat, for the purpose of seeding, meaning that he may lend them a quantity of wheat with which to seed the field, and at harvest time the sharecropper will add the amount of grain that he borrowed to the landowner’s portion of the yield. But he may not lend wheat for the sharecroppers to eat and be paid back with an equivalent quantity because this creates a concern about interest, as the price of wheat may rise. As Rabban Gamliel would lend wheat to his sharecroppers in exchange for wheat, for purposes of seeding, and if he lent it at a high price and the price then fell, or if he lent it at an inexpensive price and the price subsequently rose, in all cases he would take it back from them at the inexpensive price. But this was not because this is the halakha; rather, he wanted to be stringent with himself.

403 GEMARA: The Sages taught in a baraita: A person may lend wheat to his sharecroppers in exchange for wheat, for the purpose of seeding. In what case is this statement said? It is said when the sharecropper has not yet gone down into the field to begin to work, but if he had already gone down into the field to begin to work, lending him wheat under these terms is prohibited. The Gemara asks: What is different about the tanna of our mishna, who does not differentiate between whether the sharecropper went down or did not go down, and what is different about the tanna of the baraita, who does differentiate between whether he went down or he did not go down?

404 Rava said: Rabbi Idi explained the matter to me: In the locale of the tanna of our mishna, the local custom was that the sharecropper would provide the seeds, and therefore, whether he went down or did not go down, as long as the sharecropper has not put the seeds into the field the landowner can remove him from the field. Consequently, in a case where the landowner gives the sharecropper the seeds, he sets the terms of the sharecropping tenancy, and when the sharecropper goes down into the field, he goes down into the field for less than this, under the agreement that he will reduce his share of the crop in order to return the seed to the landowner.

405 By contrast, in the locale of the tanna of the baraita, the landowner is the one who would provide the seeds, so if he has not yet gone down into the field the landowner can remove him, and therefore, when he goes down into the field, he goes down for less than this. But if he went down, and therefore the landowner can no longer remove him, lending him wheat under these terms is prohibited, because he took upon himself in advance to work the field without receiving seeds from the owner of the field. Consequently, these seeds that he then receives are like a loan and the prohibition of interest applies.

406 § The Sages taught: A person may say to another:

407 Lend me a kor of wheat, and the lender may set a price for him, stating that the borrower must repay the wheat in the future according to the value of wheat at the time of the loan. If, by the time the borrower must repay the loan, the wheat depreciates in value, he gives the lender a quantity of wheat equivalent to what he borrowed, and if it appreciates, he gives the value of the wheat he borrowed as per the market rate when he borrowed it, as agreed, but no more.

408 The Gemara questions this ruling: If the price of wheat depreciates, why should it be permitted for the borrower to pay him with wheat worth less than the value of the amount he borrowed? But he fixed a price at the time of the loan, and therefore the borrower owes him this amount of money. Rav Sheshet said: This is what the tanna is saying: If the lender did not set a price but merely lent him wheat, and it depreciates in value, the lender takes his wheat, as they did not agree that the borrower must repay the wheat according to its value at the time that the loan was taken out. But if it appreciates in value, the borrower gives the value of the wheat he borrowed as per the market rate when he borrowed it, in order to avoid the payment of interest.

409 MISHNA: A person may not say to another: Lend me a kor of wheat and I will give it back to you at the time the wheat is brought to the granary, as the wheat may increase in value, which would mean that when he gives him back a kor of wheat at the time the wheat is brought to the granary it is worth more than the value of the loan, and he therefore will have paid interest. But he may say to him: Lend me a kor of wheat for a short period of time, e.g., until my son comes or until I find the key, as there is no concern about a change in price during such a short interval of time. And Hillel prohibits the practice even in this case. And Hillel would similarly say: A woman may not lend a loaf of bread to another unless she establishes its monetary value, lest the wheat appreciate in value before she returns it, and they will therefore have come to transgress the prohibition of interest.

410 GEMARA: Rav Huna said: One who has a se’a of an item in his house may borrow a se’a of that item. Since he has available a se’a that he could give back right away, he may borrow one se’a, and similarly, if he has two se’a available he may borrow two se’a. Rabbi Yitzḥak says: Even if he has only one se’a, he may borrow several kor in reliance upon it. Since he can repay part of the loan immediately, and as the market value has yet to change there is only a concern about future interest, this concern is mitigated when it does not apply to the entire loan.

411 The Gemara comments: Rabbi Ḥiyya teaches a baraita in support of Rabbi Yitzḥak’s ruling: If one does not have a drop of wine or if he does not have a drop of oil, he may not borrow wine or oil. Consequently, by inference it can be derived: If he does have a drop of wine or oil, he may borrow many drops in reliance upon it, as the tanna is certainly not referring to a case where he borrows just a few meager drops.

412 § The mishna teaches: And Hillel prohibits this practice. Rav Naḥman says that Shmuel says: The halakha is in accordance with the statement of Hillel. The Gemara comments: But the halakha is not, in fact, in accordance with the ruling of Shmuel.

413 § The mishna further teaches: And Hillel would similarly say: A woman may not lend even a loaf of bread due to concern that she will violate the prohibition of interest. Rav Yehuda says that Shmuel says: This is the statement of Hillel, but the Rabbis say that one may borrow various types of foods without specification and repay them without specification. If neighbors are not particular with one another about these items, there is no concern about interest, in contrast to Hillel's opinon.

414 And Rav Yehuda says that Shmuel says: With regard to the members of a group of people that eat together who are particular with each other and insist that each pay for precisely what he ate, if they dine together on Shabbat, they transgress a prohibition with regard to the strictures of measure, and with regard to the strictures of weight, and with regard to the strictures of counting, all of which are calculations that are forbidden on Shabbat. And they transgress a prohibition with regard to lending and repaying on a Festival, and according to the statement of Hillel, they also transgress the prohibition with regard to interest.

415 And Rav Yehuda says that Shmuel says: It is permitted for Torah scholars to borrow from one another with interest. The Gemara explains: What is the reason for this? It is because they are fully aware that interest is prohibited, and therefore they do not intend the loan to be a formal business transaction. They willingly forgo the additional payments to each other at the outset, and the extra payment is a gift that they give one another. The Gemara relates: Shmuel said to Avuh bar Ihi: Lend me one hundred peppers in exchange for 120 peppers that I will give you at a later date. And you should know that this matter is fitting and appropriate, as I intend that the additional twenty peppers be a gift.

416 Similarly, Rav Yehuda says that Rav says: It is permitted for a person to lend to his sons and the members of his household with interest, in order to have them taste the taste of interest so that they will understand how interest increases and how hard it is to repay it, which will discourage them from ever borrowing with interest again. The Gemara comments: But this is not correct, because the members of his household may become corrupted by doing so and act similarly with others in cases when there is no justification for such behavior.

417 MISHNA: A person may say to another: Weed the wild growths from my field with me now, and I will weed your field with you at a later stage, or: Till my field with me today and I will till with you on a different day. But he may not say to him: Weed with me today and I will till with you a different day, or: Till with me today and I will weed with you, as due to the different nature of the tasks it is possible that one of them will have to work harder than the other did, which is a type of interest, since he repaid him with additional labor.

418 All the dry days during the summer, when it does not rain, are viewed as one period, meaning that if they each agreed to work one day, the dry days are viewed as though they were all exactly equal in length, despite the slight differences between them. Similarly, all the rainy days are treated as one period. But he may not say to him: Plow with me in the dry season and I will plow with you in the rainy season.

419 Rabban Gamliel says: There is a case of pre-paid interest, and there is also a case of interest paid later, both of which are prohibited. How so? If he had hopes of borrowing money from him in the

future, and he sends him money or a gift and says: I am sending you this gift in order that you will lend to me, this is pre-paid interest. Similarly, if he borrowed money from him and subsequently returned his money, and he later sends a gift to him and says: I am sending you this gift in order to repay you for your money, which was idle with me, preventing you from earning a profit from it, this is interest paid later.

420 Rabbi Shimon says: Not only is there interest consisting of payment of money or items, but there is also verbal interest. For example, the borrower may not say to the lender: You should know that so-and-so has come from such and such a place, when he is aware that this information is of significance to his creditor. Since his intention is to provide a benefit to the lender, he has effectively paid him an extra sum for the money he lent him, which constitutes interest.

421 And these people violate a prohibition of interest: The lender, and the borrower, and the guarantor, and the witnesses. And the Rabbis say: Also the scribe who writes the promissory note violates this prohibition. These parties to the transaction violate different prohibtions. Some are in violation of: “You shall not give him your money with interest” (Leviticus 25:37), and of: “Do not take from him interest or increase” (Leviticus 25:36), and of: “Do not be to him as a creditor” (Exodus 22:24), and of “Do not place interest upon him” (Exodus 22:24), and of: “And you shall not place a stumbling block before the blind, and you shall fear your God; I am the Lord” (Leviticus 19:14).

422 GEMARA: It is taught in a baraita that Rabbi Shimon ben Yoḥai says: From where is it derived with regard to one who is owed one hundred dinars by another, and the borrower is not accustomed to greeting that lender, that it is prohibited to start greeting him after being granted the loan? The verse states: “Interest of any matter [davar] that is lent with interest” (Deuteronomy 23:20), which can also be read as indicating that even speech [dibbur] can be prohibited as interest.

423 § The mishna teaches: And these people violate the prohibition of interest. Abaye says: The lender violates all of them, meaning all of the prohibitions listed in the mishna. The borrower violates the prohibition of: “You shall not lend to your brother with interest” (Deuteronomy 23:20), as he enables his brother to lend with interest. And they also violate the prohibition: “You may lend to a gentile with interest, but to your brother you shall not lend with interest” (Deuteronomy 23:21), as well as: “And you shall not place a stumbling block before the blind” (Leviticus 19:14). The guarantor and the witness violate only: “Do not place interest upon him” (Exodus 22:24).

424 It is taught in a baraita that Rabbi Shimon says: Those who lend with interest lose more than they gain, as they will eventually be punished by God. Moreover, a loan of this kind desecrates the name of Heaven, as they cause it to seem that Moses our teacher is a scholar and his Torah is true. This is a euphemism; Rabbi Shimon means that their actions make a mockery of Moses and his Torah. And this is because they say: Had Moses our teacher known that there was a profit involved in the matter, he would not have written it as a prohibition. Not only do they violate a mitzva but they also belittle the Torah.

425 § The Gemara cites further statements with regard to loans in general. When Rav Dimi came from Eretz Yisrael, he said: From where is it derived that with regard to one who is owed one hundred dinars by another and knows that the borrower does not have the funds to repay him, that it is prohibited for him to pass before the borrower, so as not to embarrass the borrower and cause him

discomfort? The verse states: “Do not be to him as a creditor” (Exodus 22:24). Even if he does not claim the debt from the borrower, his presence reminds the latter of the debt, which distresses him.

426 Rabbi Ami and Rabbi Asi both say that if one upsets another in this way, it is as though he sentences him to two types of punishments, as it is stated: “You have caused men to ride over our heads; we went through fire and through water” (Psalms 66:12). As the one in control, a creditor is regarded as though he had brought the debtor through fire and water.

427 § Rav Yehuda says that Rav says: Whoever has money and lends it not in the presence of witnesses violates the prohibition of: “And you shall not place a stumbling block before the blind” (Leviticus 19:14), as this tempts the borrower not to repay his debt. And Reish Lakish says: He brings a curse upon himself, as it is stated: “Let the lying lips be dumb, which speak arrogantly against the righteous, with pride and contempt” (Psalms 31:19), as when the lender comes to claim his money without any proof, people will think he is falsely accusing the borrower, and they will end up cursing him.

428 The Gemara cites a related incident: The Sages said to Rav Ashi: Ravina fulfills all of the directives that the Sages say. Seeking to test him, Rav Ashi sent a messenger to him close to sunset on the eve of Shabbat, at the busiest time of the week, with the following request: Let the Master send me ten dinars as a loan, as I have happened upon a small piece of land for an acquisition and I need the money. Ravina sent a message to him: Let the Master bring witnesses and we will write a written document for this loan. Rav Ashi sent a message to him: Even I, as well? Do you suspect even me of shirking payment? Ravina sent a message to him: All the more so it is necessary to document a loan to the Master, who is occupied with his studies and therefore very likely to forget, and I will thereby bring a curse upon myself.

429 The Sages taught in a baraita: There are three who cry out and are not answered, as they are responsible for their own troubles. And they are: One who has money and lends it not in the presence of witnesses, and one who acquires a master for himself, and one whose wife rules over him.

430 The Gemara clarifies: One who acquires a master for himself, what is it? There are those who say that it is referring to one who attributes his property to a gentile. He falsely claims that his possessions belong to a gentile in order to evade his obligations, thereby inviting the gentile to take advantage of this declaration. And there are those who say that it is referring to one who writes a document bequeathing his property as a gift to his children in his lifetime, as he becomes financially dependent on them. And there are those who say that it is referring to one who has bad fortune in this town but does not go to a different town. He is consequently responsible for his own misfortunes.

Chapter 6

1 MISHNA: With regard to one who hires artisans or laborers, and they deceived one another, they have nothing but a grievance against one another, and they have no financial claim against the deceptive party. If one hired a donkey driver or a potter to bring posts [piryafarin] for a canopy or flutes to play in honor of a bride or the dead, or if he hired laborers to bring up his flax from the retting tub, i.e., the container of water in which flax is placed in the first stage of the manufacture of linen, and likewise any matter that involves financial loss if not performed on time and the laborers

reneged, if this occurred in a place where there is no other person to perform the task, he may hire replacements for a large fee at the expense of the first workers, or deceive them to get them to return to work.

[2] The mishna states a related halakha: With regard to one who hires artisans or laborers to perform work and they reneged on the agreement midway through the work, they are at a disadvantage. They must ensure that the employer does not suffer a loss.

[3] Conversely, if the employer reneges, he is at a disadvantage. These two rulings are in accordance with the principle that whoever changes the terms accepted by both parties is at a disadvantage, and whoever reneges on an agreement is at a disadvantage.

[4] GEMARA: The Gemara starts by analyzing the phrase: And they deceived one another. The Gemara comments: The tanna does not teach: They reneged on the agreement with one another, which would indicate that either the employer or the laborers changed their mind. Rather, it states that they deceived one another, which evidently means that the laborers deceived one another. The Gemara therefore inquires: What are the circumstances? The Gemara explains: This is referring to a case where, for example, the employer said to one of the laborers: Go and hire laborers for me, and that laborer went and deceived those other laborers.

[5] The Gemara again asks: What are the circumstances of this deception? If the employer said to him: Hire for me laborers at four dinars, and he went and told them that they are hired for three dinars, what is the relevance of this grievance? After all, they knew and accepted the conditions of their hire. What grounds for complaint do they have? If the employer said to him to hire laborers for three dinars, and the middleman went and told them it was for four, what are the circumstances? If he told them at the time: The monetary value of your services, i.e., your wage, is incumbent upon me, let that middleman give them the difference from his own pocket.

[6] This is as it is taught in a baraita: With regard to one who hires a laborer to perform work in his own field, and the employer inadvertently showed the laborer a field belonging to another in which he should work, the employer must give the laborer his full wages; and in addition, the employer goes back and takes from the owner of the field in which he worked the value of the benefit that owner received from the laborer. The employer is entitled to claim from the owner of the field the profit that owner gained from the work, but not the entire wages of the laborer. This indicates that one who says: Your wage is incumbent upon me, must pay the specified sum.

[7] The Gemara explains: No, it is necessary to state this halakha where the middleman said to them: The obligation to pay your wages is incumbent upon the employer, and it subsequently became apparent that the employer was not willing to pay that much. In this case the laborers have a grievance only against the laborer who hired them.

[8] The Gemara challenges: But let us see how much laborers are hired for in that place, and the employer should pay them in accordance with the accepted custom. The Gemara answers: No, it is necessary in a place where there are those who hire for four dinars and there are others who hire for three. The reason for their grievance is that the laborers can say to the middleman: Had you not told us that you were hiring us for four dinars, we would have made an effort and found another employer, and we would have hired ourselves out for four dinars. Consequently, you caused us a loss.

[9] If you wish, say that the mishna is referring even to a place where there is a fixed wage for laborers. But here we are dealing with a homeowner, i.e., one usually not accustomed to labor, who was hired for his services. In order to supplement their earnings, such people will occasionally work for others as well. The reason for their grievance is that these laborers who own fields say to the middleman: Had you not told us that we are hired for four, it would have been too demeaning for us to be hired, as it is not worthwhile to work in the field of another for so little when we have our own plots of land. This is the cause of their grievance.

[10] If you wish, say that actually, we are dealing with regular laborers, not a homeowner, and the reason for their grievance is that they say to the middleman: Since you spoke to us of four, we made an effort to do higher-quality work for you. The Gemara challenges: And let us see their work. If it is evident that they performed the task more effectively, they deserve to be paid more money. The Gemara responds: This is referring to tilling the land, where the quality of the work is not immediately apparent. The Gemara asks: With regard to tilling as well, doesn't the employer know what they have done, as he can examine the earth they tilled? The Gemara answers: The laborers dug a ditch that is now filled with water, and therefore the employer does not know exactly what they have accomplished.

[11] If you wish, say that actually, we are dealing with an employer who said to the middleman: Hire laborers for four, and he went and told them that they were hired for three. And as for that which you said: Why should they have a grievance against him, as they knew and accepted these terms? Although they agreed to those terms, they still have a grievance, as they can say to the one who came to terms with them: Don't you have respect for the verse: "Do not withhold good from him to whom it is due, when it is in the power of your hand to do it" (Proverbs 3:27)?

[12] § After analyzing the circumstances of the case in the mishna, the Gemara observes: It is obvious that if the employer said to someone that he should hire laborers for three dinars, and that person went and said to them that they were hired for four, and they said to him: We agree to be paid as the employer says, in that case it is clear that their minds are on any additional sum the employer might have offered, and they certainly did not intend to accept less than the one with whom they spoke proposed.

[13] But if the employer said he would hire them for four dinars, and the middleman went and told them that the offer was for three, and they said to him: We agree to be paid as the employer said, what is the halakha? Is it correct to say that the laborers rely on his statement, as they are effectively saying to him: We trust you that the employer said that which you reported in his name? Or perhaps they rely on the employer's statement, and therefore they are entitled to the higher wages specified by the employer?

[14] The Gemara suggests: Come and hear a resolution of this dilemma from a halakha concerning a bill of divorce: A woman said to her agent: Bring my bill of divorce for me. Knowing her husband was writing a bill of divorce, she asked the agent to collect the document and transmit it to her. According to the terms of his agency, the wife is divorced only when the document reaches her possession, as he was not appointed as an agent to receive the bill of divorce on her behalf.

[15] But the agent went and told the husband: Your wife said to me: Receive my bill of divorce for me. This statement indicates that the wife had appointed him to receive the bill of divorce in her stead, as an agent of receipt, which would mean that she is divorced as soon as the agent is given the

document. And the husband said: Take it in the manner in which my wife said. With regard to this case, Rav Naḥman says that Rabba bar Avuh says that Rav says: Even when the bill of divorce reaches her possession, she is not divorced.

[16] One can learn from this that the husband relies on the agent's statement. Since the husband was under the mistaken impression that he was interacting with an agent of receipt, he did not instruct him to deliver the document to his wife, and therefore the bill of divorce was not transmitted in the proper manner, which is why she is not divorced at all. As, if it enters your mind that the husband relies on her statement, she should at least be divorced when the bill of divorce reaches her possession, in accordance with the terms of an agent for delivery. This shows that the statement of an agent is accepted as a faithful representation of the wishes of the one who appointed him. Rav Ashi said:

[17] How can these cases be compared? Granted, if the opposite was stated, i.e., in a case where the woman said: Receive my bill of divorce for me, and the agent said to the husband: Your wife said: Bring me my bill of divorce, and the husband said: Here you are, as she said; and Rav Naḥman says that Rabba bar Avuh says that Rav says: From when the bill of divorce reaches the agent's possession, she is divorced, it would be understandable. Apparently, the husband relies upon her statement that the agent is an agent of receipt.

[18] Alternatively, had Rav Naḥman ruled: From when the bill of divorce reaches her possession, she is divorced, one could conclude that evidently, the husband relies on the agent's statement, and based on that statement, the agent is designated as an agent for delivery. But there, in the case cited, where Rav Naḥman rules that she is not divorced, it is not because the husband relies on one statement or the other. Rather, it is due to the fact that by means of his statement the agent negates his agency entirely, as he said to the husband: I am an agent for receipt, meaning: I am not to be an agent for delivery. He is essentially saying that he is not prepared to go to the trouble of delivering the bill of divorce to her. Therefore, even if he does ultimately deliver the bill of divorce to her, he is an agent neither for the woman nor for her husband. No conclusion can be drawn with regard to the question of which statement the husband relies upon.

[19] § The Gemara had assumed that the term deceived used in the mishna must be referring to an inaccuracy stated by the middleman in his discussion with the laborers. The Gemara now offers an alternative explanation. If you wish, say that when the mishna teaches: They deceived one another, it means that one of the parties reneged on the agreement, as this tanna also calls a circumstance described by the term reneged, meaning that either the employer or the laborers reneged on their agreement, by the term deceived. As it is taught in a baraita in a similar manner: With regard to one who hires artisans or laborers, and they deceived the employer, or the employer deceived them, they have nothing but a grievance against one another, and no monetary claim.

[20] The baraita continues: In what case is this statement said? When they did not go to the workplace, i.e., the employer reneged immediately. But if donkey drivers went and could not find any produce to carry, or laborers went off to work and found that the field was too moist for tilling, the employer must give them their full wages to which they are entitled. But he does not give them the entire stipulated amount, as a donkey driver who comes back loaded cannot be compared to one who comes back empty, nor can a laborer who performs work be compared to one who sits idle. The employer

deducts a sum from the laborers’ wages, paying them the amount they are willing to receive given that they do not actually have to perform the work.

[21] In what case is this statement, that if they reneged they have only a grievance, said? When they had not started the work at all. But if they had started the work, the court appraises for them that which they have done, for which they receive some form of compensation. How so? If they received standing grain to reap for a contractual agreement of two sela for the entire field, and they reaped half of it and left half of it, or if they took a garment to weave at two sela, and they weaved half of it and left half of it, in these cases the court appraises for them that which they have done.

[22] The baraita details this appraisal: If the current wage for the part of the task they had done was now worth six dinars, a sela and a half, as the price for this assignment increased, either he gives them a sela, as originally agreed upon, since they do not forfeit their stipulated wages, or they finish their work and take two sela. And if the current wage for the part of the task they had done was worth a sela, he gives them a sela. This statement will be explained by the Gemara.

[23] Rabbi Dosa says: The court appraises for them that which must still be done. If the current wage for the part of the task they had not done was worth six dinars, i.e., he can only find laborers who will complete it for six dinars, which is equivalent to one and a half sela, either he gives the first laborers a shekel, which is equivalent to half a sela, or they finish their work and take two sela. And if the current wage for the part of the task they had not done was worth a sela, he gives them a sela.

[24] The baraita continues: In what case is this statement said, i.e., in what circumstance are the laborers paid for the amount they performed and the employer has only a grievance against them? It is said with regard to a matter that does not involve financial loss due to the work stoppage, but with regard to a matter that involves financial loss due to the work stoppage, the employer may hire replacement laborers for a high price at the expense of the first laborers or deceive the first laborers. How does he deceive them? For example, he can say to them: I fixed a sela as wages for you; come and take two. And up to what amount may he hire at their expense? Even up to forty or fifty dinars. He can pay other laborers far more than the first laborers’ wages to ensure that the work is completed.

[25] In what case is this statement said, i.e., in what circumstance may the employer deceive them to such an extent in order to ensure that the work is completed? When there are no other laborers there, in that place, to hire. Since the employer will suffer a heavy loss, he may resort to one of these methods. But if there are laborers there to hire, and the laborers who reneged said to the employer: Go and hire from these, the employer has nothing but a grievance against them.

[26] A tanna taught that baraita before Rav: The employer must give them their full wages. Rav said to him: My uncle [ḥavivi], Rabbi Ḥiyya, said: If I were ruling on this case, I would give them only the wages of an idle laborer, but no more, and yet you said that he gives them their full wages? The Gemara asks: But the baraita teaches concerning this very matter: A donkey driver who comes back loaded cannot be compared to one who comes back empty, nor can a laborer who performs work be compared to one who sits idle. Evidently, even the tanna of the baraita agrees that they do not receive their full wages. The Gemara answers: The tanna teaching the baraita before Rav did not conclude it, and he was unaware of this limitation, which is why he commented that they do not deserve their entire wages.

[27] There are those who say that the tanna indeed concluded it before him, and this is what Rav is saying: My uncle said: If I were ruling on this case I would not give them anything, and yet you said that he gives them the wages of an idle laborer? The Gemara questions this version: But this is difficult. How can one account for the difference between the ruling of the baraita and that of Rav's uncle, Rabbi Ḥiyya?

[28] The Gemara responds: It is not difficult, as this case, where Rabbi Ḥiyya would rule that the laborers are not paid at all, is referring to one who surveyed his land the night before, observed that it was fit to be tilled, and hired laborers on the basis of this examination. It is their misfortune that something occurred in the meantime to prevent them from carrying out the task. Conversely, that case, where the baraita rules that they are given some payment, is referring to a landowner who did not survey his land the night before. Since he failed to check his own field, he must bear the responsibility.

[29] This is like that which Rava said: With regard to one who hires laborers to till, and rain fell and filled his land with water, preventing the laborers from performing the work, if he surveyed his land the night before and did all he could,

[30] this is the laborers' loss, as it is a consequence of their misfortune. But if he did not survey his land the night before, it is the employer's loss, and he gives them the wages of an idle laborer.

[31] And Rava further said: With regard to this one who hires laborers to draw water from a river or a trench to irrigate his field, and rain fell, so that he no longer needs laborers, this is the laborers' loss. The employer does not need to pay them, as he could not have known ahead of time that this would happen. But if the river comes up and irrigates the field, this is the employer's loss, as he should have taken this possibility into consideration. And therefore he gives them the wages of an idle laborer.

[32] And Rava says: With regard to this one who hires laborers to draw water from a river or a trench to irrigate his field, and the flow of the part of the river used to irrigate the field stopped midday, the halakha depends on the circumstance. If it is not prone to stopping, this is the laborers' loss, a consequence of their misfortune. If it is prone to stopping, then one acts in accordance with this consideration: If the workers are residents of that city and know that this might happen, it is the laborers' loss; if the laborers are not residents of that city and are not aware that this is a likely occurrence, it is the employer's loss.

[33] And Rava says: With regard to this one who hires laborers to perform a specific task and the task is completed by midday, if he has another task that is easier than the first one, he may give it to them. Alternatively, if he has other work that is similar to the first one in difficulty, he may assign it to them. But if he has other work that is more difficult than it, he may not assign it to them, and he gives them their full wages.

[34] The Gemara asks: Why must he pay them their full wages? Let him pay them for the additional time at most as an idle laborer. The Gemara answers: When Rava said his ruling in this case, he was referring to workers [be'akhlushei] of Meḥoza, who become weak if they do not work. These laborers were accustomed to steady, strenuous work, and therefore sitting idle was difficult, not enjoyable, for them.

[35] § The Master said in the baraita: The court appraises for them that which they have done. How so? If the current wage for the part of the task they have done was now worth six dinars, a sela and a half,

as the price for this assignment increased, there are two possibilities: One is that he gives them a sela, as originally agreed upon, since they do not forfeit their stipulated wages. The Gemara explains: The Rabbis hold that the laborer is at an advantage, and therefore even if the laborer reneges on the assignment, he does not lose everything.

[36] The baraita states the second possibility: Or they finish their work and take two sela. The Gemara asks: Isn't it obvious that this is the case? That is the sum they agreed on at the outset. The Gemara responds: No, it is necessary to state this halakha in a case where the price of labor increased during the day and the laborers rebelled and did not want to work anymore, and the employer went and appeased them and they agreed to finish their task. Lest you say that they can say to him: When we were appeased, it was with the intent that you would increase our wage, the baraita teaches us that the employer can say to them: I appeased you with the intent that I would trouble myself for you by providing you with superior food and drink, not that I would increase your wages.

[37] The baraita further teaches that if they performed work worth a sela, he gives them a sela. The Gemara asks: Isn't that obvious? The Gemara explains: No, it is necessary in a case where the price of labor was inexpensive at the outset and he hired them for one dinar more than accepted, and ultimately the price of labor increased and the going wage now stands at that rate of one more dinar.

[38] The Gemara elaborates: Lest you say that they can say to him: You offered us a dinar above the going rate, so now too, give us one more dinar than the current rate, to counter this, the baraita teaches us that he can say to them: When I said to you that I would add one more dinar, the reason was that it was not clear with regard to you that you would be willing to work for the lower wage, so I increased it. Now it is clear with regard to you, i.e., you agreed to a wage that was acceptable to you, and I do not intend to increase it further.

[39] The baraita further teaches that Rabbi Dosa says: The court appraises for them that which must still be done. If the current wage for the part of the task they had not done was worth six dinars, i.e., he can find laborers who will complete it only for six dinars, which is equivalent to one and a half sela, there are two possibilities: One is that he gives the first laborers a shekel, which is equivalent to half a sela. The Gemara explains that Rabbi Dosa holds that the laborer is at a disadvantage, in accordance with the principle that whoever reneges is at a disadvantage.

[40] § The baraita states the second possibility: Or they finish their work and take two sela. The Gemara asks: Isn't this obvious? The Gemara explains: No, it is necessary in a case where the price of labor decreased midday and the employer rebelled, seeking to cancel the agreement, and the laborers went and appeased him so that he would let them continue their work. Lest you say that the employer can say to them: When I was appeased, that was with the intent that you would decrease your wages for me, therefore, the baraita teaches us that the laborers can say to him: When we spoke it was with the intent that we will do improved work for you.

[41] The baraita further teaches that Rabbi Dosa said: And if the current wage for the part of the task they had not done was worth a sela, he gives them a sela. The Gemara asks: Isn't that obvious? Rav Huna, son of Rav Natan, said: No, it is necessary in a case where they reduced for him the accepted price by a dinar at the outset, and ultimately the price of labor decreased, so that the standard wage became equal to the price they had agreed on.

[42] Rav Huna, son of Rav Natan, elaborates: Lest you say that the employer can say to them: You said to me that you would accept wages of a dinar less than the market value, and therefore a dinar less

that the standard wage is what I will give you. Consequently, Rabbi Dosa teaches us that the laborers can say to him: When we said to you that we would agree to a dinar less, that was when it was not clear that you would be willing to pay the higher wage, but now it is clear that you will agree, and therefore you cannot reduce our wages.

[43] With regard to that same dispute in the baraita, Rav said: The halakha is in accordance with the opinion of Rabbi Dosa. The Gemara asks: And did Rav really say that? But doesn't Rav say that a laborer can renege from his commitment even at midday? And if you would say that there is a difference for Rabbi Dosa between hired work and contracted work, as a hired laborer can renege but a contracted laborer cannot, is there really a difference for him? But isn't it taught in a baraita: With regard to one who hires a laborer, and at midday the laborer heard that a relative of his died and he has to tend to the burial, or if the laborer was gripped with fever and could not continue to work, if he is a hired laborer,

[44] he gives him his wage; if he is a contractor, he gives him his contracted payment?

[45] The Gemara explains: Whose opinion does this baraita follow? If we say it is in accordance with the opinion of the Rabbis, why does the baraita rule that he receives his full payment specifically in a case when the laborer heard that a relative of his died, or if he was gripped with fever, where he was unable to work due to circumstances beyond his control? When he is not compelled by circumstances beyond his control to stop working, this should also be the halakha. After all, the Rabbis said that the laborer is at an advantage. Rather, is it not correct to say that this baraita is in accordance with the opinion of Rabbi Dosa? And one can learn from it that Rabbi Dosa does not differentiate between hired work and contracted work in this regard.

[46] Rav Naḥman bar Yitzḥak said: The ruling of this baraita is stated with regard to a matter that involves financial loss if the work is not completed. Consequently, the employer is at an advantage, unless the laborer is compelled to stop working due to circumstances beyond his control, in which case everyone agrees that he receives his full wages.

[47] We learned in the mishna: Whoever changes the terms accepted by both parties is at a disadvantage, and whoever reneges on an agreement is at a disadvantage. The Gemara asks: Granted, with regard to the statement: Whoever changes is at a disadvantage, one can understand this, as the tanna taught us an unattributed mishna in accordance with the opinion of Rabbi Yehuda, indicating that this is the halakha. But concerning the clause: Whoever reneges is at a disadvantage, what does it serve to add? Does it not serve to add the halakha of a laborer, and this is in accordance with the opinion of Rabbi Dosa, who holds that workers may not renege?

[48] Evidently, Rav's ruling does not accord with the opinion of Rabbi Dosa. Rather, Rabbi Dosa is saying two halakhot, and Rav holds in accordance with his opinion in one matter and disagrees with his opinion in one matter. Rav does not agree with Rabbi Dosa's ruling that laborers are at a disadvantage, but he does agree with him with regard to the manner of calculating wages.

[49] If you wish, say a different interpretation of the mishna. The phrase: Whoever reneges is at a disadvantage, is not discussing employment arrangements, but is referring to that which is taught in a baraita: Whoever reneges is at a disadvantage; how so? If one sold a field to another for one thousand dinars, and the buyer gave him two hundred dinars as a down payment, and then one of them reneged, when the seller reneges on his commitment, the buyer is at an advantage.

[50] Consequently, if the buyer desires, he may say to him: Give me back my money that I gave you as a down payment, or give me land corresponding to the value of my money. If you will not give me all the land as per our agreement, I should at least receive land in proportion to the money I already paid you. From which type of land does the seller give the buyer? From superior-quality land. And when the buyer reneges, the seller is at an advantage: If he desires, the seller says to him: Take your money, and if he desires, he says to him: Take land corresponding to the value of your money that you already paid. From which type of land does the seller give the buyer? Even from inferior-quality land.

[51] The baraita continues: Rabban Shimon ben Gamliel says: We teach them from the outset not to renege, so that the agreement will not be canceled and end in conflict. How so? The seller writes for him a bill of sale that states: I, so-and-so, son of so-and-so, sold such and such a field to so-and-so for one thousand dinars, and of them he gave me two hundred dinars. And therefore, now he owes me eight hundred dinars. In this manner, the buyer acquires the entire field, and the buyer returns the remaining eight hundred dinars to the seller even after several years. The remainder of the payment for the field has been transformed into a standard written loan.

[52] The Master said in the baraita: From which type of land does the seller give the buyer? From superior-quality land. It may enter your mind to say that this means from the most superior-quality land of all of the seller's property. The Gemara asks: But even if the buyer is considered to be like only a regular creditor, we learned in a mishna (Gittin 48b) that a creditor has the right only to intermediate-quality land, not superior-quality land. And furthermore, there is this specific plot of land, for which the buyer paid money. Why should he receive superior-quality land?

[53] Rav Naḥman bar Yitzḥak said: When the baraita refers to the type of land that may be claimed after the buyer or seller reneges, it means from the most superior-quality land that is in the agreed-upon plot of land, or from the most inferior-quality land that is in it.

[54] Rav Aḥa, son of Rav Ika, said: You may even say that the baraita means from the most superior-quality land of all of the seller's property, as there is a specific reason why that should be the case here: Ordinarily, one who buys land for one thousand dinars will not have such a large sum on hand to carry out the transaction. Rather, he will significantly reduce the price of his possessions and sell them at a loss, so as to obtain the money. If the seller reneges and the buyer does not acquire this large plot of land, he will have suffered a significant loss, and he will be like an injured party, and we learned the same mishna: The court appraises superior-quality land for payment to injured parties. Therefore, in this case too, the seller must provide land of the highest quality.

[55] § It is further stated in the baraita that Rabban Shimon ben Gamliel says: We teach them not to renege. How so? He writes for him: I, so-and-so, son of so-and-so, sold such and such a field to so-and-so for one thousand dinars, and of them he gave me two hundred dinars. And therefore, now he owes me eight hundred dinars. This effects acquisition of the field for the buyer immediately. The Gemara asks: The reason they cannot renege is that the seller wrote this for the buyer in the contract. Evidently, if not for this being specified in a document the buyer does not acquire the field immediately.

[56] The Gemara asks: But isn't it taught in a baraita: With regard to one who gives a down payment to another, and says to him: If I renege, my down payment is forfeited to you, and the other person says to him: If I renege, I will double your down payment for you, the conditions are in effect; i.e., the

court will enforce the conditions stipulated between them in this contract. This is the statement of Rabbi Yosei.

[57] The Gemara comments: Rabbi Yosei conforms to his standard line of reasoning, as he says: A transaction with inconclusive consent [asmakhta] effects acquisition. Even though it is a commitment that he undertook based on his certainty that he would never be forced to fulfill the condition, it is considered a full-fledged commitment.

[58] The Gemara continues its discussion of the baraita. Rabbi Yehuda says: It is sufficient that the down payment effects acquisition of merchandise commensurate with the amount of his down payment. Rabban Shimon ben Gamliel said: In what case is this statement said? It is when the buyer said to the seller: My down payment will effect acquisition of the merchandise. But if one sold another a field for one thousand dinars, and the buyer paid him five hundred dinars of that sum, he has acquired the entire field, and he returns the rest of the money to the seller even after several years have passed. Evidently, Rabban Shimon ben Gamliel maintains that even if they do not have an explicit contract, the buyer's first payment finalizes the sale, rendering the remaining payment a standard loan. If so, why does the previous baraita state that Rabban Shimon ben Gamliel holds that this contract must be in writing?

[59] The Gemara responds: This is not difficult. This ruling, that the down payment serves to effect acquisition only if they specified in writing that the remaining payment would be considered a loan, is stated with regard to a case where the seller goes in and goes out for money, i.e., demonstrates that he is in need of cash. Therefore, unless the acquisition was stated in writing, the buyer acquires the entire field only when he pays the entire sum. That ruling, that the down payment effects full acquisition regardless of whether or not it is written in a contract, is stated with regard to a case where he does not go in and go out for money.

[60] This is as Rava says: With regard to one who sells an item to another and then goes in and goes out for money, the buyer has not acquired it, as it is clear that the seller sold it only because he needed the money immediately. Since the seller did not receive the money he wanted right away, the transaction is null. If he does not go in and go out for money, the buyer has acquired it, and the rest of the payment is considered like a loan that must be repaid in the future.

[61] And Rava says: With regard to one who lent one hundred dinars to another and the borrower paid it back one dinar at a time, this is a valid repayment. But the lender has grounds for a grievance against him for repaying him in this manner, as he can say to him: You have caused me to lose out, as it is easier to use a lump sum than a few coins at a time.

[62] § The Gemara relates: There was a certain man who sold his donkey to another, and one dinar was still owed to him, and the seller went in and went out for his dinar. Rav Ashi sat and examined this situation, asking: In a case like this, what is the halakha? Has he acquired the donkey or has he not acquired it? Rav Mordekhai said to Rav Ashi: This is what Avimi of Hagronya said in the name of Rava: One dinar is considered to be like multiple dinars, and therefore he has not acquired it.

[63] Rav Aḥa, son of Rav Yosef, said to Rav Ashi: But we say in the name of Rava that in this case he has acquired it. Rav Ashi said to him, in resolution of the apparent contradiction between these two versions of Rava's ruling: Interpret your halakha with regard to one who sells his field

[64] due to its poor quality. In other words, he was eager to sell not due to financial pressure, but because he wanted to get rid of this low-value field. His persistent demands for every last dinar are due to his fear that the buyer will change his mind and cancel the transaction.

[65] The Gemara discusses a similar case. It is obvious that if one wants to sell his property for one hundred dinars but does not find a buyer, and in actuality he sells property for two hundred, and goes in and goes out for money, the buyer has not acquired the field, as it is clear that the seller performed the transaction due to financial straits. But if he wants to sell his property for one hundred and does not find a willing buyer, and the case was that if he troubled himself he would find one, and instead he did not trouble himself and sells property for two hundred, and then he goes in and goes out for money, what is the halakha? Is he considered like one who sells a field due to its poor quality or not? No answer was found, and therefore the Gemara states that this dilemma shall stand unresolved.

[66] § The mishna teaches that if one hired a donkey driver or a potter and they reneged, and the goods would be lost, he may hire other workers at a higher price at the former's expense, or deceive them to make them agree to return to work. The Gemara asks: Up to what amount may he hire at their expense? Rav Naḥman said: Up to their wages, i.e., if the first workers did part of the work and the employer had not yet paid them, he may add the amount he owes the original workers to the new workers' wage.

[67] Rava raised an objection to Rav Naḥman: But it was taught in a baraita that he can hire at their expense for up to forty or fifty dinars. Rav Naḥman said to him: When that baraita is taught it is with regard to a case where the bundle has come into his possession, i.e., the original worker left his tool kit with the employer. In this situation, the employer has more financial leverage, as he can sell the contents of the bundle to cover even higher costs.

[68] MISHNA: With regard to one who rents a donkey to lead it on a mountain but he led it in a valley, or one who rents a donkey to lead it in a valley but he led it on a mountain, even if this path is ten mil and that one is also ten mil, and the animal dies, he is liable. With regard to one who rents a donkey to lead it on a mountain but he led it in a valley, if it slipped and injured itself he is exempt, but if it died of heatstroke he is liable, as it was the walk in the hotter valley that caused its death. With regard to one who rents a donkey to lead it in a valley but he led it on a mountain, if it slipped he is liable, because this was caused by the mountainous terrain, but if it died of heatstroke he is exempt. If it suffered from heatstroke due to the ascent, he is liable.

[69] With regard to one who rents a donkey and it became ill or was seized for public service [angarya], the owner can say to the renter: That which is yours is before you, and he is not required to reimburse the renter or to supply him with another donkey. If the animal died or its leg broke, the owner is obligated to provide the renter with another donkey.

[70] GEMARA: The Gemara asks: What is different about the first clause, where the tanna does not distinguish between the various ways in which the animal might have died, as he rules that the renter is always liable, and what is different about the latter clause, where he does distinguish between whether the animal was injured through slipping or heatstroke?

[71] The Gemara answers: A Sage from the school of Rabbi Yannai said: The first clause is referring to a case where it died on account of the air, as we say that the air of the mountains killed it and we can equally say that the air of the valley killed it. A change in weather such that the animal is exposed to weather conditions he is unaccustomed to can be lethal. Rabbi Yosei bar Ḥanina said: The mishna is

referring to a case where it died on account of exhaustion [uvtzena], as it can be assumed that this was caused by the weather. Rabba said: The mishna is speaking of a case where a snake bit it, as this is just as likely to happen in one place as it is in the other.

[72] Conversely, Rabbi Ḥiyya bar Abba said that Rabbi Yoḥanan said: In accordance with whose opinion is this statement of the first clause of the mishna? It is in accordance with the opinion of Rabbi Meir, who says: Anyone who diverges from the intention of the employer by acting against their agreement

[73] is called a robber. Since he contravened their agreement and did not receive approval of the other party, it is considered as though he stole the animal from its owner. A robber is liable for any damage that occurs, even due to circumstances beyond his control.

[74] The Gemara asks: Which of Rabbi Meir's statements indicates that this is his opinion? If we say that it is Rabbi Meir's statement with regard to a dyer, this claim can be refuted. As we learned in a mishna (Bava Kamma 100b): With regard to one who gives 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.

[75] Rabbi Yehuda says: If the value of the enhancement resulting from the dying exceeds the dyer's expenses, then 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. This apparently indicates that because the dyer diverged from the agreement, Rabbi Meir considers him a robber, which is why the dyer must refund the entire value of the wool.

[76] The Gemara challenges this proof. From where do you know that this mishna is the source of Rabbi Meir's opinion with regard to reneging on an agreement made with an employer? Perhaps it is different there, as the dyer acquired the wool by means of the physical change in a substance, and it is for that reason, not due to his divergence from the agreement, that he is comparable to a robber.

[77] Rather, the source of the opinion of Rabbi Meir is the case of Purim collection. As it is taught in a baraita: The Purim collection, i.e., money collected for the Purim feast for paupers, may be used only for Purim; the city collection, i.e., money collected for poor people of a certain city, is given only for that city. And one does not scrutinize the matter by limiting the allocation for the poor to the exact costs of the meal and no more, but they acquire the calves and slaughter and eat them, and the remainder of the money, over and above the costs of the Purim feast, goes to the charity fund and is used for other charitable needs.

[78] Rabbi Eliezer says that this is not the case. Rather, the Purim collection is only for the Purim feast, and it is not permitted for a poor person to purchase even a strap for his sandal from it unless he stipulated in the presence of the people of the city that he may do as he wishes with the money he receives. This is the statement of Rabbi Ya'akov, who said it in the name of Rabbi Meir. But Rabban Shimon ben Gamliel is lenient. This shows that according to Rabbi Meir the recipient may not diverge at all from the intention of the one who gave the charity.

[79] The Gemara refutes this proof: Perhaps there too, this is considered an explicit condition, as it was with the intent that the poor person use it for Purim that he gave him money, but he did not give it to him with the intent that it be used for anything else. Consequently, that is why Rabbi Meir rules stringently in a case of this kind, where the recipient diverged from the intention of the giver.

[80] Rather, the proof that Rabbi Meir maintains that one who diverges from an agreement is considered a robber is from this statement of Rabbi Meir, as it is taught in a baraita that Rabbi Shimon ben Elazar says in the name of Rabbi Meir: In the case of one who gives a dinar to a poor person to purchase a robe for himself, he may not purchase a cloak with it; if he gives him money to purchase a cloak, he may not purchase a robe with it, because in so doing he diverges from the intent of the homeowner, i.e., the giver.

[81] The Gemara rejects this proof as well: Perhaps it is different there, as they will come to suspect the giver of going back on his word, for people will say that so-and-so said: I am purchasing clothing for such and such a poor person, but he did not actually purchase it. Alternatively, people will claim that he said: I am purchasing him a cloak, but he did not actually purchase it for him, as they do not see the poor person wearing the item they heard the giver promise to purchase for him. In other words, in this case the poor person might not diverge from the intent of the giver in order not to discredit the giver in the eyes of the public.

[82] The Gemara responds: If so, if this is the reason, let the mishna teach: Because of suspicion. What is the meaning of the phrase: Because he diverges from the intent of the homeowner? Conclude from it that he is called a robber because he changed and departed from the terms of the agreement, and this shows that anyone who diverges from the intention of the employer is called a robber. Evidently, this ruling is in accordance with the opinion of Rabbi Meir.

[83] § The mishna teaches with regard to one who rents a donkey and it became ill [vehivrika], that the one who rented it to him bears no responsibility. The Gemara asks: What is the meaning of the term vehivrika? Here, in Babylonia, they interpreted it as light in the eye, a white spot that forms on the pupil of the donkey's eye that impairs its vision. Rava said that it is referring to worm rot [avzeket], a disease of worms in the donkey's foot.

[84] With regard to the term worm rot, the Gemara relates: There was a certain individual who said to others: I saw worm rot on the king's clothing. They said to him: On what did you see it? On silver, i.e., linen, items or on gold, i.e., woolen, items? There are those who say that he said he had seen it on silver items, and they killed him. Since worms are not found on linen garments, they realized that he must have been lying. There are those who say that he said he had seen it on gold items, and therefore they let him be.

[85] § The mishna teaches: Or if the donkey was seized for public service, the owner can say to the renter: That which is yours is before you. Rav says: They taught this halakha only with regard to temporary public service, i.e., the government confiscates the animal for a certain period of time, after which they return it. But in a case of permanent public service, where they confiscated the animal permanently, the owner is obligated to provide the renter with another donkey.

[86] And Shmuel said: Whether the donkey was seized to perform a permanent public service or a temporary public service, if it was seized and then taken in the direction in which it was walking, i.e., the government officials led the animal in the direction it was already going, the owner can say to the renter: That which is yours is before you. The common practice was that when an animal was confiscated by government officials, the one who had been leading it would follow them until the officials found another animal. At this point, the officials would take the animal they just found and release the one they had previously seized. Therefore, the owner can insist that the renter follow the officials, who in any event are going in the direction he wishes to go, in order to retrieve the animal

he had rented. But if it was seized and then taken not in the direction in which it was walking, but in a different direction, the owner is obligated to provide the renter with another donkey.

87 The Gemara raises an objection from a baraita: With regard to one who rents a donkey and it became ill or went mad, the owner can say to the renter: That which is yours is before you. If it died or was seized for public service, the owner is obligated to provide the renter with another donkey.

88 Granted, according to the opinion of Rav this is not difficult, as he can explain that here, in the mishna, it is referring to permanent public service, and therefore the owner does not have to provide the renter with another donkey, whereas there, in the baraita, it is referring to temporary public service. Consequently, the owner must give the renter another donkey. But according to the opinion of Shmuel it is difficult.

89 And if you would say that according to the opinion of Shmuel too, it is not difficult, as he could resolve the apparent contradiction in a similar manner by explaining that here, in the mishna, it is referring to a case where it was seized and then taken in the direction in which it was walking, and there, in the baraita, it is referring to a case where it was seized and then taken not in the direction in which it was walking but in a different direction, this resolution is not possible.

90 This resolution cannot be accepted, because from the fact that the baraita teaches in the latter clause that Rabbi Shimon ben Elazar says: If it was seized and then taken in the direction in which it was walking the owner can say to the renter: That which is yours is before you, but if not the owner is obligated to provide the renter with another donkey, by inference one can learn that according to the opinion of the first tanna there is no difference whether or not the animal was seized and then taken in the direction in which it was walking. If so, the baraita is difficult to reconcile with Shmuel's opinion.

91 The Gemara answers that Shmuel could say to you: Isn't there the ruling of Rabbi Shimon ben Elazar, who holds in accordance with my opinion? I spoke in accordance with the ruling of Rabbi Shimon ben Elazar. If you wish, say instead that the entire baraita is in accordance with the opinion of Rabbi Shimon ben Elazar, and it is incomplete, and this is what it is teaching: With regard to one who rents a donkey and it became ill or went mad, the owner can say to the renter: That which is yours is before you. If it died or was seized for public service, the owner is obligated to provide the renter with another donkey. In what case is this statement said? When it is seized and then taken not in the direction in which it was walking but in a different direction, but if it was seized and then taken in the direction in which it was walking, the owner can say to the renter: That which is yours is before you.

92 This is the statement of Rabbi Shimon ben Elazar, as Rabbi Shimon ben Elazar would say: If the animal was seized and then taken in the direction in which it was walking, the owner can say to the renter: That which is yours is before you, but if not, the owner is obligated to provide the renter with another donkey.

93 The Gemara asks: And can you establish this entire baraita in accordance with the opinion of Rabbi Shimon ben Elazar? But the first clause teaches: With regard to one who rents a donkey and it became ill or went mad, the owner can say to the renter: That which is yours is before you. And yet Rabbi Shimon ben Elazar said in a different baraita: With regard to one who rents a donkey to ride on it, and it becomes ill or goes mad, the owner is obligated to provide the renter with another donkey.

[94] Rabba bar Rav Huna said that this is not a contradiction. The case of one who takes a donkey to ride on is different, as he requires a donkey that walks steadily. A sick donkey is no better than a dead one for this purpose. Rav Pappa said: And acquiring a donkey so that it should carry glass vessels is considered to be like riding on it, as glass vessels also require steady walking to prevent the load from falling.

[95] Rabba bar Rav Huna says that Rav says: In the case of one who rents a donkey to ride on it and it died halfway through the journey, the renter gives the owner his fee for half of the journey, but the renter has nothing but a grievance against the owner. He has no legal claim against the owner over the fact that he now has to go to great trouble to find another donkey.

[96] The Gemara asks: What are the circumstances? If this is referring to a place where donkeys are available for rent, what is the purpose of this grievance? He does not have any cause for grievance in this case, as he can simply rent another donkey and has not lost anything. If it is a place where donkeys are not available for rent, should he be required to give the owner his fee? After all, the donkey failed to perform the task for which it was rented.

[97] The Gemara explains: Actually, it is referring to a place where donkeys are not available for rent, and the renter must pay the owner due to the fact that the owner of the donkey can say to him: Had you wanted to come to here, i.e., halfway through the journey, wouldn’t you have had to pay a fee? Therefore, pay me for the distance that my donkey carried you.

[98] The Gemara further inquires: What are the circumstances? If this is referring to a case where the owner said to him: I am renting you an unspecified donkey, the owner is obligated to provide him with another donkey. Since the owner promised him a donkey, if the first donkey is no longer available, he must give him another one. If it is referring to a case where he said to him: I am renting you this particular donkey, then if there is enough money to be gained from selling its carcass to purchase another donkey, let the renter purchase another one.

[99] The Gemara responds: No, it is necessary to state this halakha only in a case where there is not enough money to be gained from the sale of its carcass to purchase another donkey. The Gemara asks: Even so, if there is enough money to be gained from the sale of its carcass to hire another donkey, let him rent another donkey and continue along his way. What grounds are there for grievance? The Gemara explains that Rav conforms to his standard line of reasoning, as Rav said: One may not fully deplete the principal in order to pay rental fees. Consequently, the renter has no right to sell the carcass, so as not to deplete the entire monetary value of the donkey.

[100] This is as it was stated in a dispute between amora’im on this issue: With regard to one who rents a donkey and it died halfway through the journey, Rav says: If there is enough money to be gained from the sale of its carcass to purchase another donkey, the renter may purchase one, but if there is enough money only to rent another donkey, he may not rent one. Shmuel says: Even if there is enough money to be gained from the sale of its carcass only to rent another donkey, he may rent one.

[101] The Gemara asks: With regard to what do they disagree? The Gemara answers: Rav holds that one may not fully deplete the principal, and as the carcass now constitutes the principal value of the donkey, one may not use the proceeds of its sale to pay rental fees, as nothing will be left to return to the owner. And Shmuel holds that one may fully deplete the principal.

[102] The Gemara raises an objection to Rav's opinion from a baraita (Tosefta, Arakhin 5:1), which discusses the case of a borrower who gives his lender a tree as a security for a loan so that the lender may eat an amount of its fruit up to the value of the loan. If the tree dried up or was cut down, it is prohibited for both the borrower and lender to use the body of the tree. What should be done? Land should be purchased with the proceeds from the sale of what is left of the tree, and the lender enjoys the profits of that land. The Gemara explains the objection: And yet here, once the Jubilee Year arrives, that purchased land will return to its original owner. It will not remain with the borrower after the loan has been repaid. And it will turn out that the principal is fully depleted, as the borrower will be left with nothing.

[103] The Gemara responds: With what are we dealing here? We are dealing with a case where he purchased the field for sixty years. As Rav Ḥisda says that Rav Ketina says: From where is it derived with regard to one who sells his field for sixty years or any fixed length of time, that it does not return to its original owner in the Jubilee Year? As it is stated: "And the land shall not be sold in perpetuity" (Leviticus 25:23). This prohibition applies to land which, if there were no Jubilee Year, would be sold in perpetuity, but as there is a Jubilee Year it is not sold in perpetuity. That excludes this case, where the field is sold for a fixed length of time, as even though there is no Jubilee Year it is not sold in perpetuity.

[104] The Gemara raises a difficulty: Ultimately, when the end of those sixty years arrives, the land will return to its owner, and at that point the principal will be fully depleted. The Gemara answers: Rather, with what are we dealing here? We are dealing with a period when the halakhot of the Jubilee Year are not in effect, as one can purchase land in perpetuity when the Jubilee Year is not observed. The Gemara adds support for this explanation: This too stands to reason, as, if it enters your mind that this halakha is referring to a period when the halakhot of the Jubilee Year are in effect and the ruling is that the principal may be fully depleted, why undertake a complicated transaction? Let the lender simply cut the tree into branches for kindling, and take it and sell it right away.

[105] The Gemara responds: If the challenge to Rav's opinion is due to that baraita, it is not difficult. There may be times that the years during which the lender is entitled to the collateral are completed before the arrival of the Jubilee Year, in which case the land would revert to the borrower for a certain amount of time, and therefore the principal is not necessarily fully depleted. Alternatively, it is possible that money comes into the borrower's possession and he redeems the field four or five years before the arrival of the Jubilee Year. In this case the principal will not be fully depleted, as he repays the loan before the land is returned.

[106] § The Sages taught: With regard to one who rents a boat, and it sunk halfway through the journey, Rabbi Natan says: If the renter already gave money for the boat, he does not receive a refund, but if he has not yet given money he does not give it after the boat has sunk.

[107] The Gemara asks: What are the circumstances of this contract? If we say that the owner stated he was renting him this particular boat and the renter said that he was transporting unspecified wine, then even if he gave money, why should he not receive a refund? Let him say to the owner: Give me the boat so that I can transport wine, and if you cannot do so, refund the rental fee so that I can rent another boat. Rather, one could say that this is referring to a situation where the owner said he would rent him an unspecified boat, and the renter said that he would transport this particular wine. But in that case, even if he did not give money, why should he not give the owner the rental fee?

[108] Let the owner say to him: Give me that wine and I will bring a boat. Since that particular wine is gone, the renter cannot comply with his request, and therefore he should have to pay the rental fee.

[109] Rav Pappa said: You find the correct application of Rabbi Natan's ruling only in a case where the two parties stipulated this specific boat and that specific wine. Since neither party can fulfill his part of the agreement, the money remains where it is. But if they stipulated an unspecified boat and unspecified wine, as they can both complete the agreement, they divide the rental fee, i.e., the renter pays half.

[110] The Sages taught: With regard to one who rents a boat and unloads it [uferakah] halfway through the journey, the renter gives the owner his rental fee for half the journey, and the owner of the boat has nothing but a grievance against him. The Gemara asks: What are the circumstances? If we say that this is referring to a situation where the owner can find someone else to whom he can rent out the boat, why does he have grounds for a grievance? And if it is referring to a case where he cannot find another to whom he can rent it out, the renter should be required to pay the full rental fee, as he reneged on his commitment to rent the boat for the entire trip.

[111] The Gemara answers: Actually, this is referring to a case where the owner can find someone else to whom he can rent out the boat. But why does he have cause for a grievance? Because of the wear and tear on the boat due to the additional loading and unloading of cargo, which was not taken into account in their agreement. The Gemara asks: If so, that is a proper legal claim, and the owner of the boat has not merely a grievance against the renter, but cause for claiming monetary restitution from him.

[112] Rather, what is the meaning of the term perakah? This means that the renter unloaded more of his own cargo into the boat halfway through the journey. Accordingly, the baraita is ruling that the renter must pay a fee for the additional cargo only for the second half of the journey. The Gemara asks: But if so, what is the grievance? Why should the owner object to this arrangement at all? The Gemara explains that the grievance is due to the change from the renter's prior intention, as they had not agreed upon the addition of this additional cargo when they performed the transaction. Alternatively, the grievance is because of the extra rope that was necessary to secure the additional cargo.

[113] The Sages taught in a baraita: With regard to one who rents a donkey to ride on it, the renter may place on it his garment, his water jug, and food for that journey. Beyond those items, the donkey driver, who would take the renter on the journey, may prevent him from placing anything on the animal by saying that he does not wish to further burden the donkey. The donkey driver may place on it barley and hay for the donkey and his own food for that first day alone. Beyond those items, the renter may prevent him from placing anything on the animal.

[114] The Gemara asks: What are the circumstances? If this is referring to a situation where food is available for purchase, the donkey driver should also be able to prevent the renter from bringing food for the entire journey, and if it is a case where food is not available for purchase, the renter should also not be able to prevent the donkey driver from loading on the donkey his own food for the entire journey.

[115] Rav Pappa said: No, the ruling of the baraita is necessary in a situation where food is available for one who goes to the trouble to purchase it from one station [me'avna] to the next station. Since it is the manner of a donkey driver to go to the trouble to purchase food, he may load the animal only

with food for that day, whereas it is not the manner of the renter to go to the trouble to purchase food, and therefore he may take food with him for the entire journey.

[116] The Sages taught: With regard to one who rents a donkey with the understanding that a man will ride upon it, a woman may not ride upon it. If he rented it with the understanding that a woman will ride upon it, a man may ride upon it. And if he rented it with the understanding that a woman will ride upon it, any female may ride upon it, whether she is an adult woman or a minor girl. And even a pregnant woman, despite her additional weight, and even a nursing woman who takes the child with her may ride upon it.

[117] The Gemara asks: Now that you said that the owner cannot prevent even a nursing woman from riding upon the donkey, despite the fact that this involves the weight of two people, is it necessary to say that a pregnant woman may ride upon the donkey? Rav Pappa said: The tanna spoke of a pregnant woman who is also nursing, as there is additional weight.

[118] Abaye said: You can learn from the fact that a pregnant woman is considered heavier than the average woman that the weight of a fish [binita] is in its belly, i.e., weight increases according to the size of its belly. The Gemara asks: What is the practical difference resulting from Abaye's statement with regard to a fish? The Gemara explains: It is with regard to the halakhot of buying and selling, so that one can know how to evaluate the weight of a fish, and calculate its value accordingly.

[119] MISHNA: With regard to one who rents a cow and a plow in order to plow on the mountain but he plowed in the valley, if the plowshare, the cutting tool on the bottom part of the plow, breaks, he is exempt, as it was even more likely to break on mountainous terrain. In a case where he rents the cow and a plow to plow in the valley but he plowed on the mountain, if the plowshare breaks he is liable. If he hired the cow to thresh legumes but it threshed grain, and the cow slipped and broke its leg, he is exempt. If he hired it to thresh grain but it threshed legumes he is liable, because legumes are slippery.

[120] GEMARA: The mishna discussed the liability of a renter who diverged from the terms of the rental agreement, but it does not teach the halakha of liability for broken machinery in a case where the renter did follow the agreement. The Gemara asks: In a case where the renter did not diverge from their agreement, who pays? Rav Pappa said: The one who holds the goad [parasha] pays, as it can be assumed that he caused the plow to break by not leading it in a straight path. Rav Sheisha, son of Rav Idi, said: The one who holds the vessel, the plow itself, pays. And the halakha is that the one who holds the vessel pays. And if it was a place where rocks are commonly found they both pay, as in this case any small irregularity in the ground where the plow digs a furrow is likely to cause the plow to break.

[121] § Rabbi Yoḥanan says, citing the Tosefta (Bava Batra 4:6): In a case of one who sells a cow to another and says to him: You should know that this cow has defects, it is accustomed to goring, it is accustomed to biting, it is a kicker, it lies down habitually; but in reality it had only one defect and he inserted it among the list of defects that it did not have, this is a mistaken transaction, as the buyer saw that it did not have the other defects and therefore did not take seriously any of the defects the seller enumerated, including the one that the cow actually had. But if the seller stated: The animal has this defect, i.e., the defect that it in fact has, and other defects, without specifying what they were, this is not a mistaken transaction.

[122] The Gemara notes that this is also taught in a baraita (Tosefta, Bava Batra 4:3): With regard to one who sells a maidservant to another and says to him: This maidservant is an imbecile, she is epileptic, she is crazy [meshuamemet]; but in reality she had only one defect and he inserted it among the other defects, this is a mistaken transaction. But if the seller stated: The maidservant has this defect, i.e., the defect that she in fact has, and other defects, without specifying what they were, this is not a mistaken transaction.

[123] Rav Aḥa, son of Rava, said to Rav Ashi: If the animal had all of these defects, what is the halakha in that case? Can the buyer claim to have thought that the seller was not serious when he mentioned so many problems? Rav Mordekhai said to Rav Ashi: We say this halakha in the name of Rava: If the animal had all of these defects, it is not a mistaken transaction, as he was forthright. The seller is not at fault if the buyer did not believe him.

[124] MISHNA: With regard to one who rents a donkey in order to bring wheat on it, to transport it on its back, and he brought upon it an identical weight of barley, which is lighter than wheat, and the donkey was injured, he is liable. Similarly, if he hired it for transporting grain, and he brought straw of the same weight upon it, he is liable, because the extra volume is as difficult for the animal as the load itself. If he rented a donkey in order to bring on it a letekh, i.e., a measurement of volume, of wheat, but he brought a letekh of barley, he is exempt, as he brought the same volume of a lighter substance. And one who adds to a load a greater volume than he stipulated is liable. And how much must he add to the load for him to be liable? Sumakhos says in the name of Rabbi Meir: A se’a on a camel and three kav on a donkey.

[125] GEMARA: It was stated that amora’im disagreed about the precise text of this mishna. Abaye said that we learned in the mishna: Difficult as the load. Rava said that we learned: Difficult for the load. The Gemara explains: Abaye said that we learned: Difficult as the load, with the meaning that volume is like weight, and therefore when the volume of the two substances is equal, if one adds three kav he is liable. Rava said that we learned: Difficult for the load, with the meaning that if one weight is like the other weight, then the difference in volume is considered an addition. In other words, one is liable if the weight of the barley is the same as that of the wheat, in which case the additional volume is considered to cause damage. Rava holds that if the volume of the two is equal, one is not liable for the additional three kav of weight.

[126] The Gemara attempts to cite a proof for one of these opinions. We learned in the mishna: If one hired a donkey to bring a letekh of wheat, but he brought a letekh of barley, he is exempt. And one who adds to a load a greater volume than he stipulated is liable. What, is it not correct that this means he did not bring exactly a letekh of barley, but added three kav, which would support the opinion of Abaye? The Gemara refutes this interpretation: No, he added a whole se’a. The Gemara asks: But the continuation of the mishna was taught concerning this case: How much must he add to the load for him to be liable? Sumakhos says in the name of Rabbi Meir: A se’a on a camel and three kav on a donkey.

[127] The Gemara explains that this is what the last clause of the mishna is saying: In a case where the renter did not diverge from their agreement, e.g., they stipulated that he would bring wheat and he brought wheat, or barley and he brought barley, how much must he add to the load for him to be liable? Sumakhos says in the name of Rabbi Meir: A se’a on a camel and three kav on a donkey.

[128] The Gemara further suggests: Come and hear a proof from a baraita: If one hired a donkey to bring a letekh, i.e., fifteen se’a, of wheat, but he brought

[129] sixteen se’a of barley, he is liable. This indicates that if he added only three kav, i.e., half a se’a, he is exempt. Abaye interpreted the baraita as referring to smoothed-over barley, a precisely measured load, where the volume of the barley was not measured with heaped measuring utensils, but leveled flat. Consequently, it is roughly a se’a less than the usual amount.

[130] § The Sages taught: A kav is too large an addition for a porter, and therefore if the porter is injured by the additional weight, the owner must pay him. An adriv, half a kor, is too large an addition for a small boat [areiva]; a kor is too large an addition for a regular boat; three kor is too large an addition for a large ship [burnei].

[131] The Master said: A kav is too large an addition for a porter. The Gemara asks: If it is so, that he cannot withstand this load, the porter is a sensible person; let him throw it off and avoid injury. Abaye said: This is referring to a case where the load knocked him down immediately, before he could remove it from his back. Rava said: Even if you say that it is referring to a case where it did not knock him down immediately the baraita is not difficult, as it is necessary only with regard to the extra pay that he can demand for this addition. Rav Ashi said: Even if the porter is a sensible man, perhaps he thought it was a momentary weakness that seized him and did not realize that the load itself was excessive.

[132] § The baraita teaches: A kor is too large an addition for a regular boat; three kor is too large an addition for a large ship. Rav Pappa said: Learn from here that unspecified boats can bear thirty kor, i.e., this is the volume of a ship’s cargo. The reason for this claim is that in all these cases the addition that causes damage is one-thirtieth of the normal load. The Gemara asks: What is the practical difference resulting from this observation? The Gemara answers: The difference is with regard to the halakhot of buying and selling, i.e., one who purchases a boat of unspecified dimensions should know that this is its expected capacity.

[133] MISHNA: All artisans and laborers who take raw materials to their homes are considered paid bailees for those items until they return them to the owner. And with regard to all those who said to the owner: I finished the work, and therefore take what is yours, i.e., this item, and bring money in its stead, from that point on each of them is considered an unpaid bailee. If one person says to another: Safeguard my property for me and I will safeguard your property for you, each of them is a paid bailee, as each receives the services of the other as payment for his safeguarding. If one says: Safeguard for me, and the other says to him: Place it before me, the second individual is an unpaid bailee.

[134] One who lent to another based on collateral is a paid bailee for the collateral. Rabbi Yehuda says: One who lent another money is an unpaid bailee for the collateral, whereas one who lent another produce is a paid bailee. Abba Shaul says: It is permitted for a person to rent out a poor person’s collateral that was given to him for a loan, so that by setting a rental price for it he will thereby progressively reduce the debt, i.e., the lender will subtract the rental money he receives from the amount owed by the borrower, because this is considered like returning a lost item. The borrower profits from this arrangement, whereas if the lender does not use the collateral in this manner it provides benefit to no one.

[135] GEMARA: The Gemara suggests: Let us say that the mishna is not in accordance with the opinion of Rabbi Meir, as it is taught in a baraita: With regard to a renter, whose legal status is not stated explicitly in the Torah, how does he pay in the event that a rented article is lost or stolen? Rabbi Meir says: He pays like an unpaid bailee, i.e., only in cases where the loss of the item was due to his negligence. Rabbi Yehuda says: He pays like a paid bailee, i.e., even in cases where the loss of the item was not due to his negligence. Skilled laborers are similar to renters, as they take possession of the item to earn a profit from it, and the mishna teaches that skilled laborers are like paid bailees. Consequently, the ruling of the mishna is apparently not in accordance with the opinion of Rabbi Meir.

[136] The Gemara rejects this claim. You may even say that the mishna is in accordance with the opinion of Rabbi Meir, and the reason skilled laborers are considered like paid bailees is that through that benefit that the worker receives from the fact that the owner of the item leaves aside everyone else and hires him, he becomes a paid bailee over the item. The Gemara challenges this reasoning: If so, with regard to a renter as well, it can be said that through that benefit he receives from the fact that the owner leaves aside everyone else and rents to him, he should become a paid bailee over the item.

[137] Rather, in light of this refutation the Gemara suggests a different reason that you may even say that the mishna is in accordance with the opinion of Rabbi Meir: Through that benefit that the skilled laborer receives from the fact that the owner gives him a little more money, he becomes a paid bailee. Since it is impossible to calculate the precise sum to which a skilled laborer is entitled, it is assumed that he is slightly overpaid.

[138] The Gemara asks: With regard to a renter as well, are we not dealing even with a case where the owner gives him a little more value for his money, and yet Rabbi Meir claims that he is considered like an unpaid bailee? Rather, you may even say that the mishna is in accordance with the opinion of Rabbi Meir for a different reason: Through that benefit that the skilled laborer receives from the fact that he holds onto the item so that he is not required to go in and go out for his money, he becomes a paid bailee over the item.

[139] If you wish, say instead that the mishna can be explained in accordance with the opinion of Rabbi Meir without these explanations, as Rabba bar Avuh reversed the opinions and teaches that the baraita says: With regard to a renter, how does he pay? Rabbi Meir says: Like a paid bailee; Rabbi Yehuda says: Like an unpaid bailee.

[140] § The mishna teaches: And in the case of all those who said to the owner: Take what is yours, i.e., this item, and bring money in its stead, each of them is considered an unpaid bailee. We learned in a mishna there (98b): If the borrower said to the lender: Send the animal that you agreed to lend me with the person whom you said would deliver it, and he sent it to him and it died on the way, the borrower is liable, and similarly when he returns it. The borrower is responsible for the animal as long as it has not actually been returned to the owner.

[141] Rafram bar Pappa said that Rav Ḥisda said: They taught this halakha only when the borrower returned it during the period of its loan, as he accepted responsibility for the animal for the stipulated duration of the loan. But if he returned it after the period of its loan, he is exempt, as once the duration of the loan is complete he no longer has the status of a borrower. Rav Naḥman bar Pappa

raises an objection from the mishna: And all those who said: Take what is yours and bring money, each of them is considered an unpaid bailee.

[142] This indicates that if the skilled laborer said only: I completed the work with it, he is considered a paid bailee, i.e., even after he completes the work the item remains within his responsibility. The Gemara rejects this line of reasoning: No, this is not what should be deduced from the mishna. Rather, the correct deduction is that one who says: Give money first and then take what is yours, is a paid bailee.

[143] The Gemara asks: But if that is the case, when one says only: I completed the work with it, what is the halakha? Is he considered an unpaid bailee? If so, rather than teaching a new halakha in the mishna: And all those who say: Take what is yours and bring money, each of them is considered an unpaid bailee, let it teach us instead the halakha of one who says: I completed the work with it, and it can be deduced that all the more so is this the halakha if he says to him: Take what is yours.

[144] The Gemara rejects this line of reasoning: The case of take what is yours must be taught explicitly. Otherwise, it might enter your mind to say that once he issues this statement, he is not considered even an unpaid bailee and retains no responsibility whatsoever for the item. Therefore, the mishna teaches us that even in this case he is still considered an unpaid bailee and continues to bear certain responsibilities.

[145] There are those who say that there is a different version of this discussion. Rather than challenging that Rav Ḥisda's opinion is opposed by the ruling of the mishna, Rav Naḥman bar Pappa said: We, too, learn a proof for Rav Ḥisda's statement from the mishna: And all those who say: Take what is yours and bring money, each of them is considered an unpaid bailee. What, is it not correct to say that the same is true when he says: I have completed the work with it? The Gemara rejects this claim. No, the case of one who says take what is yours is different, as stated above, as one might think that this statement frees the laborer of all responsibility.

[146] The Gemara cites a third version of this discussion. Huna Mar bar Mareimar raised a contradiction between the mishnayot before Ravina and resolved it himself. We learned in the mishna: And all those who say: Take what is yours and bring money, each of them is considered an unpaid bailee. And apparently the same is true for one who said: I completed the work with it. And Huna Mar bar Mareimar raises a contradiction from the aforementioned mishna: If the borrower said to the lender: Send the animal to me, and he sent it to him and it died on the way, the borrower is liable, and similarly when he returns it. And he resolves this contradiction in accordance with that which Rafram bar Pappa said that Rav Ḥisda said: They taught this halakha only when he returned it during the period of its loan. But if he returned it after the period of its loan, he is exempt.

[147] § A dilemma was raised before the Sages: When Rav Ḥisda said that a borrower who returned the item after the period of the loan is exempt, is he exempt only from the strict obligations of a borrower, but he remains liable as a paid bailee, or perhaps he is also not liable as a paid bailee? Ameimar said: It stands to reason that he is exempt as a borrower but is still liable as a paid bailee. Ameimar's reasoning is that since he previously had benefit, he must provide benefit in return, by safeguarding the item as a paid bailee until the item reaches the owner's possession.

[148] It is taught in a baraita (Tosefta, Bava Batra 6:5) in accordance with the opinion of Ameimar: With regard to one who takes vessels from an artisan's house to send them as a gift to his father-in-law's house, and he said to the artisan: If they accept them from me as a gift I will give you the

money for them, and if not, i.e., if they return the gift, I will give you money in accordance with the financial advantage I received from them, i.e., I will pay you the benefit that I accrued through their knowledge that I tried to send them a gift; and an accident happened to the vessels and they were broken, if this incident occurred on their way to the recipient the customer is liable.

149 If they broke on the way back he is exempt, because he is like a paid bailee, who is not liable for accidents. If this individual, who pays for the financial advantage he received, is considered a paid bailee, all the more so should this apply to a borrower who returned the item after the period of the loan, in accordance with the opinion of Ameimar, as he did not offer to pay anything.

150 The Gemara relates: There was a certain man who sold a donkey to another. The buyer said to him: I will bring it to such and such a place; if it is sold, well and good; and if not, I will return it to you. He went and it was not sold, and on his way back the donkey was injured in an accident. The case came before Rav Naḥman, who deemed the buyer liable to pay.

151 Rabba raised an objection to Rav Naḥman from the baraita: If an accident happened to the vessels on their way to the recipient, the customer is liable; if they broke on the way back he is exempt, because he is like a paid bailee. If so, why did you deem this buyer liable, when the accident occurred on his return?

152 Rav Naḥman said to Rabba that there is a difference between the cases, as the way back of this one is considered like the way to the recipient. What is the reason for this? It is based on logical reasoning: Even on his way back, if he found an opportunity to sell the donkey, wouldn’t he have sold it? Therefore, as he was in possession of the animal the entire time, the halakha treats his going and returning equally, and he retains the responsibility of a borrower until he actually returns the animal to its owner.

153 § The mishna teaches: With regard to one who says to another: Safeguard my property for me and I will safeguard your property for you, each of them is a paid bailee. The Gemara asks: But why is this the halakha? It is a case of safeguarding with the owners. There is a principle that a bailee is exempt from paying for the damage if the owner of the item is present with the bailee or in his employ when he is safeguarding the item. Rav Pappa said: The mishna means that he said to him: Safeguard my property for me today and I will safeguard your property for you tomorrow. At the time of his safeguarding, the owner was not in the bailee’s employ.

154 The Sages taught in a baraita (Tosefta 7:10): If one said: Safeguard my property for me and I will safeguard your property for you, or: Lend money to me and I will lend money to you, or: Safeguard my property for me and I will lend money to you, or: Lend money to me and I will safeguard your property for you, they all become paid bailees for each other. The Gemara asks: Why are they liable as paid bailees? Is this not a situation of safeguarding with the owners? Rav Pappa again said: This is referring to a case where he said to him: Safeguard my property for me today and I will safeguard your property for you tomorrow.

155 The Gemara relates: There were certain ice plant dealers [ahaluyei], and every day one of them would have a turn to bake for the group. One day the others said to one of them: Go and bake for us. He said to them: Safeguard my cloak for me. Before he came back they were negligent with it and it was stolen. They came for judgment before Rav Pappa, and he deemed them liable to pay for the cloak.

156 The Rabbis said to Rav Pappa: Why did you deem them liable to pay? This is akin to a case of negligence by a bailee while he is with the owners, as the owner of the cloak was baking for them at the time the cloak was stolen due to their negligence. Rav Pappa was embarrassed over his apparent mistake. Ultimately, it was discovered that at that time, when the cloak was stolen, the cloak owner was drinking beer and not baking. Since he was not doing work for them, this was not a case of safeguarding with the owner, and therefore Rav Pappa's ruling was vindicated.

157 The Gemara comments: This works out well according to the one who says that in a case of negligence by a bailee while he is with the owners he is exempt; due to that reason Rav Pappa was embarrassed. But according to the one who says that in a case of negligence he is liable even while he is with the owners, why was Rav Pappa embarrassed? Rather, this is what actually happened: That day was not his turn to bake, and they said to him: You go and bake for us, and he said to them: As payment for baking for you when it is not my turn, safeguard my cloak. In other words, they were paid bailees.

158 Before he came back it was stolen. They came before Rav Pappa, who deemed them liable to pay. The Sages said to Rav Pappa: This is a case of safeguarding with the owners. Rav Pappa was embarrassed. Ultimately it was discovered that at that time the cloak owner was drinking beer and not baking, and therefore this was not a case of safeguarding with the owners.

159 The Gemara relates: An incident occurred with these two people who were going on the way, one of whom was tall and one of whom was short. The tall one was riding on a donkey and he had a sheet. The short one was covered with a woolen cloak [sarbela] and was walking on foot. When the short one reached a river, he took his cloak and placed it on the donkey in order to keep the cloak dry, and he took that tall man's sheet and covered himself with it, and the water washed away his sheet.

160 The tall man came for judgment before Rava, who deemed the short man liable to pay for the sheet. The Rabbis said to Rava: Why did you deem him liable to pay? This is a case of borrowing with the owners present. Rava was embarrassed. Ultimately, it was discovered that the short man took the sheet without the tall man's knowledge and placed it back without his knowledge, and therefore this was not borrowing, but theft.

161 The Gemara relates that there was a certain man who rented a donkey to another. The owner said to the renter: Look, do not go on the path of Nehar Pekod, where there is water and the donkey is likely to drown. Instead, go on the path of Neresh, where there is no water. The renter went on the path of Nehar Pekod and the donkey died. When he came back, he said: Yes, I went on the path of Nehar Pekod; but there was no water there, and therefore the donkey's death was caused by other factors.

162 Rava said: The renter's claim is accepted, due to the reasoning of: Why should he lie? In other words, if this man wanted to lie, he could have told the donkey's owner: I went on the path of Neresh, as the owner instructed. Abaye said to Rava: We do not say the principle of: Why would I lie, in a place where there are witnesses. Since witnesses can be summoned to establish conclusively whether there was water along the path of Nehar Pekod, the reasoning that the renter could have stated a different claim is not employed.

163 § The mishna teaches that if one says to another: Safeguard my property for me, and the other says to him: Place it before me, the second individual is an unpaid bailee. Rav Huna said: If the second individual said to him: Place it down before yourself, he is neither an unpaid bailee nor a paid

bailee, and he has no responsibility at all. A dilemma was raised before the Sages: If he said simply: Place it down, without specifying further, what is the halakha? The Gemara attempts to provide an answer from the mishna. Come and hear: If one says to another: Safeguard my property for me, and the other says to him: Place it before me, the second individual is an unpaid bailee. This indicates that an unspecified statement is nothing.

[164] The Gemara rejects this inference: On the contrary, one can infer the opposite from that which Rav Huna says: If the second individual said to him: Place it down in front of yourself, it is in this case that he is neither an unpaid bailee nor a paid bailee. This indicates that if he said simply: Place it down, without specifying further, he is an unpaid bailee. Rather, no inference is to be learned from this mishna, as the inferences are contradictory concerning this halakha.

[165] The Gemara suggests: Let us say that this matter is the subject of a dispute between tanna'im, as it was taught in a mishna (Bava Kamma 47b): If one brought his items into the courtyard of another with the permission of the owner of the courtyard and they were damaged there, the owner of the courtyard is liable. Rabbi Yehuda HaNasi says: In all cases he is liable only if the owner of the courtyard explicitly accepts upon himself to safeguard the items. That mishna is apparently referring to one who places his items in a yard without specification, and the tanna'im disagreed on the question of liability; it therefore has a parallel application to the case in this mishna.

[166] The Gemara refutes this claim. From where do you know that these cases are parallel? Perhaps the Rabbis there say their opinion only in a courtyard, which can be safeguarded, and therefore when the owner of the courtyard allowed the other to bring his items into the courtyard and said to him: Place them in, what he was saying to him was: Place them in so that I can safeguard it for you. But here, in a market, which is a place where goods cannot be safeguarded, he was actually saying to him: Place it down and sit and safeguard it yourself.

[167] Alternatively, one can say the opposite: Perhaps Rabbi Yehuda HaNasi says his ruling, that the owner of the courtyard is not liable, only there, in his courtyard, as he requires permission from the owner of the courtyard to enter, and when the owner of the courtyard gave him permission to enter, all he said to him was: Sit and safeguard it. But here, in the market, when he said to the owner of the item: Place it down, he was saying to him: Place it down and I will safeguard it for you. As if it enters your mind that he was saying to him: Place it down and sit and safeguard it yourself, does the owner of the item really require permission from him to put an item down in a public place? In light of these suggestions, there is not necessarily a connection between the two mishnayot.

[168] § The mishna teaches: One who lent to another based on collateral is a paid bailee for the collateral. The Gemara comments: Let us say that the mishna is not in accordance with the opinion of Rabbi Eliezer. As it is taught in a baraita: With regard to one who lends to another based on collateral and the collateral was lost, the lender takes an oath that he was not negligent in his safeguarding, and then he may take his money that he lent him. This is the statement of Rabbi Eliezer, who apparently maintains that the lender took the collateral as proof of the loan, and therefore he is considered an unpaid bailee, who is liable for negligence unless he takes an oath.

[169] The baraita continues: Rabbi Akiva says that the borrower can say to him: Didn't you lend to me only based on the collateral? If the collateral is lost, your money is lost. In other words, the collateral was taken as security for the debt. But if he lent him one thousand dinars by means of a promissory note and the borrower left him collateral against the money, everyone agrees that if the collateral is

lost, his money is lost. In this case it cannot be claimed that the collateral was held as proof of the debt, as there is a document attesting to the debt. Consequently, it was evidently taken as security corresponding to the loan, which means that if the collateral is lost, the lender loses his money.

170 The Gemara refutes this suggestion: Even if you say that the mishna is in accordance with the opinion of Rabbi Eliezer, it is not difficult. Here, the baraita is referring to a case where the lender took his collateral at the time of his loan, and therefore the collateral served as proof of the loan, whereas there, the mishna is referring to a case where the lender took his collateral later, not at the time of his loan, to enhance his ability to collect payment. In this latter case, the collateral is clearly security for the money, and therefore he is considered a paid bailee.

171 The Gemara raises a difficulty: But don't both this and that, the mishna and the baraita,

172 teach the same phrase: One who lent to another based on collateral, which indicates that the collateral was given at the time of the loan? Rather, the Gemara proposes a different resolution: It is not difficult. Here, the baraita is referring to a case where he lent him money, whereas there, the mishna is referring to a situation where he lent him produce. Since produce will spoil, the lender benefits from the deal, as he will receive fresher produce in return. Therefore, he is considered a paid bailee for the collateral.

173 The Gemara raises a difficulty: But from the fact that the latter clause of the mishna teaches that Rabbi Yehuda says: One who lent another money is an unpaid bailee, whereas one who lent another produce is a paid bailee, by inference you can conclude that according to the first tanna there is no difference between one who lends money and one who lends produce. If so, the proposed resolution does not fit the text.

174 The Gemara responds: The entire mishna is in accordance with the opinion of Rabbi Yehuda, and the mishna is incomplete and this is what it is teaching: One who lent to another based on collateral is a paid bailee. In what case is this statement said? When he lent him produce. But if he lent him money, he is an unpaid bailee. As Rabbi Yehuda says: One who lent another money is an unpaid bailee with regard to the collateral, whereas one who lent produce is a paid bailee.

175 The Gemara raises a difficulty: If that is so, it turns out that the mishna is established not in accordance with the opinion of Rabbi Akiva. This is problematic, as most of the Sages of the mishna were Rabbi Akiva's students, and anonymous mishnayot are generally presumed to follow his rulings. Rather, it is clear that the mishna is not in accordance with the opinion of Rabbi Eliezer.

176 The Gemara suggests: Let us say that the dispute between Rabbi Akiva and Rabbi Eliezer applies only in a case where the collateral is not equal to the monetary value of the loan, and they disagree with regard to a statement of Shmuel. As Shmuel says: With regard to one who lends one thousand dinars to another and the borrower puts before the lender as collateral for the loan the handle of a sickle, which is worth only a small fraction of the loan, nevertheless, if the sickle is lost, the thousand dinars are lost. The Gemara is suggesting that Rabbi Akiva would agree with this ruling, whereas Rabbi Eliezer would disagree with it.

177 The Gemara rejects this suggestion: If the case is one where the collateral is not equal to the amount of money constituting the loan, everyone holds that the halakha is not in accordance with the opinion of Shmuel. But here the dispute is referring to a situation where the collateral does equal the

amount of the money constituting the loan, and they disagree with regard to a statement of Rabbi Yitzḥak.

178 As Rabbi Yitzḥak says: From where is it derived that a creditor acquires collateral given to him and is considered its owner as long as the item is in his possession? It is derived from a verse, as it is stated: “You shall return the pledge to him when the sun goes down that he may sleep in his garment, and bless you; and it shall be a righteousness for you before the Lord your God” (Exodus 24:13). Rabbi Yitzḥak infers: If the creditor does not acquire the collateral, then from where is the righteousness involved in returning it? In this case, the creditor would not be giving up anything of his own. From here it is derived that a creditor acquires the collateral.

179 The Gemara rejects this suggestion: And can you understand it that way? You can say that Rabbi Yitzḥak stated this halakha in a case where he took his collateral not at the time of his loan but at a later stage, in order to collect his debt. But did Rabbi Yitzḥak say this ruling in a situation where he took his collateral at the time of his loan?

180 Rather, if he took his collateral not at the time of his loan, everyone holds in accordance with the opinion of Rabbi Yitzḥak. And here it is discussing a case where he took his collateral at the time of his loan, and Rabbi Eliezer and Rabbi Akiva disagree with regard to the case of a bailee of a lost item. As it was stated that amora’im disagreed concerning the responsibility of the bailee for a lost item. If someone found a lost item and it is subsequently lost or stolen from him, what responsibility does he bear toward the owner? Rabba said: This individual is considered to be like an unpaid bailee. Rav Yosef said: He is like a paid bailee.

181 The Gemara suggests: Let us say that the opinion of Rav Yosef is the subject of a dispute between tanna’im. There is no question that Rabba’s opinion is the subject of a dispute between tanna’im, as Rabbi Akiva’s opinion cannot be reconciled with his ruling: If one who takes collateral for his loan is considered a paid bailee, the same certainly applies to one who goes out of his way to safeguard a lost item. The Gemara is asking whether there is any way to explain Rav Yosef’s ruling in accordance with the opinions of both tanna’im, or if he must accept that Rabbi Eliezer disputes his opinion. The Gemara responds: No, it is possible with regard to a bailee for a lost item that everyone holds in accordance with the opinion of Rav Yosef, even Rabbi Eliezer. And here, in the baraita,

182 they disagree with regard to a lender who needs the collateral, i.e., the lender wants to use the collateral and deduct the value of its use from the amount of the loan. One Sage, Rabbi Akiva, holds that he is performing a mitzva in that he lent to him, and therefore he is considered a paid bailee. And one Sage, Rabbi Eliezer, holds that he is not performing a mitzva, as his intention is to lend for his own benefit. And consequently he is considered an unpaid bailee for the collateral.

183 § The mishna teaches that Abba Shaul says: It is permitted for a person to rent out a poor person’s collateral that was given to him for a loan, so that he shall set a rental price for it and thereby progressively reduce the debt, because this is considered like returning a lost item. Rav Ḥanan bar Ami says that Shmuel says: The halakha is in accordance with the opinion of Abba Shaul, but even Abba Shaul said his ruling only with regard to a hoe, a chisel, and an ax, since the remuneration from these utensils is great and their depreciation is small.

184 MISHNA: With regard to one who was transporting a barrel from one place to another and he broke it, whether he was an unpaid bailee or a paid bailee, if he takes an oath that he was not negligent he is exempt from payment. Rabbi Eliezer says: Both this one, an unpaid bailee, and that

one, a paid bailee, must take an oath to exempt themselves from payment, but I wonder whether both this one and that one can take an oath. In other words, this is the halakha that I heard from my teachers, but I do not understand their ruling.

185 GEMARA: The Sages taught: With regard to one who was transporting a barrel for another person from one place to another and he broke it, whether he was an unpaid bailee or a paid bailee, if he takes an oath that he was not negligent, he is exempt from payment. This is the statement of Rabbi Meir. Rabbi Yehuda says: An unpaid bailee takes an oath and does not pay, but a paid bailee pays. Rabbi Eliezer says: This one and that one take an oath, and I wonder whether both this one and that one can take an oath.

186 The Gemara analyzes these opinions. Is that to say that Rabbi Meir holds that one who stumbles is not considered negligent, but the victim of an accident? But isn't it taught in a baraita: If one's pitcher broke in a public place and he did not remove it from there, or if his camel fell and he did not stand it up, Rabbi Meir renders him liable for the damage they caused? And the Rabbis say that he is exempt according to human laws but is liable according to the laws of Heaven. Although the court cannot impose liability, nevertheless he is morally culpable. And we maintain that they disagree with regard to the question of whether one who stumbles is negligent. This indicates that Rabbi Meir holds that one who stumbles is considered negligent.

187 Rabbi Elazar said: Break the mishna, as he who taught this did not teach that, i.e., there are two traditions with regard to Rabbi Meir's opinion. And Rabbi Yehuda came to say a different ruling: An unpaid bailee takes an oath and does not pay while a paid bailee pays, this one in accordance with his law and that one in accordance with his law, as an unpaid bailee is exempt from liability for theft and loss, while a paid bailee is liable in those cases and exempt only in cases of circumstances beyond his control. And Rabbi Eliezer came to say: Yes, there is a tradition that is in accordance with the opinion of Rabbi Meir, as I learned from my teachers, but I wonder whether both this one and that one can take an oath.

188 The Gemara asks: Granted, an unpaid bailee takes an oath that he was not negligent with regard to the barrel, as required by Torah law, but why does a paid bailee take an oath? Even if he was not negligent he is still required to pay, as he is obligated to pay for theft and loss. And even with regard to an unpaid bailee, this works out well if the barrel broke on an inclined plane [midron], as the accident occurred due to the difficulty of transporting it, but if it broke not on an inclined plane but under different circumstances, how can he take an oath that he was not negligent with it? Evidently his negligence caused the accident.

189 And even on an inclined plane, this works out well where there is no evidence, i.e., in a case without witnesses. But where there is evidence, let him bring evidence and be exempt. Why then is he forced to take an oath? As it is taught in a baraita: Isi ben Yehuda says, with regard to the verse: "And it died or was hurt or driven away without an eyewitness, an oath of the Lord shall be between them" (Exodus 22:9–10), that one can infer from here that if there is an eyewitness, let him bring evidence and be exempt.

190 The Gemara previously cited Rabbi Elazar's answer to the apparent contradiction between the statements of Rabbi Meir, which was followed by an analysis of the various opinions of the tanna'im. The Gemara presents a different interpretation. And Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: There is no difficulty with the oath proposed by Rabbi Meir, as this oath is a decree of the

Sages for the betterment of the world. The reason for this oath is that if you do not say so, that an unpaid bailee who broke the barrel in transport can exempt himself by means of an oath, you will have no person who will be willing to transport a barrel for another from one place to another, due to the fear that it might break and he will have to pay.

[191] The Gemara asks: How exactly does he take an oath? Rava said that the phrasing is: I take an oath that I broke it unintentionally. And Rabbi Yehuda came to say: An unpaid bailee takes an oath, while a paid bailee pays, this one in accordance with his law and that one in accordance with his law. And Rabbi Elazar came to say: Yes, there is a tradition in accordance with the opinion of Rabbi Meir. But I wonder whether both this one and that one can take an oath.

[192] Granted, an unpaid bailee takes an oath that he was not negligent with regard to the barrel, but why does a paid bailee take an oath? Even if he was not negligent, he is still required to pay. And even with regard to an unpaid bailee, this works out well if the barrel was broken on an inclined plane, but if it broke not on an inclined plane but under different circumstances, how can he take an oath that he was not negligent with it?

[193] And even on an inclined plane, this works out well where there is no evidence. But where there is evidence, let him bring evidence and be exempt. As it is taught in a baraita: Isi ben Yehuda says, with regard to the verse: “And it died or was hurt or driven away without an eyewitness, an oath of the Lord shall be between them” (Exodus 22:9–10), that one can infer from here that if there is an eyewitness, let him bring evidence and be exempt.

[194] The Gemara relates: There was a certain man who transported a barrel of wine in the market [beristeka] of Meḥoza and broke it on one of the protrusions of a wall in Meḥoza. The case came before Rava, who said to him: With regard to the market of Meḥoza, people are generally found there. Go and bring evidence in your favor and you will be exempt. Rav Yosef, Rava’s son, said to him: In accordance with whose opinion did you issue this ruling? In accordance with the opinion of Isi ben Yehuda? Rava said to him: Yes, I ruled in accordance with the ruling of Isi, and we hold in accordance with his opinion.

[195] The Gemara relates a similar incident. There was a certain man who said to another: Go and buy for me four hundred pitchers of wine. The second man went and bought them for him. Ultimately, he came before the first man and said to him: I bought four hundred pitchers of wine for you, but they fermented.

[196] The case came before Rava, who said to the second man: If four hundred pitchers of wine had fermented, this matter would generate publicity, i.e., people would have heard of this occurrence. Consequently, go and bring proof that initially, when you purchased the pitchers, the wine was good, and you will be exempt. Rav Yosef, Rava’s son, said to him: In accordance with whose opinion did you issue this ruling? According to that of Isi ben Yehuda? Rava said to him: Yes, I ruled in accordance with the ruling of Isi, and we hold in accordance with his opinion.

[197] The Gemara relates: Rav Ḥiyya bar Yosef issued a decree in the city of Sikhra, where he was the presiding Sage: With regard to those who carry loads on a pole [be’agra] and the item breaks, they must pay half. What is the reason? Such a pole is used to carry loads that are too much for one individual to carry and too little for two. Consequently, this breakage is close to an accident and equally close to negligence, and therefore they compromise with a payment of half liability. If he carried it with a digla, a wooden tool designed for double loads, he pays in full, as the use of such a

tool indicates that he was carrying a load beyond the capacity of a single individual to bear and therefore acted negligently.

198 The Gemara relates an incident involving Rabba bar bar Ḥanan: Certain porters broke his barrel of wine after he had hired them to transport the barrels. He took their cloaks as payment for the lost wine. They came and told Rav. Rav said to Rabba bar bar Ḥanan: Give them their cloaks. Rabba bar bar Ḥanan said to him: Is this the halakha? Rav said to him: Yes, as it is written: “That you may walk in the way of good men” (Proverbs 2:20). Rabba bar bar Ḥanan gave them their cloaks. The porters said to Rav: We are poor people and we toiled all day and we are hungry and we have nothing. Rav said to Rabba bar bar Ḥanan: Go and give them their wages. Rabba bar bar Ḥanan said to him: Is this the halakha? Rav said to him: Yes, as it is written: “And keep the paths of the righteous” (Proverbs 2:20).

Chapter 7

1 MISHNA: With regard to one who hires laborers and tells them to rise exceptionally early and to continue working until exceptionally late, if this is in a locale where laborers are not accustomed to rising so early or to continuing to work until so late, the employer is not permitted to compel them to do so. In a locale where employers are accustomed to feeding their laborers, the employer must feed them. If they are in a locale where an employer is accustomed to providing their laborers with sweet foods, he must provide such food. Everything is in accordance with the regional custom in these matters.

2 There was an incident involving Rabbi Yoḥanan ben Matya, who said to his son: Go out and hire laborers for us. His son went, hired them, and pledged to provide sustenance for them as a term of their employment, without specifying the details.

3 And when he came back to his father and reported what he had done, Rabbi Yoḥanan ben Matya said to him: My son, even if you were to prepare a feast for them like that of King Solomon in his time, you would not have fulfilled your obligation to them, as they are the descendants of Abraham, Isaac, and Jacob. Rather, before they begin engaging in their labor, go out and say to them: The stipulation that food will be provided is on the condition that you have the right to claim from me only a meal of bread and legumes, which is the typical meal given to laborers. Rabban Shimon ben Gamliel says: Rabbi Yoḥanan ben Matya’s son did not need to state this condition, as the principle is that everything is in accordance with the regional custom.

4 GEMARA: With regard to the mishna’s statement that an employer may not compel his laborers to rise exceptionally early and continue working until exceptionally late, the Gemara asks: Isn’t this obvious? By what right can he force them to do so? The Gemara explains: No, the mishna’s ruling is necessary only in a case where the employer increased their wages beyond the standard in that place. Lest you say that the employer could say to the laborers: The fact that I increased your wages was with the understanding that you would rise early and continue working late for me, the mishna therefore teaches us that the laborers can say in response to the employer: The fact that you increased our wages was with the understanding that we would perform quality work for you, not that we would work longer hours.

[5] § Reish Lakish says:

[6] A laborer’s entrance into the city from the field at the end of a day’s work is at his own expense, i.e., he must work until the very end of the day before returning home, and he is not paid for his travel time. In contrast, his departure to work is at his employer’s expense, i.e., he may travel after sunrise, which is time that he is paid for. The source for this is as it is stated: “The sun rises; they slink away and couch in their dens; man goes forth to his work and to his labor until the evening” (Psalms 104:22–23). This verse indicates that people set out to work only from sunrise, but they work until the very end of the day.

[7] The Gemara asks: But if employment practices are in accordance with regional custom, how can a source be cited from a verse? Let us see how they are accustomed to working in that place. The Gemara answers: The statement of Reish Lakish is with regard to a new city, which does not yet have an accepted practice. The Gemara asks: Even so, let us see from which city the laborers originally came, and let them follow the customs of that city. The Gemara answers: This is a case of an eclectic group of laborers, who came from many different cities. The Gemara offers an alternative answer: If you wish, say instead that the employer said to the laborer: I am hiring you as a laborer by Torah law. According to this explanation, Reish Lakish is detailing the halakha by Torah law.

[8] With regard to the aforementioned psalm, the Gemara notes: Rabbi Zeira interpreted a verse homiletically, and some say that Rav Yosef taught in a baraita: What is the meaning of that which is written: “You make darkness and it is night, in which all the beasts of the forest creep forth” (Psalms 104:20)? “You make darkness and it is night”; this is referring to this world, which resembles nighttime. “In which all the beasts of the forest creep forth”; these are the wicked in this world, who resemble a beast of the forest, as the wicked have great influence in this world.

[9] With regard to the World-to-Come, the verse states: “The sun rises; they slink away and couch in their dens” (Psalms 104:22). “The sun rises” for the righteous, and “they slink away,” i.e., the wicked go to Gehenna. As for the phrase: “And couch in their dens,” it is interpreted as follows: You will not have a single righteous person who will not have his own residence in the World-to-Come, as befitting his dignity. With regard to the phrase: “Man goes forth to his work,” it indicates that the righteous go forth to receive their reward. Finally, the phrase: “And to his labor until the evening” (Psalms 104:22), teaches that the verse is referring to one who has completed his labor by the evening, i.e., before the evening of his lifetime, his death.

[10] The Gemara relates a story that involves rising early. Rabbi Elazar, son of Rabbi Shimon, found a certain officer [parhagavna] whose responsibility was to arrest thieves. He said to the officer: How are you able to arrest them? Aren’t they likened to beasts, as it is written: “You make darkness and it is night, in which all the beasts of the forest creep forth” (Psalms 104:20)? There are those who say that he said to him a proof from this verse: “He lies in wait in a secret place as a lion in his lair, he lies in wait to catch the poor; he catches the poor when he draws him up in his net” (Psalms 10:9). Since the wicked are so devious, perhaps you apprehend the righteous and leave the wicked alone?

[11] The officer said to him: But what should I do? It is the king’s edict [harmana] that I must arrest thieves, and I am performing my job to the best of my ability. Rabbi Elazar, son of Rabbi Shimon, said to him: Come and I will instruct you how you should do it. At the fourth hour of the day enter the tavern. When you see someone drinking wine, holding his cup in his hand, and dozing, inquire about his background.

[12] If he is a Torah scholar and is dozing, assume that he rose early in the morning for his studies. If he is a daytime laborer, assume that he rose early and performed his work. And if his work is at night and no one heard him working, it is possible that this is because he draws copper wires, which is a form of labor that does not produce noise. And if he is none of these, he is a thief, and you should arrest him, as it can be assumed that he was awake the previous night because he was stealing, and that is why he is now dozing off.

[13] This matter of the advice of Rabbi Elazar, son of Rabbi Shimon, was heard in the king's palace. The king's ministers said: Let the reader of the letter be its messenger [parvanka], i.e., since Rabbi Elazar, son of Rabbi Shimon, offered this advice, he should be the one to implement it. They brought Rabbi Elazar, son of Rabbi Shimon, to the authorities who appointed him to this task, and he proceeded to arrest thieves. Rabbi Yehoshua ben Korḥa sent Rabbi Elazar, son of Rabbi Shimon, the following message: You are vinegar, son of wine, i.e., you are wicked in comparison to your father, the righteous Rabbi Shimon, just as vinegar is spoiled wine. Until when will you inform on the nation of our God to be sentenced to execution by a gentile king's court?

[14] Rabbi Elazar, son of Rabbi Shimon, sent a message back to him: I am merely eradicating thorns from the vineyard, i.e., I am removing the wicked from the Jewish people. Rabbi Yehoshua ben Korḥa sent back to him: Let the Owner of the vineyard, i.e., God, come and eradicate His own thorns. It is not your place to do this. The Gemara relates: One day, a certain laundryman met Rabbi Elazar, son of Rabbi Shimon, and called him vinegar, son of wine. Rabbi Elazar, son of Rabbi Shimon, said: From the fact that this man acted so insolently by vilifying a Torah scholar, one can conclude that he is a wicked person. He told the authorities: Arrest that man. They arrested him and condemned him to death.

[15] After his mind settled, i.e., when his anger abated, Rabbi Elazar, son of Rabbi Shimon, regretted his hasty decision. He went after the laundryman in order to ransom him and save him from execution, but he was unable to do so. He read the verse about him: "Whoever keeps his mouth and his tongue, keeps his soul from troubles" (Proverbs 21:23), i.e., had the laundryman not issued his derogatory comment he would have been spared this fate. Ultimately, they hanged the laundryman. Rabbi Elazar, son of Rabbi Shimon, stood beneath the gallows and wept. Those who were present said to him: Our teacher, let it not be bad in your eyes that you caused his death, as this laundryman was a wholly wicked person; you should know that he and his son both engaged in intercourse with a betrothed young woman on Yom Kippur.

[16] Upon hearing this, Rabbi Elazar, son of Rabbi Shimon, placed his hand upon his belly, over his innards, and said: Rejoice, my innards, rejoice! If your mere suspicions are so accurate, all the more so your certainties must be correct. If the condemnation of this man based upon the suspicions raised by his insolence proved to be correct, the identification of thieves in accordance with logical reasoning must certainly be accurate. I am assured about you, my innards, that worm and maggot will not affect you, which is a sign of a completely righteous person.

[17] Nevertheless, his mind was not calmed. He decided to test himself. He arranged for people to give him a sedative to drink, and they brought him into a house of marble, where surgeries were performed, and cut open his belly. They removed baskets upon baskets of fat from it, placed them in the hot sun in the summer months of Tammuz and Av, and the fat did not putrefy. In this manner,

Rabbi Elazar, son of Rabbi Shimon, received proof that his decisions were correct and that he was a wholly righteous individual.

[18] The Gemara questions what the proof was: This is not sufficient proof, as all fat that is not attached to flesh does not putrefy. The Gemara answers: True, all fat not attached to flesh does not putrefy, but the red veins within the fat do putrefy. Here, by contrast, although there were red veins in the fat, they did not putrefy, which is a sign of his righteousness. Rabbi Elazar, son of Rabbi Shimon, read the verses about himself: "I have set the Lord always before me…therefore my heart is glad, and my glory rejoices; my flesh also dwells in safety" (Psalms 16:8–9).

[19] The Gemara relates: And a similar incident also occurred to Rabbi Yishmael, son of Rabbi Yosei, i.e., he too was appointed head officer.

[20] Elijah the prophet encountered him

[21] and said to him: Until when will you inform on the nation of our God to be sentenced to execution? Rabbi Yishmael, son of Rabbi Yosei, said to Elijah: What should I do? It is the king's edict that I must obey. Elijah said to him: Faced with this choice, your father fled to Asia. You should flee to Laodicea rather than accept this appointment.

[22] § With regard to these Sages, the Gemara adds: When Rabbi Yishmael, son of Rabbi Yosei, and Rabbi Elazar, son of Rabbi Shimon, would meet each other, it was possible for a pair of oxen to enter and fit between them, under their bellies, without touching them, due to their excessive obesity.

[23] A certain Roman noblewoman [matronita] once said to them: Your children are not really your own, as due to your obesity it is impossible that you engaged in intercourse with your wives. They said to her: Theirs, i.e., our wives' bellies, are larger than ours. She said to them: All the more so you could not have had intercourse. There are those who say that this is what they said to her: "For as the man is, so is his strength" (Judges 8:21), i.e., our sexual organs are proportionate to our bellies. There are those who say that this is what they said to her: Love compresses the flesh.

[24] The Gemara asks: And why did they respond to her audacious and foolish question? After all, it is written: "Answer not a fool according to his folly, lest you also be like him" (Proverbs 26:4). The Gemara answers: They answered her in order not to cast aspersions on the lineage of their children.

[25] The Gemara continues discussing the bodies of these Sages: Rabbi Yoḥanan said: The organ of Rabbi Yishmael, son of Rabbi Yosei, was the size of a jug of nine kav. Rav Pappa said: The organ of Rabbi Yoḥanan was the size of a jug of five kav, and some say it was the size of a jug of three kav. Rav Pappa himself had a belly like the baskets [dikurei] made in Harpanya.

[26] With regard to Rabbi Yoḥanan's physical features, the Gemara adds that Rabbi Yoḥanan said: I alone remain of the beautiful people of Jerusalem. The Gemara continues: One who wishes to see something resembling the beauty of Rabbi Yoḥanan should bring a new, shiny silver goblet from the smithy and fill it with red pomegranate seeds [partzidaya] and place a diadem of red roses upon the lip of the goblet, and position it between the sunlight and shade. That luster is a semblance of Rabbi Yoḥanan's beauty.

[27] The Gemara asks: Is that so? Was Rabbi Yoḥanan so beautiful? But doesn't the Master say: The beauty of Rav Kahana is a semblance of the beauty of Rabbi Abbahu; the beauty of Rabbi Abbahu is a semblance of the beauty of Jacob, our forefather; and the beauty of Jacob, our forefather, is a semblance of the beauty of Adam the first man, who was created in the image of God. And yet Rabbi

Yoḥanan is not included in this list. The Gemara answers: Rabbi Yoḥanan is different from these other men, as he did not have a beauty of countenance, i.e., he did not have a beard.

[28] The Gemara continues to discuss Rabbi Yoḥanan's beauty. Rabbi Yoḥanan would go and sit by the entrance to the ritual bath. He said to himself: When Jewish women come up from their immersion for the sake of a mitzva, after their menstruation, they should encounter me first, so that they have beautiful children like me, and sons learned in Torah like me. This is based on the idea that the image upon which a woman meditates during intercourse affects the child she conceives.

[29] The Rabbis said to Rabbi Yoḥanan: Isn't the Master worried about being harmed by the evil eye by displaying yourself in this manner? Rabbi Yoḥanan said to them: I come from the offspring of Joseph, over whom the evil eye does not have dominion, as it is written: "Joseph is a fruitful vine, a fruitful vine by a fountain [alei ayin]" (Genesis 49:22); and Rabbi Abbahu says: Do not read the verse as saying: "By a fountain [alei ayin]"; rather, read it as: Those who rise above the evil eye [olei ayin]. Joseph's descendants are not susceptible to the influence of the evil eye.

[30] Rabbi Yosei bar Ḥanina said that this idea is derived from here: "And let them grow [veyidgu] into a multitude in the midst of the earth" (Genesis 48:16). Just as with regard to fish [dagim] in the sea, the water covers them and the evil eye therefore has no dominion over them, as they are not seen, so too, with regard to the offspring of Joseph, the evil eye has no dominion over them.

[31] The Gemara relates: One day, Rabbi Yoḥanan was bathing in the Jordan River. Reish Lakish saw him and jumped into the Jordan, pursuing him. At that time, Reish Lakish was the leader of a band of marauders. Rabbi Yoḥanan said to Reish Lakish: Your strength is fit for Torah study. Reish Lakish said to him: Your beauty is fit for women. Rabbi Yoḥanan said to him: If you return to the pursuit of Torah, I will give you my sister in marriage, who is more beautiful than I am. Reish Lakish accepted upon himself to study Torah. Subsequently, Reish Lakish wanted to jump back out of the river to bring back his clothes, but he was unable to return, as he had lost his physical strength as soon as he accepted the responsibility to study Torah upon himself.

[32] Rabbi Yoḥanan taught Reish Lakish Bible, and taught him Mishna, and turned him into a great man. Eventually, Reish Lakish became one of the outstanding Torah scholars of his generation. One day the Sages of the study hall were engaging in a dispute concerning the following baraita: With regard to the sword, the knife, the dagger [vehapigyon], the spear, a hand sickle, and a harvest sickle, from when are they susceptible to ritual impurity? The baraita answers: It is from the time of the completion of their manufacture, which is the halakha with regard to metal vessels in general.

[33] These Sages inquired: And when is the completion of their manufacture? Rabbi Yoḥanan says: It is from when one fires these items in the furnace. Reish Lakish said: It is from when one scours them in water, after they have been fired in the furnace. Rabbi Yoḥanan said to Reish Lakish: A bandit knows about his banditry, i.e., you are an expert in weaponry because you were a bandit in your youth. Reish Lakish said to Rabbi Yoḥanan: What benefit did you provide me by bringing me close to Torah? There, among the bandits, they called me: Leader of the bandits, and here, too, they call me: Leader of the bandits. Rabbi Yoḥanan said to him: I provided benefit to you, as I brought you close to God, under the wings of the Divine Presence.

[34] As a result of the quarrel, Rabbi Yoḥanan was offended, which in turn affected Reish Lakish, who fell ill. Rabbi Yoḥanan's sister, who was Reish Lakish's wife, came crying to Rabbi Yoḥanan, begging that he pray for Reish Lakish's recovery. She said to him: Do this for the sake of my

children, so that they should have a father. Rabbi Yoḥanan said to her the verse: “Leave your fatherless children, I will rear them” (Jeremiah 49:11), i.e., I will take care of them. She said to him: Do so for the sake of my widowhood. He said to her the rest of the verse: “And let your widows trust in Me.”

35 Ultimately, Rabbi Shimon ben Lakish, Reish Lakish, died. Rabbi Yoḥanan was sorely pained over losing him. The Rabbis said: Who will go to calm Rabbi Yoḥanan’s mind and comfort him over his loss? They said: Let Rabbi Elazar ben Pedat go, as his statements are sharp, i.e., he is clever and will be able to serve as a substitute for Reish Lakish.

36 Rabbi Elazar ben Pedat went and sat before Rabbi Yoḥanan. With regard to every matter that Rabbi Yoḥanan would say, Rabbi Elazar ben Pedat would say to him: There is a ruling which is taught in a baraita that supports your opinion. Rabbi Yoḥanan said to him: Are you comparable to the son of Lakish? In my discussions with the son of Lakish, when I would state a matter, he would raise twenty-four difficulties against me in an attempt to disprove my claim, and I would answer him with twenty-four answers, and the halakha by itself would become broadened and clarified. And yet you say to me: There is a ruling which is taught in a baraita that supports your opinion. Do I not know that what I say is good? Being rebutted by Reish Lakish served a purpose; your bringing proof to my statements does not.

37 Rabbi Yoḥanan went around, rending his clothing, weeping and saying: Where are you, son of Lakish? Where are you, son of Lakish? Rabbi Yoḥanan screamed until his mind was taken from him, i.e., he went insane. The Rabbis prayed and requested for God to have mercy on him and take his soul, and Rabbi Yoḥanan died.

38 § After this digression, the Gemara returns to the story of Rabbi Elazar, son of Rabbi Shimon. And although his flesh did not putrefy, even so Rabbi Elazar, son of Rabbi Shimon, still did not rely on his own opinion, as he was worried that he may have erred in one of his decisions. He accepted afflictions upon himself as atonement for his possible sins. At night his attendants would spread out sixty felt bed coverings for him. In the morning, despite the bed coverings, they would remove sixty basins of blood and pus from underneath him.

39 The following day, i.e., every morning, his wife would prepare for him sixty types of relish [lifda] made from figs, and he would eat them and become healthy. His wife, concerned for his health, would not allow him to go to the study hall, so that the Rabbis would not push him beyond his limits.

40 In the evening, he would say to his pains: My brothers and my friends, come! In the morning he would say to them: Go away, due to the dereliction of Torah study that you cause me. One day his wife heard him inviting his pains. She said to him: You are bringing the pains upon yourself. You have diminished the money of my father’s home due to the costs of treating your self-imposed afflictions. She rebelled against him and went back to her father’s home, and he was left with no one to care for him.

41 Meanwhile, there were these sixty sailors who came and entered to visit Rabbi Elazar, son of Rabbi Shimon. They brought him sixty servants, each bearing sixty purses, and prepared him sixty types of relish and he ate them. When they had encountered trouble at sea, these sailors had prayed to be saved in the merit of Rabbi Elazar, son of Rabbi Shimon. Upon returning to dry land, they presented him with these gifts.

42 One day, the wife of Rabbi Elazar, son of Rabbi Shimon, said to her daughter: Go and check on your father and see what he is doing now. The daughter came to her father, who said to her: Go and tell your mother that ours is greater than theirs, i.e., my current financial status is greater than that of your father's household. He read the verse about himself: "She is like the merchant-ships; she brings her food from afar" (Proverbs 31:14). As he was unhindered by his wife from going to the study hall, Rabbi Elazar, son of Rabbi Shimon, ate and drank and became healthy and went out to the study hall.

43 The students brought sixty questionable samples of blood before him for inspection, to determine whether or not they were menstrual blood. He deemed them all ritually pure, thereby permitting the women to engage in intercourse with their husbands. The Rabbis of the academy were murmuring about Rabbi Elazar, son of Rabbi Shimon, and saying: Can it enter your mind that there is not one uncertain sample among them? He must be mistaken. Rabbi Elazar, son of Rabbi Shimon, said to them: If the halakha is in accordance with my ruling, let all the children born from these women be males. And if not, let there be one female among them. It turned out that all of the children were males, and they were called Elazar in his name.

44 It is taught in a baraita that Rabbi Yehuda HaNasi lamented and said concerning the wife of Rabbi Elazar, son of Rabbi Shimon: How much procreation has this evil woman prevented from the Jewish people. She caused women not to have children by preventing her husband from going to the study hall and rendering his halakhic rulings.

45 As Rabbi Elazar, son of Rabbi Shimon, was dying, he said to his wife: I know that the Rabbis are angry at me for arresting several thieves who are their relatives, and therefore they will not properly tend to my burial. When I die, lay me in my attic and do not be afraid of me, i.e., do not fear that anything will happen to my corpse. Rabbi Shmuel bar Naḥmani said: Rabbi Yonatan's mother told me that the wife of Rabbi Elazar, son of Rabbi Shimon, told her: I laid him in the attic for no less than eighteen years and for no more than twenty-two years.

46 His wife continued: When I would go up to the attic I would check his hair, and when a hair would fall out from his head, blood would come and appear in its place, i.e., his corpse did not decompose. One day I saw a worm emerging from his ear, and I became very distressed that perhaps his corpse had begun to decompose. My husband appeared to me in a dream and said to me: It is no matter for concern. Rather, this is a consequence for a sin of mine, as one day I heard a Torah scholar being insulted and I did not protest as I should have. Therefore, I received this punishment in my ear, measure for measure.

47 During this period, when two people would come for adjudication of a dispute, they would stand by the doorway to the home of Rabbi Elazar, son of Rabbi Shimon. One litigant would state his side of the matter, and the other litigant would state his side of the matter. A voice would issue forth from his attic, saying: So-and-so, you are guilty; so-and-so, you are innocent. The Gemara relates: One day, the wife of Rabbi Elazar, son of Rabbi Shimon, was quarreling with a neighbor. The neighbor said to her as a curse: This woman should be like her husband, who was not buried. When word spread that Rabbi Elazar, son of Rabbi Shimon, had not been buried, the Rabbis said: This much, i.e., now that the matter is known, to continue in this state is certainly not proper conduct, and they decided to bury him.

48 There are those who say that the Sages found out that Rabbi Elazar, son of Rabbi Shimon, had not been buried when Rabbi Shimon ben Yoḥai, his father, appeared to them in a dream and said to them:

I have a single fledgling among you, i.e., my son, and you do not wish to bring it to me by burying him next to me. Consequently, the Sages went to tend to his burial. The residents of Akhbaria, the town where the corpse of Rabbi Elazar, son of Rabbi Shimon, was resting, did not allow them to do so, as they realized that all the years that Rabbi Elazar, son of Rabbi Shimon, had been resting in his attic, no wild beast had entered their town. The townspeople attributed this phenomenon to his merit and they did not want to lose this protection.

[49] One day, which was Yom Kippur eve, everyone in the town was preoccupied with preparations for the Festival. The Rabbis sent a message to the residents of the adjacent town of Biri instructing them to help remove the body of Rabbi Elazar, son of Rabbi Shimon, from the attic, and they removed his bier and brought it to his father's burial cave. They found a serpent [le'akhna] that had placed its tail in its mouth and completely encircled the entrance to the cave, denying them access. They said to it: Serpent, serpent! Open your mouth to allow a son to enter next to his father. It opened its mouth for them and uncoiled, and they buried Rabbi Elazar, son of Rabbi Shimon, alongside his father.

[50] The Gemara continues: After this incident, Rabbi Yehuda HaNasi sent a messenger to speak with the wife of Rabbi Elazar, son of Rabbi Shimon, and propose marriage. She sent a message to him in response: Shall a vessel used by someone sacred, i.e., Rabbi Elazar, son of Rabbi Shimon, be used by someone who is, relative to him, profane? There, in Eretz Yisrael, they say that she used the colloquial adage: In the location where the master of the house hangs his sword, shall the contemptible shepherd hang his basket [kultei]? Rabbi Yehuda HaNasi sent a message back to her: Granted that in Torah he was greater than I, but was he greater than I in pious deeds? She sent a message back to him: Whether he was greater than you in Torah I do not know; but I do know that he was greater than you in pious deeds, as he accepted afflictions upon himself.

[51] The Gemara asks: With regard to Torah knowledge, what is the event that demonstrated the superiority of Rabbi Elazar, son of Rabbi Shimon, over Rabbi Yehuda HaNasi? The Gemara answers: When Rabban Shimon ben Gamliel and Rabbi Yehoshua ben Korḥa, the leading Sages of the generation, were sitting on benches [asafselei] teaching Torah along with the other Sages, the youthful pair Rabbi Elazar, son of Rabbi Shimon, and Rabbi Yehuda HaNasi would sit before them on the ground out of respect.

[52] These two young students would engage in discussions with the Sages, in which they would raise difficulties and answer them brilliantly. Seeing the young scholars' brilliance, the leading Sages said: From their waters we drink, i.e., we are learning from them, and they are the ones sitting on the ground? Benches were prepared for Rabbi Elazar, son of Rabbi Shimon, and Rabbi Yehuda HaNasi, and they were promoted to sit alongside the other Sages.

[53] Rabban Shimon ben Gamliel said to the other Sages present: I have a single fledgling among you, i.e., my son Rabbi Yehuda HaNasi, and you are seeking to take it from me? By promoting my son to such a prestigious position at such a young age, his chances of being adversely affected by the evil eye are greatly increased. They demoted Rabbi Yehuda HaNasi to sit on the ground, at his father's request. Rabbi Yehoshua ben Korḥa said to the Sages: Should one who has a father to care for him, i.e., Rabbi Yehuda HaNasi, be demoted so that he may live, while the other one, who does not have a father to care for him, i.e., Rabbi Elazar, son of Rabbi Shimon, should be allowed to die? Upon hearing his argument, the Sages also demoted Rabbi Elazar, son of Rabbi Shimon, without

explaining to him the reason for his demotion. He became offended and said to them: You are equating Rabbi Yehuda HaNasi to me, by demoting us together. In fact, I am much greater than he.

[54] As a result of that incident, the relationship of Rabbi Elazar, son of Rabbi Shimon, with Rabbi Yehuda HaNasi changed. Up until that day, when Rabbi Yehuda HaNasi would state a matter of Torah, Rabbi Elazar, son of Rabbi Shimon, would support him by citing proofs for his opinion. From this point forward, when they were discussing a subject and Rabbi Yehuda HaNasi would say: I have an argument to respond, Rabbi Elazar, son of Rabbi Shimon, would preempt him by saying to him: Such and such is what you have to respond, and this is the refutation of your claim. Now that you asked these questions, you have surrounded us with bundles of refutations that have no substance, i.e., you have forced us to give unnecessary answers. Rabbi Elazar, son of Rabbi Shimon, would anticipate Rabbi Yehuda HaNasi's comments and immediately dismiss them as having no value.

[55] Rabbi Yehuda HaNasi became offended. He came and told his father what had transpired. Rabban Shimon ben Gamliel said to him: My son, do not let his actions offend you, as he is a lion, son of a lion, and you are a lion, son of a fox. Rabbi Elazar's father, Rabbi Shimon, was a renowned Sage, and therefore Rabbi Elazar's sagacity is not surprising. In any event, this incident demonstrates the superiority of Rabbi Elazar, son of Rabbi Shimon, to Rabbi Yehuda HaNasi with regard to knowledge of Torah.

[56] The Gemara concludes: This incident is the background to a statement which Rabbi Yehuda HaNasi said: There are three prototypical modest people, and they are: Father, i.e., Rabban Shimon ben Gamliel;

[57] the sons of Beteira; and Jonathan, son of Saul. The Gemara discusses each case: The incident revealing the modesty of Rabban Shimon ben Gamliel is that which we just said, as he referred to himself modestly as a fox. The sons of Beteira were exceptionally modest, as they served in the position of Nasi and yet abdicated their positions in favor of Hillel when he emigrated from Babylonia to Eretz Yisrael. As the Master said: The sons of Beteira, upon recognizing that Hillel was a superior expert in halakha, seated him at the head and appointed him Nasi over them (see Pesaḥim 66a). Jonathan, son of Saul, was extremely modest, as he said to David: "And you shall be king over Israel, and I shall be second to you" (I Samuel 23:17), despite the fact that his father, Saul, was the current king.

[58] The Gemara asks: From where do we know that the aforementioned men were truly modest? Perhaps Jonathan, son of Saul, relinquished his rights to the kingship not due to modesty, but because he saw that the world, i.e., the masses, were drawn after David, and he felt he had no other recourse. With regard to the sons of Beteira also, perhaps they abdicated only because they saw that Hillel was greater than they, as he was able to answer questions that they could not resolve. The Gemara adds: But Rabban Shimon ben Gamliel certainly was a truly modest individual.

[59] § The Gemara returns to the previous incident. When he heard that the greatness of Rabbi Elazar, son of Rabbi Shimon, was due to his suffering, Rabbi Yehuda HaNasi said to himself: Afflictions are evidently precious. He accepted thirteen years of afflictions upon himself; six years of stones in the kidneys and seven years of scurvy [bitzfarna]. And some say it was seven years of stones in the kidneys and six years of scurvy.

[60] The Gemara relates: The stableman [ahuriyareih] of the house of Rabbi Yehuda HaNasi was wealthier than King Shapur of Persia, due to Rabbi Yehuda HaNasi's abundant livestock. When the

stableman would place fodder before the livestock, the sound of their lowing would travel the distance of three mil. He would calculate the right moment so that he would place the fodder before the animals at precisely that time when Rabbi Yehuda HaNasi entered the latrine, so that the lowing of the animals would drown out Rabbi Yehuda HaNasi's screams of pain. But even so, Rabbi Yehuda HaNasi's voice was so loud that it overcame the sound of the livestock, and even sailors heard it out at sea.

61 The Gemara says: But even so, the afflictions of Rabbi Elazar, son of Rabbi Shimon, were greater than those of Rabbi Yehuda HaNasi. The reason is that whereas the afflictions of Rabbi Elazar, son of Rabbi Shimon, came upon him out of love, and left him out of love, i.e., they were solely the result of his own request, not because he deserved them, those of Rabbi Yehuda HaNasi came upon him due to an incident and left him due to another incident.

62 The Gemara stated that Rabbi Yehuda HaNasi's suffering came upon him due to an incident. What was that incident that led to his suffering? The Gemara answers that there was a certain calf that was being led to slaughter. The calf went and hung its head on the corner of Rabbi Yehuda HaNasi's garment and was weeping. Rabbi Yehuda HaNasi said to it: Go, as you were created for this purpose. It was said in Heaven: Since he was not compassionate toward the calf, let afflictions come upon him.

63 The Gemara explains the statement: And left him due to another incident. One day, the maidservant of Rabbi Yehuda HaNasi was sweeping his house. There were young weasels [karkushta] lying about, and she was in the process of sweeping them out. Rabbi Yehuda HaNasi said to her: Let them be, as it is written: "The Lord is good to all; and His mercies are over all His works" (Psalms 145:9). They said in Heaven: Since he was compassionate, we shall be compassionate on him, and he was relieved of his suffering.

64 The Gemara relates: During all the years of the suffering of Rabbi Elazar, son of Rabbi Shimon, no one died prematurely, as his afflictions atoned for the entire generation. During all the years of the suffering of Rabbi Yehuda HaNasi, the world did not require any rain, as the moisture of the dew was sufficient. As Rabba bar Rav Sheila said: A day of rain is as difficult as a day of judgment, due to the damage that storms and flooding can cause. And Ameimar said: Were it not for the fact that rain is needed by people, the Sages would pray for mercy and annul it, due to the nuisances of rain. And even so, despite the fact that there was no rain all those years, when a radish was uprooted from its row in the field, there remained in its place a hole filled with water, due to the moisture in the earth.

65 The Gemara continues discussing Rabbi Yehuda HaNasi's relationship with Rabbi Elazar, son of Rabbi Shimon. Once Rabbi Yehuda HaNasi arrived at the place of Rabbi Elazar, son of Rabbi Shimon. He said to the locals: Does that righteous person have a son? They said to him: He has a son who is wayward, and any prostitute who hires herself out to others for two coins hires him for eight, due to his handsomeness. Upon hearing this report, Rabbi Yehuda HaNasi resolved to extricate Rabbi Elazar's son from his plight. He brought him back with him, ordained him as a rabbi, and gave him over to Rabbi Shimon ben Isi ben Lakonya, the brother of the boy's mother, to teach him Torah.

66 Each day, the boy would say: I am going back to my town, because it was difficult for him to study. Rabbi Shimon ben Isi ben Lakonya said to him: You have been made wise, and a golden cloak has been spread over you when you were ordained, and you are called by the title Rabbi, and yet you say: I am going back to my town? The boy said to him: I vow [momei] that this thought of leaving is

now abandoned, i.e., I will stay and improve my ways. When the boy matured and became a Torah scholar, he came and sat in the academy of Rabbi Yehuda HaNasi. Rabbi Yehuda HaNasi heard his voice and said: This voice is similar to the voice of Rabbi Elazar, son of Rabbi Shimon. Those who were present said to him: It is his son.

[67] Rabbi Yehuda HaNasi read the verse about him: “The fruit of the righteous is a tree of life; and he that is wise wins souls” (Proverbs 11:30). The Gemara explains, with regard to the phrase “the fruit of the righteous,” that this is referring to Rabbi Yosei, son of Rabbi Elazar, son of Rabbi Shimon, who was the son of a righteous individual and became a great scholar in his own right. When the verse states: “And he that is wise wins souls,” this is referring to Rabbi Shimon ben Isi ben Lakonya, who successfully helped Rabbi Yosei reach his potential.

[68] When this Rabbi Yosei died, he was brought to his father’s cave for burial. A serpent encircled the entrance of the cave, denying any access. Those present said to it: Serpent, serpent! Open your mouth, so that a son may enter next to his father. The serpent did not open its mouth for them. The people there thought that Rabbi Yosei was denied burial alongside his father because this one, Rabbi Elazar, son of Rabbi Shimon, was greater than that one, Rabbi Yosei.

[69] A Divine Voice emerged and said: It is not because this one is greater than that one; rather, it is because this one, Rabbi Elazar, experienced the suffering of the cave, while that one, i.e., Rabbi Yosei, did not experience suffering of the cave. Rabbi Elazar, son of Rabbi Shimon, suffered with his father for thirteen years in a cave while hiding from the Romans (see Shabbat 33b).

[70] The Gemara relates a similar incident: Once Rabbi Yehuda HaNasi arrived at the place of Rabbi Tarfon. He said to the townspeople: Does that righteous person, Rabbi Tarfon, who would take an oath by the life of his children, have a son? Rabbi Tarfon was wont to take oaths by the lives of his children (see Oholot 16:1). They said to him: He does not have a son, but he has a grandson, a son from his daughter, and every prostitute who is hired for two coins hires him for eight.

[71] The townspeople brought Rabbi Tarfon’s grandson before Rabbi Yehuda HaNasi, who said to him: If you repent from your evil ways, I will give you my daughter in marriage. He repented and became a righteous individual. There are those who say that he married Rabbi Yehuda HaNasi’s daughter and subsequently divorced her. There are those who say that he did not marry her at all, so that it would not be said about him: It was for the sake of that woman that this man repented.

[72] § The Gemara asks: And why did Rabbi Yehuda HaNasi exert himself so much to save these wayward sons? The Gemara answers: It is because of that which Rav Yehuda says that Rav says, and some say that which Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says, and some say that which Rabbi Shmuel bar Naḥmani says that Rabbi Yonatan says: Anyone who teaches Torah to the son of another merits to sit and study in the heavenly academy, as it is stated: “Therefore so says the Lord: If you return, and I bring you back, you shall stand before Me” (Jeremiah 15:19). This verse, which is addressed to Jeremiah, indicates that if he is able to cause the Jewish people to return to God, he himself will be brought to stand before God.

[73] And anyone who teaches Torah to the son of an ignoramus achieves such an exalted status that even if the Holy One, Blessed be He, were to issue a harsh decree, He may nullify it for his sake, as it is stated in the continuation of the verse: “And if you bring forth the precious out of the worthless, you shall be as My mouth,” i.e., you will be like the mouth of God that can rescind a decree.

74 The Gemara relates other statements pertaining to Torah scholars and their descendants. Rabbi Parnakh says that Rabbi Yoḥanan says: With regard to anyone who is a Torah scholar, and whose son is a Torah scholar, and whose grandson is a Torah scholar, the Torah will never again cease from his descendants, as it is stated: “And as for Me, this is My covenant…My spirit that is upon you, and My words which I have put in your mouth, shall not depart out of your mouth, nor out of the mouth of your seed, nor out of the mouth of your seed’s seed, says the Lord, from now and forever” (Isaiah 59:21).

75 The Gemara asks: What is the significance of the phrase “says the Lord”? The Gemara answers that the Holy One, Blessed be He, said: I am your guarantor in this matter. The Gemara asks: What is the meaning of the phrase “from now and forever”? The verse mentioned only three generations. Rabbi Yirmeya says: The verse means that from this point forward, after three generations, the Torah returns to its lodging, i.e., the Torah is now ingrained in the family.

76 The Gemara relates that Rav Yosef fasted forty fasts so that the Torah would become ingrained in his family, and he was read the verse in a dream: “My words…shall not depart out of your mouth.” He fasted an additional forty fasts and he was read: “Shall not depart out of your mouth, nor out of the mouth of your seed.” He fasted an additional one hundred fasts. In a dream, he came and was read the conclusion of the verse: “Shall not depart out of your mouth, nor out of the mouth of your seed, nor out of the mouth of your seed’s seed.” He said: From this point forward I do not need to fast anymore, as I am now assured that the Torah will return to its lodging.

77 The Gemara relates a similar occurrence: When Rabbi Zeira ascended from Babylonia to Eretz Yisrael, he fasted one hundred fasts so that he would forget the Babylonian method of studying Gemara, so that it would not hinder him from adapting to the unique style of study prevalent in Eretz Yisrael. He fasted an additional one hundred fasts so that Rabbi Elazar, ben Pedat, would not die during his lifetime, which would have caused the burden of communal matters to fall upon him. As dean of the Torah academy, Rabbi Elazar ben Pedat was in charge of all public affairs, leaving Rabbi Zeira unencumbered to study Torah. Rabbi Zeira fasted an additional one hundred fasts so that the fire of Gehenna should not affect him.

78 The Gemara relates with regard to Rabbi Zeira: Every thirty days, he would examine himself to ascertain if he remained on his exalted level. He would ignite an oven, climb in, and sit inside it, and the fire would not affect him. One day, the Sages gave him the evil eye, i.e., they were envious of him, and his legs became singed in the fire. And from then on they referred to him as: The short one with singed legs.

79 § The Gemara discusses the topic of the acquisition of Torah knowledge. Rav Yehuda says that Rav says: What is the meaning of that which is written: “Who is the wise man, that he may understand this? And who is he to whom the mouth of the Lord has spoken, that he may declare it? Why has the land been lost and laid waste like a wilderness, so that none passes through?” (Jeremiah 9:11). This matter, i.e., the question: Why has the land been lost,

80 was stated by the Sages, i.e., the wise man mentioned in the verse, and yet they could not explain it. It was stated by the prophets, i.e., those to whom the mouth of the Lord has spoken, and yet they could not explain it, until the Holy One, Blessed be He, Himself explained it, as it is stated in the next verse: “And the Lord says: Because they have forsaken My Torah which I set before them” (Jeremiah 9:12). Rav Yehuda says that Rav says: This does not mean that the Jewish people ceased

Torah study altogether; rather, they did not recite a blessing on the Torah prior to its study, as they did not regard Torah study as a sacred endeavor.

[81] Rav Ḥama says: What is the meaning of that which is written: “In the heart of him that has discernment wisdom rests; but in the inward part of fools it makes itself known” (Proverbs 14:33)? “In the heart of him who has discernment wisdom rests”; this is a Torah scholar, son of a Torah scholar. “But in the inward part of fools it makes itself known”; this is a Torah scholar, son of an ignoramus, as his wisdom stands out in contrast to the foolishness of the rest of his family. Ulla said: This explains the adage that people say: A small coin in an empty barrel calls: Kish, kish, i.e., it rattles loudly, whereas a coin in a barrel full of coins is not heard.

[82] Rabbi Yirmeya said to Rabbi Zeira: What is the meaning of that which is written with regard to the World-to-Come: “The humble and great are there; and the servant is free from his master” (Job 3:19)? Is that to say that we do not know that the humble and the great are there in the World-to-Come? Rather, this is the meaning of the verse: Anyone who humbles himself over matters of Torah in this world becomes great in the World-to-Come; and anyone who establishes himself as a servant over matters of Torah in this world becomes free in the World-to-Come.

[83] § The Gemara continues discussing the greatness of the Sages. Reish Lakish was demarcating burial caves of the Sages. When he arrived at the cave of Rabbi Ḥiyya, the precise location of his grave eluded him. Reish Lakish became distressed, as he was apparently unworthy of finding the grave. He said: Master of the Universe! Did I not analyze the Torah like Rabbi Ḥiyya? A Divine Voice emerged and said to him: You did analyze the Torah like him, but you did not disseminate Torah like him.

[84] The Gemara relates: When Rabbi Ḥanina and Rabbi Ḥiyya would debate matters of Torah, Rabbi Ḥanina would say to Rabbi Ḥiyya: Do you think you can debate with me? Heaven forbid! If the Torah were forgotten from the Jewish people, I could restore it with my powers of analysis and intellectual acumen. Rabbi Ḥiyya said to Rabbi Ḥanina: Do you think you can debate with me? You cannot compare yourself to me, as I am acting to ensure that the Torah will not be forgotten by the Jewish people.

[85] Rabbi Ḥiyya elaborated: What do I do to this end? I go and sow flax seeds and twine nets with the flax, and then I hunt deer and feed their meat to orphans. Next I prepare parchment from their hides and I write the five books of the Torah on them. I go to a city and teach five children the five books, one book per child, and I teach six other children the six orders of the Mishna, and I say to them: Until I return and come here, read each other the Torah and teach each other the Mishna. This is how I act to ensure that the Torah will not be forgotten by the Jewish people.

[86] The Gemara notes that this is what Rabbi Yehuda HaNasi said: How great are the deeds of Rabbi Ḥiyya! Rabbi Yishmael, son of Rabbi Yosei, said to Rabbi Yehuda HaNasi: Are his deeds even greater than the Master’s, i.e., yours? Rabbi Yehuda HaNasi said to him: Yes. Rabbi Yishmael persisted: Are they even greater than those of my father, Rabbi Yosei? Rabbi Yehuda HaNasi said to him: Heaven forbid! Such a statement shall not be heard among the Jewish people, that someone is greater than your father, Rabbi Yosei.

[87] The Gemara continues discussing the greatness of Rabbi Ḥiyya. Rabbi Zeira said: Last night, Rabbi Yosei, son of Rabbi Ḥanina, appeared to me in a dream. I said to him: Near whom are you placed in the upper realms? He said to me: Near Rabbi Yoḥanan. I asked: And Rabbi Yoḥanan is near

whom? He replied: Near Rabbi Yannai. And Rabbi Yannai is near whom? Near Rabbi Ḥanina. And Rabbi Ḥanina is near whom? Near Rabbi Ḥiyya. Rabbi Zeira added: I said to Rabbi Yosei: But isn't Rabbi Yoḥanan worthy of being placed near Rabbi Ḥiyya? He said to me: In a place of fiery sparks and burning fires, who can bring Rabbi Yoḥanan, son of Nappaḥa, there?

88 Rav Ḥaviva said: Rav Ḥaviva bar Surmakei told me: I once saw one of the Sages whom Elijah the prophet would visit, and his eyes looked beautiful and healthy in the morning, but appeared to be charred by fire in the evening. I said to him: What is this phenomenon? And he said to me: I said to Elijah: Show me the Sages upon their ascension to the heavenly academy. Elijah said to me: You may gaze at all of them except for those in the chariot [miguharka] of Rabbi Ḥiyya, upon whom you may not gaze. I asked Elijah: What are the signs of Rabbi Ḥiyya's chariot, so I will know when not to look? He said: Angels accompany all of the other Sages' chariots as they ascend and descend, except for the chariot of Rabbi Ḥiyya, which ascends and descends of its own accord, due to his greatness.

89 The Sage relating this story continued: I was unable to restrain myself, and I gazed upon Rabbi Ḥiyya's chariot. Two fiery flames came and struck that man, i.e., me, and blinded his eyes. The next day, I went and prostrated on Rabbi Ḥiyya's burial cave in supplication. I said: I study the baraitot of the Master, Rabbi Ḥiyya; please pray on my behalf. And my vision was healed, but my eyes remained scorched.

90 The Gemara relates another incident involving Elijah the prophet. Elijah was often found in the academy of Rabbi Yehuda HaNasi. One day it was a New Moon, the first of the month, and Elijah was delayed and did not come to the academy. Later, Rabbi Yehuda HaNasi said to Elijah: What is the reason that the Master was delayed? Elijah said to him: I had to wake up Abraham, wash his hands, and wait for him to pray, and then lay him down again. And similarly, I followed the same procedure for Isaac, and similarly for Jacob in turn. Rabbi Yehuda HaNasi asked Elijah: And let the Master wake them all together. Elijah responded: I maintain that if I were to wake all three to pray at the same time, they would generate powerful prayers and bring the Messiah prematurely.

91 Rabbi Yehuda HaNasi said to Elijah: And is there anyone alive in this world who is comparable to them and can produce such efficacious prayers? Elijah said to him: There are Rabbi Ḥiyya and his sons. Rabbi Yehuda HaNasi decreed a fast, and the Sages brought Rabbi Ḥiyya and his sons down to the pulpit to pray on behalf of the congregation. Rabbi Ḥiyya recited the phrase in the Amida prayer: Who makes the wind blow, and the wind blew. Rabbi Ḥiyya recited the next phrase: Who makes the rain fall, and rain fell. When he was about to say the phrase: Who revives the dead, the world trembled.

92 They said in heaven: Who is the revealer of secrets in the world? They said in response: It is Elijah. Elijah was brought to heaven, whereupon he was beaten with sixty fiery lashes. Elijah came back down to earth disguised as a bear of fire. He came among the congregation and distracted them from their prayers, preventing Rabbi Ḥiyya from reciting the phrase: Who revives the dead.

93 § The Gemara relates: Shmuel Yarḥina'a was the physician of Rabbi Yehuda HaNasi. One time, Rabbi Yehuda HaNasi felt a pain in his eye. Shmuel said to him: I will place a medication in your eye. Rabbi Yehuda HaNasi said to him: I cannot have the medication placed directly in my eye, as I am afraid it will cause me too much pain. Shmuel said to him: I will apply a salve above your eye, not directly in it. Rabbi Yehuda HaNasi said to him: Even that I cannot bear. Shmuel placed the medication in a tube of herbs beneath his pillow, and Rabbi Yehuda HaNasi was healed.

94 Rabbi Yehuda HaNasi made efforts to ordain Shmuel Yarḥina’a as a rabbi but was unsuccessful, as Shmuel always demurred. Shmuel Yarḥina’a said to him: The Master should not be upset about my refusal, as I know that I am not destined to be ordained as a rabbi. I myself saw the book of Adam the first man, which contains the genealogy of the human race, and it is written in it that Shmuel Yarḥina’a

95 shall be called a wise [ḥakim] physician, but he shall not be called rabbi, and Rabbi Yehuda HaNasi’s convalescence shall be through him. I also saw written there: Rabbi Yehuda HaNasi and Rabbi Natan are the end of the Mishna, i.e., the last of the tanna’im, the redactors of the Mishna. Rav Ashi and Ravina are the end of instruction, i.e., the end of the period of the amora’im, the redacting of the Talmud, which occurred after the period of the tanna’im.

96 And your mnemonic to remember that Rav Ashi and Ravina redacted the Talmud is the verse: “Until I entered into the sanctuary [mikdashei] of God, and considered [avina] their end” (Psalms 73:17). The sanctuary, mikdashei, alludes to Rav Ashi, while the term avina alludes to Ravina, which is a contraction of Rav Avina. The phrase: Their end, is interpreted as a reference to the redacting of the Talmud.

97 § The Gemara relates another story discussing the greatness of the Sages. Rav Kahana said: Rav Ḥama, son of the daughter of Ḥasa, told me that Rabba bar Naḥmani died due to the fear of a decree of religious persecution. The Gemara explains: His enemies accused him [akhalu beih kurtza] of disloyalty in the king’s palace, as they said: There is one man from among the Jews who exempts twelve thousand Jewish men from the king’s head tax two months a year, one month in the summer and one month in the winter. Since many people would study in Rabba’s study hall during the months of Adar and Elul, he was being blamed for preventing those people from working during those months.

98 They sent a messenger [peristaka] of the king after him, but he was not able to find him. Rabba bar Naḥmani fled and went from Pumbedita to Akra, from Akra to Agma, from Agma to Shiḥin, from Shiḥin to Tzerifa, from Tzerifa to Eina Demayim, and from Eina Demayim back to Pumbedita. Ultimately, he was found in Pumbedita, as the king’s messenger arrived by chance at that same inn where Rabba bar Naḥmani was hiding. The inn attendants placed a tray before the messenger and gave him two cups to drink. They then removed the tray from before him and his face was miraculously turned backward.

99 The attendants said to Rabba bar Naḥmani: What should we do with him? He is the king’s man, and we cannot leave him like this. Rabba bar Naḥmani said to them: Place a tray before him and give him one cup to drink, and then remove the tray from before him and he will be healed. They did this, and he was healed. The messenger said: I am certain that the man I seek is here, as this unnatural event must have befallen me on his account. He searched for Rabba bar Naḥmani and found out where he was. The messenger said that they should tell Rabba bar Naḥmani: I will leave this inn and will not disclose your location. Even if they will kill that man, i.e., me, I will not disclose your location. But if they will beat him, me, I will disclose your whereabouts, as I cannot bear being tortured.

100 With that guarantee, they brought Rabba bar Naḥmani before the messenger. They took him into a small vestibule [le’idrona] and closed the door before him. Rabba bar Naḥmani prayed for mercy, and the wall crumbled. He fled and went to hide in a swamp. He was sitting on the stump of a palm

tree and studying Torah alone. At that moment, the Sages in the heavenly academy were disagreeing with regard to a halakha of leprosy. In general, a leprous spot includes two signs of impurity, a bright white spot and a white hair. The basic halakha is that if the snow-white leprous sore [baheret] preceded the white hair then the afflicted person is ritually impure, but if the white hair preceded the baheret, he is pure.

[101] The heavenly debate concerned a case of uncertainty as to which came first, the spot or the hair. The Holy One, Blessed be He, says: The individual is pure, but every other member of the heavenly academy says: He is impure. And they said: Who can arbitrate in this dispute? They agreed that Rabba bar Naḥmani should arbitrate, as Rabba bar Naḥmani once said: I am preeminent in the halakhot of leprosy and I am preeminent in the halakhot of ritual impurity imparted by tents.

[102] They sent a messenger from heaven after him to take his soul up to the heavenly academy, but the Angel of Death was unable to approach Rabba bar Naḥmani, as his mouth did not cease from his Torah study. In the meantime, a wind blew and howled between the branches. Rabba bar Naḥmani thought that the noise was due to an infantry battalion [gunda] about to capture him. He said: Let that man, i.e., me, die and not be given over to the hands of the government. The Angel of Death was therefore able to take his soul.

[103] As he was dying, he said in response to the dispute in heaven: It is pure; it is pure. A Divine Voice emerged from heaven and said: Happy are you, Rabba bar Naḥmani, as your body is pure and your soul left you with the word: Pure. A note [pitka] fell from heaven and landed in the academy of Pumbedita. The note read: Rabba bar Naḥmani was summoned to the heavenly academy, i.e., he has died. Abaye and Rava and all of the other Rabbis went out to tend to his burial; however, they did not know the location of his body. They went to the swamp and saw birds forming a shade and hovering over a certain spot. The Rabbis said: We can conclude from this that he is there.

[104] The Rabbis lamented him for three days and three nights. A note fell from heaven, upon which was written: Anyone who removes himself from the lamentations shall be ostracized. Accordingly, they lamented him for seven days. Another note fell from heaven, stating: Go to your homes in peace.

[105] On that day when Rabba bar Naḥmani died, a hurricane lifted a certain Arab [taya’a] merchant while he was riding his camel. The hurricane carried him from one side of the Pappa River and threw him onto the other side. He said: What is this? Those present said to him: Rabba bar Naḥmani has died. He said before God: Master of the Universe! The entire world is Yours and Rabba bar Naḥmani is also Yours. You are to Rabba and Rabba is to You, i.e., you are beloved to each other. If so, why are You destroying the world on his account? The storm subsided.

[106] The Gemara concludes its earlier discussion of obese Sages (84a). Rabbi Shimon ben Ḥalafta was obese. One day he was particularly hot and went and sat on a mountain boulder to cool himself off. He said to his daughter: My daughter, fan me with a fan, and as a gift I will give you packages of spikenard. In the meantime, a strong wind blew. He said: How many packages of spikenard do I owe to the overseers of this wind?

[107] § The Gemara returns to its discussion of the mishna (83a), which teaches that an employer must provide his laborers with sustenance, all in accordance with the regional custom. The Gemara asks: What is added by the inclusive term: All? The Gemara answers: This serves to include a place where it is customary for the laborers to eat bread and drink a quarter-log [anpaka] of wine. As, if in such a

case the employer were to say to them: Arise early in the morning and I will bring you this sustenance, so as not to waste work time, they may say to him: It is not in your power to compel us to do so.

[108] § The mishna teaches that there was an incident involving Rabbi Yoḥanan ben Matya, who said to his son: Go out and hire laborers for us. His son hired the laborers and stipulated that he would provide sustenance for them. The Gemara asks: After the mishna has stated that all practices are in accordance with the regional custom, how can it cite this incident, which seems to contradict the previous ruling, as Rabbi Yoḥanan ben Matya and his son did not follow the regional custom? The Gemara answers: The mishna is incomplete and this is what it is teaching: All practices are in accordance with the regional custom, but if the employer pledged to provide sustenance for them,

[109] he has increased his obligation to them, since if he had meant to give them no more than the accepted amount, he would not have made any stipulation at all. The mishna then continues: And there is also a supporting incident involving Rabbi Yoḥanan ben Matya, who said to his son: Go out and hire laborers for us. His son went, hired them, and pledged to provide sustenance for them as a term of their employment, without specifying the details. And when he came back to his father and reported what he had done, Rabbi Yoḥanan ben Matya said to him: My son, even if you were to prepare a feast for them like that of King Solomon in his time, you would not have fulfilled your obligation to them, as they are the descendants of Abraham, Isaac, and Jacob.

[110] The Gemara asks: Is this to say that the feast of Abraham, our forefather, was superior to that of King Solomon? But isn't it written: "And Solomon's provision for one day was thirty measures of fine flour, and sixty measures of meal; ten fat oxen, and twenty oxen out of the pastures, and a hundred sheep, beside harts, and gazelles, and roebucks, and fatted fowl" (I Kings 5:2–3). And Guryon ben Asteyon says in the name of Rav: These measures of flour mentioned in the verse were used merely for the bakers' well-worked dough [la'amilan] that was placed in the pot to absorb the steam. And Rabbi Yitzḥak says: These measures of flour were used for meat pudding, a mixture of wine, flour, and leftover meat, in a pot.

[111] And Rabbi Yitzḥak further says: King Solomon had one thousand wives, each one of whom would prepare for him at her home a feast of such proportions. What is the reason that they did this? This wife reasoned: Perhaps he will feast with me today, and that wife reasoned: Perhaps he will feast with me today. But with regard to Abraham, it is written: "And Abraham ran to the herd, and fetched a calf tender and good" (Genesis 18:7), and Rav Yehuda says that Rav says, in explanation of the verse: "A calf" indicates one; the word "tender" means an additional one, i.e., two; "and good" indicates yet another one. This makes a total of three calves, a considerably smaller feast than that of Solomon.

[112] The Gemara answers: There, with regard to Abraham, he prepared three oxen for three people, whereas here, in the case of Solomon, his wives would prepare a feast for the entire realms of Israel and Judah, as it is stated: "Judah and Israel were many, as the sand which is by the sea in multitude, eating and drinking and making merry" (I Kings 4:20). Abraham's feast was proportionately greater than that of Solomon.

[113] With regard to the verse cited in relation to King Solomon, the Gemara asks: What is the meaning of the term "fatted fowl [avusim]"? Rav says: It means that they are fed [ovsim] by force. Shmuel says: It means that they were fattened [avusim] and maintained on their own accord, i.e., they were

naturally fat. Rabbi Yoḥanan says: Solomon’s feasts were of fine quality because they would bring from his herd an ox that had never been forced to work, and they would also bring a hen from its coop that had never been forced to lay eggs, and use those for the cuisine.

[114] The Gemara cites a related statement of Rabbi Yoḥanan. Rabbi Yoḥanan says: The choicest of cattle is the ox. The choicest of fowl is the hen. With regard to the type of hen to which this is referring, Ameimar says: It is a fattened, black hen [zagta] that is found among the wine vats, which consumes so many grape seeds that it cannot take a step the length of a reed, due to its corpulence.

[115] The Gemara returns to discuss the verse in Genesis: “And Abraham ran to the herd, and fetched a calf tender and good” (Genesis 18:7). Rav Yehuda says that Rav says: “A calf” is one; “tender” indicates an additional one, i.e., two; “and good” indicates another one, for a total of three calves. The Gemara asks: But why not say that the verse is referring to only one calf, as people say when describing a single item that it is tender and good?

[116] The Gemara answers: If so, let the verse write: Tender, good. What is the significance of the term “and good,” which indicates an addition? Conclude from this that the verse is stated for the purpose of an exposition and is referring to more than one calf. The Gemara challenges: But one can still say there were only two calves. The Gemara answers: From the fact that the word “good” is written for an exposition, to include an additional calf, it may be inferred that the term “tender” is also written for an exposition and indicates yet another calf.

[117] Rabba bar Ulla raises an objection, and some say it is Rav Hoshaya, and some say it is Rav Natan, son of Rabbi Hoshaya, who raises the objection: The verse states: “And he gave it to the servant; and he hastened to prepare it” (Genesis 18:7). The singular term “it” indicates that there was only one calf. The Gemara answers: Abraham gave each and every calf to one servant, i.e., he gave the three calves to three different servants. The Gemara raises a question from the verse: “And he took curd, and milk, and the calf which he had dressed, and set it before them” (Genesis 18:8), which again indicates that there was only one calf. The Gemara responds: The verse means that as each calf arrived prepared, he brought it before them, and he did not serve all three calves at once.

[118] The Gemara asks: And why do I need three calves? One calf should be sufficient for three guests. Rav Ḥanan bar Rava said: Abraham prepared three calves in order to feed the guests three tongues with mustard, a particular delicacy. With regard to this incident, Rabbi Tanḥum bar Ḥanilai says: A person should never deviate from the local custom, as Moses ascended to heaven on high and did not eat bread while he was there, whereas the ministering angels descended down to this world, as guests visiting Abraham, and they ate bread. You say: And they ate bread? Can it enter your mind that they actually ate food? Rather, say that they merely appeared as though they ate and drank.

[119] Rav Yehuda says that Rav says: Every action that Abraham performed himself for the ministering angels, the Holy One, Blessed be He, performed Himself for Abraham’s descendants. And every action that Abraham performed through a messenger, the Holy One, Blessed be He, likewise performed for his descendants through a messenger.

[120] The Gemara elaborates: With regard to Abraham, the verse states: “And Abraham ran to the herd” (Genesis 18:7), bringing the meat himself, and in reference to God’s actions for Abraham’s descendants the verse states: “And there went forth a wind from the Lord, and brought across quails from the sea” (Numbers 11:31), that God brought meat to them. In reference to Abraham, the verse states: “And he took curd and milk” (Genesis 18:8), and God says to the Jewish people: “Behold, I

will cause to rain bread from heaven for you” (Exodus 16:4), which shows that God gave food to the Jewish people.

121 With regard to Abraham, the verse states: “And he stood by them under the tree, and they ate” (Genesis 18:8), and in reference to God, the verse states: “Behold, I will stand before you there upon the rock in Horeb; and you shall strike the rock, and there shall come water out of it” (Exodus 17:6). In the case of Abraham it is written: “And Abraham went with them to bring them on the way” (Genesis 18:16), and the verse states: “And the Lord went before them by day” (Exodus 13:21).

122 By contrast, Abraham performed certain actions through an agent. He said: “Let now a little water be fetched” (Genesis 18:4), and correspondingly the verse states in reference to Moses, God’s messenger: “And you shall strike the rock, and there shall come water out of it, that the people may drink” (Exodus 17:6).

123 The Gemara notes: And in stating this, Rav disagrees with that statement of Rabbi Ḥama, son of Rabbi Ḥanina. As Rabbi Ḥama, son of Rabbi Ḥanina, says, and likewise the school of Rabbi Yishmael taught: In reward for three acts of hospitality that Abraham performed for the angels, his descendants merited three rewards. The Gemara elaborates: In reward for providing them with curd and milk, the Jewish people merited the manna; in reward for: “And he stood [omed] by them,” the Jews merited the pillar [amud] of cloud; in reward for Abraham saying: “Let now a little water be fetched,” they merited the well of Miriam. This statement does not distinguish between actions performed by Abraham himself and those performed by means of a messenger.

124 The Gemara continues its analysis of the verse: “Let now a little water be fetched and wash your feet” (Genesis 18:4). Rabbi Yannai, son of Rabbi Yishmael, said that the guests said to Abraham: Are you suspicious that we are Arabs who bow to the dust of their feet? Yishmael has already issued from him, i.e., your own son acts in this manner.

125 § The Gemara expounds another verse involving Abraham: “And the Lord appeared to him by the terebinths of Mamre, as he sat in the tent door in the heat of the day” (Genesis 18:1). The Gemara asks: What is the meaning of “the heat of the day”? Rabbi Ḥama, son of Rabbi Ḥanina, says: That day was the third day after Abraham’s circumcision, and the Holy One, Blessed be He, came to inquire about the well-being of Abraham. The Holy One, Blessed be He, removed the sun from its sheath in order not to bother that righteous one with guests, i.e., God made it extremely hot that day to allow Abraham to recover from his circumcision, as he would not be troubled by passing travelers whom he would invite into his tent.

126 Despite the intense heat, Abraham wanted to invite guests. He sent Eliezer his slave to go outside to see if there were any passersby. Eliezer went out but did not find anyone. Abraham said to him: I do not believe you. The Gemara comments: This demonstrates the popular adage that people there, i.e., in Eretz Yisrael, say: Slaves do not have any credibility. The Gemara continues: Abraham himself went out and saw the Holy One, Blessed be He, standing at the entrance to his tent. This is as it is written: “My Lord, if now I have found favor in your eyes, do not leave Your servant” (Genesis 18:3), i.e., God’s presence was there, and Abraham asked Him for permission to attend to the travelers.

127 Once God saw Abraham tying and untying the bandage on his circumcision, God said: It is not proper conduct to stand here, i.e., it is not respectful to Abraham even for God to stand there. This is as it is written: “And he lifted up his eyes and looked, and, behold, three men stood over him; and

when he saw them, he ran to meet them” (Genesis 18:2). The verse first states that they stood over him, and then it says that he ran to meet them. The Gemara reconciles this apparent contradiction: Initially, they came and stood over him. Upon seeing that he was in pain, they said: It is not proper conduct to stand here.

[128] The Gemara continues: Who are these three men? They are the angels Michael, Gabriel, and Raphael: Michael, who came to announce to Sarah that she was to give birth to a son; Raphael, who came to heal Abraham after his circumcision; and Gabriel, who went to overturn Sodom. The Gemara asks: But it is written: “And the two angels came to Sodom in the evening” (Genesis 19:1). The Gemara answers that Michael went along with Gabriel to Sodom to save Lot. The Gemara notes: The language is also precise, as it is written: “And he overturned those cities” (Genesis 19:25), and it is not written: They overturned those cities. Conclude from it that only one angel overturned Sodom.

[129] The Gemara asks: What is different with regard to the incident involving Abraham, where the angels acquiesced immediately to his request to remain with him, as it is written: “So do, as you have said” (Genesis 18:5), and what is different with regard to Lot, where they first displayed reluctance, as it is written:

[130] “And he urged them greatly” (Genesis 19:3), only after which they acquiesced? Rabbi Elazar says: From here we learn that one may decline the request of a lesser man, but one may not decline the request of a great man.

[131] The Gemara continues analyzing the same passage. It is written: “And I will fetch a morsel of bread, and satisfy your heart” (Genesis 18:5), and it is written: “And Abraham ran to the herd, and fetched a calf tender and good” (Genesis 18:7). Rabbi Elazar said: From here we learn that the righteous say little and do much, whereas the wicked say much and do not do even a little.

[132] From where do we derive this principle that the wicked say much and do not do even a little? We derive it from Ephron. Initially, it is written that Ephron said to Abraham: “A piece of land worth four hundred shekels of silver, what is that between me and you?” (Genesis 23:15). And ultimately it is written: “And Abraham listened to Ephron; and Abraham weighed to Ephron the silver, which he had named in the hearing of the children of Heth, four hundred shekels of silver, current money with the merchant” (Genesis 23:16), i.e., shekels that could be used in any location. This teaches that not only did Ephron take shekels from Abraham, he took from him only centenaria [kantarei], i.e., superior coins, as there is a place where they call a shekel a centenarius.

[133] The verse states: “Make ready quickly three measures of flour, fine flour” (Genesis 18:6). The Gemara questions the apparent redundancy. It is written: “Flour,” and it is also written: “Fine flour.” Rabbi Yitzḥak says: From here we learn that a woman is more stingy with guests than a man. Sarah wanted to use merely flour, and Abraham persuaded her to use fine flour.

[134] The Gemara continues its analysis of the verses. It is written: “Knead it, and make cakes” (Genesis 18:6), and two verses later it is written: “And he took curd, and milk, and the calf which he prepared” (Genesis 18:8). Abraham served these items to the guests, and yet he did not bring bread before them despite having instructed Sarah to prepare baked goods.

[135] Efrayim Miksha’a, disciple of Rabbi Meir, says in the name of Rabbi Meir: Abraham, our forefather, would eat non-sacred food only when he was in a state of ritual purity, i.e., he treated his food as though it were consecrated to God. And Sarah, our foremother, menstruated that day, which

rendered the baked goods ritually impure, preventing Abraham from handling them. Therefore, they could not serve bread to their guests.

136 The next verse states: “And they said to him: Where is Sarah your wife? And he said: Behold, in the tent” (Genesis 18:9). The Gemara explains that this verse serves to inform us that Sarah, our foremother, was a modest woman, as she remained inside while the guests were present. Rav Yehuda says that Rav says, and some say it is Rabbi Yitzḥak who says: The ministering angels, who visited Abraham in the guise of travelers, knew that Sarah, our foremother, was inside the tent. Rather, what was the purpose of their eliciting Abraham’s response: In the tent? It was in order to endear her to her husband, by accentuating Sarah’s modesty.

137 Rabbi Yosei, son of Rabbi Ḥanina, says: They inquired about her in order to send her the cup of blessing. It is customary to recite Grace after Meals over a cup of wine, which is then distributed to those present. It is taught in the name of Rabbi Yosei: Why are there dots in the Torah scroll upon the letters ales, yod, and vav in the word “to him [eilav]”? These letters spell ayo, which means: Where is he? The Torah is teaching the proper etiquette, which is that a person should inquire of his hostess about his host, just as he should inquire about the welfare of his hostess from the host. The Gemara asks: But doesn’t Shmuel say: One may not inquire about the welfare of a woman at all, as this is immodest? The Gemara answers: A greeting by means of her husband is different. Asking a husband about his wife is not considered immodest.

138 The Gemara analyzes the verses that describe Sarah at the time: “And Sarah laughed within herself, saying: After I am waxed old [veloti] shall I have pleasure [edna]” (Genesis 18:12). Rav Ḥisda says: After the skin had worn out [nitballa] and become full of wrinkles, the skin once again became soft [nitadden] and her wrinkles smoothed out, and Sarah’s beauty returned to its place.

139 It is written that Sarah said: “And my lord is old” (Genesis 18:12), and it is written: “And the Lord said to Abraham: Why did Sarah laugh, saying: Shall I certainly bear a child, and I am old?” (Genesis 18:13). This verse indicates that the Holy One, Blessed be He, did not repeat to Abraham that which Sarah actually said, that her husband is old. Why did God change the wording of her statement so that she was referring to herself?

140 The school of Rabbi Yishmael taught: Peace is of such great importance that even the Holy One, Blessed be He, altered the truth for the sake of preserving peace, as it is stated: “And Sarah laughed within herself, saying: After I am waxed old shall I have pleasure, and my lord is old,” and it is written: “And the Lord said to Abraham: Why did Sarah laugh, saying: Shall I certainly bear a child, and I am old?”

141 In reference to Sarah having given birth to Isaac, the verse states: “And she said: Who would have said to Abraham that Sarah should nurse children?” (Genesis 21:7). The Gemara asks: How many children did Sarah nurse? Why does the verse use the plural form when she had only one child? Rabbi Levi says: That day when Abraham weaned his son Isaac, he prepared a great celebratory feast. All of the nations of the world were gossiping and saying to each other: See this old man and old woman who brought a foundling from the market and are saying: He is our son, and moreover they are making a great feast to bolster their claim.

142 What did Abraham, our forefather, do? He went and invited all of the great men of that generation, and Sarah, our foremother, invited their wives. Each and every one of the wives brought her child with her but did not bring her wet nurse. And a miracle occurred to Sarah, our foremother,

and her breasts were opened like two springs, and she nursed all of these children. And still those people were gossiping and saying to each other: Even if Sarah, at ninety years of age, can give birth, can Abraham, at one hundred years of age, father a child? Immediately, the countenance of Isaac's face transformed and appeared exactly like that of Abraham. Everyone exclaimed and said: "Abraham fathered Isaac" (Genesis 25:19).

[143] § The Gemara continues discussing Abraham: Until Abraham, there was no aging, i.e., old age was not physically recognizable. Consequently, one who wanted to speak to Abraham would mistakenly speak to Isaac, and vice versa: An individual who wanted to speak to Isaac would speak to Abraham, as they were indistinguishable. Abraham came and prayed for mercy, and aging was at last noticeable, as it is stated: "And Abraham was old, well stricken in age" (Genesis 24:1), which is the first time that aging is mentioned in the Bible.

[144] Until Jacob, there was no illness leading up to death; rather, one would die suddenly. Jacob came and prayed for mercy, and illness was brought to the world, allowing one to prepare for his death, as it is stated: "And one said to Joseph: Behold, your father is sick" (Genesis 48:1), which is the first time that sickness preceding death is mentioned in the Bible. Until Elisha, one did not fall ill and then heal, as everyone who fell ill would die. Elisha came and prayed for mercy and he was healed, as it is written: "Now Elisha fell ill with his illness from which he was to die" (II Kings 13:14). By inference, one can derive that he had previously fallen ill with other illnesses from which he did not die.

[145] The Sages taught: Elisha fell ill with three illnesses: One was due to the fact that he pushed Gehazi away with both hands, i.e., he banished Gehazi without granting him a chance to repent (see II Kings, chapter 5). One was due to the fact that he incited bears against young children (see II Kings 2:23–25). And one was the illness from which he died, as it is stated: "Now Elisha fell ill of his illness from which he was to die" (II Kings 13:14).

[146] § The mishna (83a) teaches that Rabbi Yoḥanan ben Matya said to his son: Rather, before they begin engaging in their labor, go out and say to them: The stipulation that food will be provided is on the condition that you have the right to claim from me only a meal of bread and legumes, which is the typical meal given to laborers. Rav Aḥa, son of Rav Yosef, said to Rav Ḥisda: Did we learn: Bread of legumes [pat kitnit], i.e., inferior-quality bread made of legumes, or did we learn: Bread and legumes [pat vekitnit]? Rav Ḥisda said to him: By God! That word vekitnit requires at its beginning the letter vav as large as an oar [mordeya] made of cypress wood [deliberot], i.e., pat vekitnit is undoubtedly the correct version.

[147] § The mishna teaches that Rabban Shimon ben Gamliel says: The son of Rabbi Yoḥanan ben Matya did not need to state this, as the principle is: Everything is in accordance with the regional custom. The Gemara asks: This term: Everything, serves to add what? What is the tanna including by this term? The Gemara answers: It serves to add that which we learned in a baraita: With regard to one who hires a laborer and said to him: I will pay you as one or two of the residents of the city are paid, he gives him wages in accordance with the lowest wage paid in that region. This is the statement of Rabbi Yehoshua. The Rabbis say: One divides the difference between the highest and lowest paid wages, thereby giving the wages to this laborer according to the average of the regional custom. This halakha is alluded to in the statement of Rabban Shimon ben Gamliel.

[148] MISHNA: This mishna details the halakha that a laborer is permitted to eat from the produce with which he is working. And these laborers may eat by Torah law: A laborer who works with produce attached to the ground at the time of the completion of its work, e.g., harvesting produce; and a laborer who works with produce detached from the ground before the completion of its work, i.e., before it is sufficiently processed and thereby subject to tithes. And this is the halakha provided that they are working with an item whose growth is from the land. And these are laborers who may not eat: A laborer who works with produce attached to the ground

[149] not at the time of the completion of its work, i.e., while it is still growing; and a laborer who works with produce detached from the ground after the completion of its work, when it is sufficiently processed and therefore subject to tithes; and a laborer who works with an item whose growth is not from the land.

[150] GEMARA: The Gemara asks: From where are these matters, that a laborer may eat from produce attached to the ground, derived? The Gemara answers: As it is written: “When you come into your neighbor’s vineyard, then you may eat grapes until you have enough at your own pleasure; but you shall not put any in your vessel” (Deuteronomy 23:25). The Gemara asks: We find a source for a vineyard; from where do we derive that a laborer may likewise eat from any other type of produce?

[151] The Gemara answers: We derive it from a comparison to the case of a vineyard: Just as a vineyard is unique in that it is an entity whose growth is from the ground, and the laborer eats from it at the time of the completion of its work, i.e., when he is harvesting the grapes, so too with regard to any entity whose growth is from the ground and it is at the time of the completion of its work, a laborer may eat from it.

[152] The Gemara challenges this derivation: What is notable about a vineyard? It is notable in that the owner of a vineyard is obligated in the mitzva of olelot, the obligation to leave incomplete clusters of grapes for the poor (see Leviticus 19:10). Accordingly, one should not be able to derive the halakha of other types of produce from the halakha of a vineyard. The Gemara explains: We derive the halakha that a laborer may eat from other crops from the halakha that he may eat standing grain. The Gemara asks: And from where do we derive that he may eat standing grain itself? The Gemara answers: As it is written: “When you come into your neighbor’s standing grain, then you may pluck ears with your hand; but you shall not move a sickle on to your neighbor’s standing grain” (Deuteronomy 23:26).

[153] The Gemara responds: What is notable about standing grain? It is notable in that the owner of dough prepared from grain is obligated in the mitzva of ḥalla. The Gemara asks an incidental question: And from where do you know that this standing grain mentioned in the verse is the same standing grain whose owner is obligated in the mitzva of ḥalla? Perhaps the Merciful One is discussing any standing produce, not only the five grains from which ḥalla must be separated.

[154] The Gemara answers: The matter is derived by means of a verbal analogy between the term “standing” written here and the term “standing” written elsewhere. It is written here: “When you come into your neighbor’s standing grain” (Deuteronomy 23:26), and it is written there, with regard to harvesting the barley for the omer offering: “Seven weeks you shall count for yourself; from the time the sickle is first put to the standing grain” (Deuteronomy 16:9). Just as there, in the verse referring to the harvesting of the omer, it is the owner of standing grain who is obligated in the

mitzva of ḥalla, as barley is one of the five grains, so too here, with regard to a laborer, it is discussing standing grain whose owner is obligated in the mitzva of ḥalla.

[155] The Gemara resumes its discussion by reiterating its earlier question. The comparison between standing grain and other produce can be refuted as follows: What is notable about standing grain? It is notable in that the owner of dough prepared from grain is obligated in the mitzva of ḥalla. The Gemara answers: Let the case of a vineyard prove that this comparison is valid, as the mitzva of ḥalla does not apply to the produce of a vineyard, and yet a laborer may eat from it. The Gemara asks: What is notable about a vineyard? It is notable in that its owner is obligated in the mitzva of olelot. The Gemara responds: Let the case of standing grain prove that this is not a decisive factor, as its owner is not obligated in the mitzva of olelot and even so a laborer may eat from it.

[156] Since no exact comparison can be drawn to either a vineyard or standing grain alone, the Gemara suggests a combined solution: The inference has reverted to its starting point. The aspect of this case, a vineyard, is not like the aspect of that case, standing grain. Their common denominator is that each one grows from the earth and at the time of the completion of its work the laborer may eat from it. So too, with regard to any type of produce that grows from the earth, at the time of the completion of its work, a laborer may eat from it.

[157] The Gemara asks: What is unique about their common denominator? It is unique in that they have an aspect relating to the altar, i.e., the products of both a vineyard and standing grain differ from other types of produce in that they are both offered on the altar. Wine is brought for libations and flour in meal-offerings. The Gemara suggests tangentially: An olive should also be derived through this category of those products which a laborer may eat, as it too has an aspect relating to the altar, in the oil of meal-offerings.

[158] The Gemara refutes this suggestion: And is the halakha of an olive derived from the common factor of the two types of produce mentioned earlier? But it itself is called the fruit of a vineyard [kerem], as it is written: “And he burned up both the piles of produce and the standing grain, and also the olive yards [kerem zayit]” (Judges 15:5). Rav Pappa said: This verse does not mean that an olive is considered the product of a vineyard, as in the verse it is called olive yard [kerem zayit], and it is not called a plain vineyard. Therefore, the halakha of olives must be derived by analogy from the common denominator.

[159] The Gemara resumes its discussion: In any case, it is difficult, as there still has not been found a source according to which the halakha that a laborer may eat when he is working applies to all types of produce. Rather, Shmuel said: The verse states with regard to a laborer who may eat produce: “But you shall not move a sickle” (Deuteronomy 23:26). This serves to include all types of produce that are cut with a sickle.

[160] The Gemara asks: But this word “sickle” is necessary to teach a different halakha with regard to a laborer: At the time of the sickle, i.e., when the work has been completed and the produce is being picked, you may eat. But when it is not yet the time of the sickle, you may not eat. If so, how can Shmuel use the term “sickle” as the source for the halakha that a laborer may eat all kinds of produce that are cut with a sickle?

[161] The Gemara answers: That halakha, with regard to when a laborer may eat, is derived from the verse: “But you may not put any in your vessel” (Deuteronomy 23:25), as the Gemara will explain later. Therefore, the word “sickle” is not required to teach that halakha and can be used as the source

of the halakha that a laborer may eat all kinds of produce that are cut with a sickle, as stated by Shmuel. The Gemara asks: Shmuel's derivation works out well for any type of produce that requires a sickle for its harvest. But from where do we derive that the same applies to a type of produce that does not require a sickle for its harvest?

[162] Rather, Rabbi Yitzḥak said that the halakha concerning which produce a laborer may eat is derived from a different source. The verse states: "Standing [kama]" (Deuteronomy 23:26), and the unmodified term kama serves to include any standing produce. The Gemara asks: But didn't you say earlier that the term standing is referring specifically to standing produce whose owner is obligated in the mitzva of ḥalla, and not to other produce?

[163] The Gemara answers: That matter applies before we derived a halakha from the mention of "sickle." Now that a halakha was derived from "sickle," any type of produce that requires a sickle for its harvesting is included, as stated earlier, and this applies even though the owner of that particular produce is not obligated in the mitzva of ḥalla. Accordingly, why do I need the term "standing"? It serves to include any standing produce.

[164] The Gemara asks: And now that we have derived the halakha concerning which produce a laborer is entitled to eat both from the mention of "sickle" and from "standing," why do I need the earlier verse: "When you come into your neighbor's vineyard, then you may eat grapes until you have enough at your own pleasure; but you may not put any in your vessel" (Deuteronomy 23:25)?

[165] The Gemara answers that Rava said: This verse is required for its unique halakhot, as it is taught in a baraita that the phrase "when you come [tavo]" is interpreted as follows: Coming [bia] is stated here, and coming is also stated there: "In the same day you shall give him his wages, and the sun shall not go down [tavo] upon it" (Deuteronomy 24:15). Just as there, in Deuteronomy, chapter 24, the verse is speaking of a laborer, so too here, in Deuteronomy, chapter 23, the verse is speaking of a laborer, despite the fact that this detail is not stated explicitly in the verse.

[166] The baraita continues analyzing the verse: The phrase "in your neighbor's vineyard" indicates that it is prohibited for a laborer to put the grapes in his vessel only while he is working in the vineyard of a Jew, but not in the vineyard of a gentile, where he may place grapes in his vessel. The Gemara digresses to discuss this point: This explanation works out well according to the one who says that robbery from a gentile is prohibited; this is why it was necessary for the verse to permit a laborer to eat the gentile's grapes. But according to the one who says that robbery from a gentile is permitted, now that robbery itself is permitted, is it necessary to teach that a laborer in the vineyard of a gentile is permitted to put grapes in his vessel?

[167] The Gemara answers: The one who maintains that robbery from a gentile is permitted interprets the phrase "in your neighbor's vineyard" as teaching that a laborer may eat produce only in his neighbor's vineyard, but he may not eat produce of consecrated property. The baraita continues: The term "then you may eat" indicates that a laborer must eat the entire grape and may not suck its juice and cast the rest away. The word "grapes" teaches that a laborer may eat only grapes by themselves and not grapes and something else, i.e., he may not use a condiment to make the grapes more palatable to enable him to eat an excessive amount.

[168] The term: "At your own pleasure [kenafshekha]" (Deuteronomy 23:25), can also mean: As you are. Consequently, the term kenafshekha teaches that just as the halakha is concerning the owner of the vineyard himself, so is the halakha concerning you, the laborer himself: Just as the owner, alluded

to by the term nafshekha, may eat from the produce before its labor is complete and is exempt from separating tithes, so too, the laborer himself may eat and is exempt from tithes.

169 The expression: “until you have enough” indicates that a laborer may eat until he is satiated, but he may not engage in excessive eating. The phrase “but you may not put any in your vessel” teaches that at a time when you put the grapes in the owner’s vessels, i.e., when harvesting the grapes, then you may eat, but at a time when you are not putting the grapes in the owner’s vessels, i.e., if the laborer is performing other tasks in the vineyard before harvesting, you may not eat.

170 § Rabbi Yannai says: The owner of untithed produce is not obligated in the mitzva of tithing

171 until it sees the front of the house through which people enter and exit, and it is brought into the house through that entrance, as it is stated in the formula of the declaration of the tithes: “I have removed the consecrated from the house” (Deuteronomy 26:13), which indicates that the obligation to tithe produce whose purpose has not yet been designated applies only when it is brought into the house.

172 And Rabbi Yoḥanan says: Even bringing produce into the courtyard determines that the production process of the produce has been completed and that the produce is therefore subject to tithes, as it is stated in the confession of the tithes: “And I have given to the Levite, the stranger, the orphan, and the widow, and they shall eat in your gates and be satisfied” (Deuteronomy 26:12).

173 The Gemara asks: But according to Rabbi Yoḥanan also, isn’t it written: “From the house”? The Gemara answers: He could have said to you that the term “house” is not to be taken literally. Rather, it indicates that bringing untithed produce into a courtyard is similar to bringing it into a house, in the following way: Just as a house is a secured area, so too, the courtyard must be secured. An area that is accessible to the public is not considered a courtyard for the purposes of this halakha.

174 The Gemara asks: And according to Rabbi Yannai also, isn’t it written: “In your gates”? The Gemara answers: That term is necessary to teach that this halakha, that the production process is considered complete, applies only when one brings the produce into his house through the gate, i.e., the entranceway, to the exclusion of produce that was brought in through rooftops and enclosures, in which case the produce is not subject to tithes.

175 Rav Ḥanina Ḥoza’a raises an objection from a statement of the baraita mentioned earlier (87b): The term “at your own pleasure [kenafshekha]” can also mean: As you are. Consequently, the term kenafshekha teaches that just as the halakha is concerning the owner of the vineyard himself, so is the halakha concerning the laborer himself: Just as the owner, alluded to by the term nafshekha, may eat from the produce before its labor is complete and is exempt from separating tithes, so too, the laborer himself may eat and is exempt from tithes.

176 The objection of Rav Ḥanina Ḥoza’a is as follows: This indicates that only an owner and a laborer may eat from produce without tithing it; but one who buys produce is obligated by Torah law to separate tithes before partaking of it. What, is it not correct to conclude that this is the halakha even when he purchased the produce while it was still in the field, i.e., he is obligated to tithe the produce even though it has not entered his house or courtyard?

177 Rav Pappa said: Here, in the baraita, we are dealing with a fig tree that is standing in a garden outside a courtyard and its leaves are leaning into a courtyard, or, according to the one who says that

the obligation to separate tithes applies when the produce is brought into the house, the branches are leaning into the house. Therefore, the produce entered the courtyard or house.

178 The Gemara asks: If so, the homeowner himself, not only the buyer, should also be obligated to separate tithes, as the produce is in either the courtyard or the house. The Gemara answers: The homeowner's eyes are on his fig tree, i.e., his primary concern is the tree, not its produce, and the main part of the tree is outside the courtyard. But the buyer's eyes are on his purchase, i.e., his focus is on the produce itself, which is in the space of the courtyard or house.

179 The Gemara asks: And is a buyer obligated by Torah law to tithe the produce he purchases? But isn't it taught in a baraita: For what reason were the shops of Beit Hino, a town near Jerusalem, destroyed three years before the destruction of Jerusalem itself? It was because they based their practices strictly on matters of Torah, i.e., they did not adhere to the rabbinic safeguards. The baraita explains that they would say

180 that a buyer need not tithe the produce he purchases, as derived from the verses: "You shall tithe all the produce of your planting, which is brought forth in the field year by year, and you shall eat before the Lord, your God" (Deuteronomy 14:22–23). They claimed that the phrases "you shall tithe…and you shall eat" indicate that only the one who eats the produce must tithe it, but not the one who sells it. Likewise, the phrase "the produce of your planting" teaches that the one who performs the planting must separate tithes, but not the one who buys it. Rather, the obligation of a buyer to separate tithes applies by rabbinic law, and the verse is cited as a mere support for this halakha. The residents of Beit Hino did not adhere to this rabbinic law and did not observe the halakha requiring the buyer to separate tithes.

181 It was stated previously that a buyer is not required to tithe produce by Torah law. If so, the same certainly applies to a laborer. Consequently, the term kenafshekha cannot serve to teach that a laborer may eat without tithing, as claimed earlier. The Gemara asks: Rather, what does kenafshekha come to teach? The Gemara answers: It comes to teach that which is taught in another baraita: Kenafshekha can mean: Like your own person. Just as with regard to your own person, i.e., the owner, if you muzzled yourself and did not eat from your field's produce, you are exempt from liability for the transgression of: "You shall not muzzle an ox when it is treading out the grain" (Deuteronomy 25:4), so too with regard to a laborer, if you muzzled him, i.e., you did not allow him to eat, you are exempt from liability for the transgression of muzzling an ox while it is working.

182 Mar Zutra raises an objection from a mishna (Ma'asrot 1:5): With regard to different types of produce, what is the equivalent of their granary, i.e., the point at which the processing of various types of produce is completed so that they become subject to the halakhot of tithes? With regard to cucumbers and gourds, they become obligated from when they lose their blossom; and Rabbi Asi said: This means from when their blossom [pikas] is removed. The Gemara clarifies the objection from the mishna: What, is it not correct to say that the mishna means from when they lose their blossom, even while the produce is still in the field? This would mean that the produce is subject to the halakhot of tithes before it enters the house or the courtyard, which is not in accordance with the opinions of either Rabbi Yannai or Rabbi Yoḥanan.

183 The Gemara answers: No, the mishna means: From when they lose their blossom specifically in the house or courtyard, i.e., the house or courtyard renders the produce subject to tithes only when the produce loses its blossom. The Gemara asks: If so, the phrase: From when they lose their

blossom, is inaccurate, as the mishna should have said: Until they lose their blossom. The expression: From when they lose their blossom, indicates that the obligation applies as soon as that happens, i.e., before the produce enters the courtyard or house. By contrast, the expression: Until they lose their blossom, indicates that the obligation does not come into effect until they lose their blossom, regardless of whatever else is done to them, i.e., only when they are in the house and they lose their blossom.

184 The Gemara answers: Had the mishna taught: Until they lose their blossom, I would say erroneously that the produce is not subject to tithes until their loss of blossom is complete, i.e., until all of the produce loses its blossoms. The expression: From when they lose their blossom, teaches us that the obligation to separate tithes takes effect from when they begin to lose their blossom.

185 Mar Zutra, son of Rav Naḥman, raises an objection from a baraita: With regard to produce, its granary for tithes, rendering one who eats it liable for violating the prohibition against untithed produce, is from when its work is completed. And what is meant by the completion of its work? This means the work of its being brought in. The Gemara discusses the meaning of being brought in. What, is it not correct to say that this is referring to its being brought into a pile, even while the produce is still in the field?

186 The Gemara rejects this suggestion: No, it means that its being brought into the house is considered the completion of its work. And if you wish, say instead: When Rabbi Yannai and Rabbi Yoḥanan say that types of produce are subject to tithes when they are brought into the house or courtyard, they were referring only to olives or grapes, which are not of a granary, i.e., since these types of produce are not processed in a granary, which is the typical criterion for rendering produce subject to tithes, they become subject to tithes when they are brought into a house or courtyard. But in the case of wheat or barley, a granary is explicitly written with regard to them (see Numbers 18:27, 30). Therefore, they are subject to tithes in the granary, even before they are brought into a house or courtyard.

187 § The Gemara returns to its discussion with regard to the right of a laborer to eat while working: We found a source for the halakha that a person may eat from attached produce while working in the field; and likewise we found a source that an ox that is threshing must be allowed to eat from detached produce, as the verse states: “You shall not muzzle an ox in its threshing” (Deuteronomy 25:4). From where do we derive that a person, while working, may eat from detached produce?

188 The Gemara answers: This is derived by an a fortiori inference from the case of an ox. And if an ox, which one need not allow to eat from attached produce, must be allowed to eat from detached produce, then with regard to a person, who may eat from attached produce, is it not right that he may also eat from detached produce? The Gemara rejects this inference: What is notable about an ox? It is notable in that you are commanded concerning its muzzling. Can you say that a similar halakha should apply to a person, as you are not commanded with regard to his muzzling?

189 The Gemara asks: But let an employer be commanded concerning a person’s, i.e., his laborer’s, muzzling, from an a fortiori inference from an ox: And if with regard to an ox, which you are not commanded to sustain, as there is no mitzva to support ownerless oxen if they do not have food to eat, and yet you are commanded concerning its muzzling, with regard to a Jewish person, whom you are commanded to sustain if he is impoverished (see Leviticus 25:35–36), is it not right that you are commanded concerning his muzzling?

[190] The Gemara answers: The halakha that one is not commanded concerning the muzzling of his laborer is derived from the fact that the verse states: “Kenafshekha,” which indicates that as you treat your own person, so is the halakha with regard to the person of the laborer. In other words, just as with regard to himself, the owner, if you muzzled yourself, you are exempt from punishment for violating the transgression of: “You shall not muzzle an ox in its threshing,” so too with regard to a laborer, if you muzzled him you are exempt from punishment for violating the transgression of muzzling an ox while it is working.

[191] After refuting the a fortiori inference, the Gemara inquires: Rather, from where do we derive that a person may eat from detached produce? The Gemara answers: The verse states the term “standing,” “standing” twice: “When you come into your neighbor’s standing grain…but you shall not move a sickle on your neighbor’s standing grain” (Deuteronomy 23:26). If the second expression is not applied to the matter of the right of a person to eat from attached produce, as that halakha has been derived from the first mention of “standing,” apply it to the matter of the right of a person to eat from detached produce.

[192] Rabbi Ami stated an alternative answer: A verse is not required to teach the right of a person to eat from detached produce, as it is written: “When you come into your neighbor’s vineyard, then you may eat grapes” (Deuteronomy 23:25). Are we not dealing even with a case in which the employer hired the laborer to transport the grapes out of the vineyard, and yet the Merciful One states that he may eat?

[193] The Gemara asks: From where do we derive that an ox must be allowed to eat from attached produce? The Gemara answers: This is derived by an a fortiori inference from the case of a person. And if a person, who may not eat from detached produce, i.e., there is no explicit verse that permits him to do so, nevertheless may eat from attached produce, then with regard to an ox, which must be allowed to eat from detached produce, is it not right that it must also be allowed to eat from attached produce? The Gemara rejects this inference: What is notable about a person? He is notable in that you are commanded to sustain him. Can you say that a similar halakha should apply in a case of an ox, when you are not commanded to sustain it?

[194] The Gemara asks: But let one be commanded to sustain an ox, to prevent the suffering of living creatures, by an a fortiori inference from the case of a person: And if, with regard to a person, where you are not commanded concerning his muzzling, nevertheless you are commanded to sustain him, then in the case of an ox, where you are commanded concerning its muzzling, is it not right that you are commanded to sustain it?

[195] The Gemara rejects this suggestion: This cannot be the case, as the verse states: “And your brother shall live with you” (Leviticus 25:36), which indicates that the mitzva to provide sustenance applies only to your brother, but not to an ox. After refuting the a fortiori inference, the Gemara inquires: Rather, from where do we derive that an ox must be allowed to eat from attached produce? The Gemara answers: The verse states the term “your neighbor,” “your neighbor” twice (Deuteronomy 23:26). If the second expression is not applied to the matter of the right of a person to eat from attached produce, as that halakha has been derived from the first mention of “your neighbor,” apply it to the matter of an ox, that it must be allowed to eat from attached produce.

196 Ravina said: Verses are not necessary either for the halakha that a person may eat from detached produce, or for the halakha that an ox must be allowed to eat from attached produce, as it is written: “You shall not muzzle an ox in its threshing” (Deuteronomy 25:4).

197 Now, consider: All matters, i.e., all animals, are included in the halakha of muzzling, as we derive a verbal analogy between the term “an ox” stated here and the term “an ox” stated with regard to Shabbat. Just as the prohibition against having one’s animal perform labor on Shabbat applies not only to oxen but to all animals, as explicitly stated in the Torah (Deuteronomy 5:14), so too the halakha of muzzling includes all animals, not merely oxen. If so, and the term “ox” in this verse does not limit the halakha to that animal alone, let the Merciful One write in general terms: You shall not thresh while muzzling; why do I need the word “ox” that the Merciful One writes?

198 It serves to juxtapose and compare the one who muzzles to the muzzled animal, and likewise to compare the muzzled animal to the one who muzzles: Just as the one who muzzles, a person, may eat from produce attached to the ground, so too the muzzled animal may eat from attached produce. And just as the muzzled animal may eat from detached produce, so too the one who muzzles may eat from detached produce.

199 § The Sages taught another exposition with regard to the wording in the verse: “You shall not muzzle the ox in its threshing.” The verse mentions threshing. Just as threshing is unique in that it applies to an item grown from the ground, and it is performed at the time of the completion of its work, and a laborer may eat from it, so too with regard to any item that is grown from the ground, a laborer may eat it. This serves to exclude one who milks a cow, one who makes butter from cream, and one who makes cheese from milk, as these are not grown from the ground, and therefore a laborer may not eat them.

200 The Gemara asks: Why do I need this exposition? This halakha can be derived from the words in the verse: “When you come into your neighbor’s vineyard” (Deuteronomy 23:25), as these actions are not performed in a vineyard. The Gemara answers: It was necessary to state this halakha, as it might enter your mind to say that since the Merciful One writes: “Standing” (Deuteronomy 23:26), and, as explained earlier, this serves to include all items that stand, i.e., produce of all kinds, one might have thought that it also serves to include items that are not grown from the ground. The tanna therefore teaches us that this halakha applies only to food that grows from the ground.

201 It is taught in another baraita, with regard to the same term: Threshing, that just as threshing is unique in that it applies to an item that is at the time of the completion of its work and a laborer may eat from it, so too with regard to any item that is at the time of the completion of its work, a laborer may eat it. This serves to exclude one who weeds garlic and onions, i.e., one hired to remove the wild growths from among garlic and onions. The reason is that since it is not the completion of their work, a laborer may not eat from them.

202 The Gemara asks: Why do I need this exposition? It can be derived from: “But you shall not put any in your vessel” (Deuteronomy 23:25), which indicates that if the laborer does not place the food into the owner’s vessels, he is not permitted to eat. The Gemara answers: No, it is necessary for the tanna to teach the following halakha: Even though he also plucks and removes the small ones from between the thick ones, and therefore the work of the small garlic and onions has been completed, nevertheless, the laborer may not eat from them, as this is not the completion of the work of the entire field.

[203] It is taught in another baraita concerning the term: Threshing, that just as threshing is unique in that it applies to an item whose work is not yet completed for tithes, and a laborer may eat from it, so too with regard to any item whose work is not completed for tithes, a laborer may eat it. This serves to exclude one who separates dates and dried figs, which are initially gathered together and stuck to each other before the laborer splits them apart with a rake. The reason is that since its work is completed for tithes when it has been gathered from the field, a laborer may not eat from it.

[204] The Gemara raises a difficulty: But isn't it taught in a baraita: With regard to one who separates dates and dried figs, this laborer may eat from it? Rav Pappa said: When that baraita is taught, it is referring to unripe dates, which are plucked before they are ready, and placed on the ground in order to ripen fully. The work of these fruits has not yet been completed even after they have been separated from each other.

[205] It is taught in another baraita, with regard to the same term: Threshing, that just as threshing is unique in that it applies to an item whose work is not yet completed for ḥalla, and a laborer may eat from it, so too with regard to any item whose work is not completed for ḥalla, a laborer may eat it. This serves to exclude one who kneads dough, and one who smooths it over with water and oil, and one who bakes, as its work is completed for ḥalla, and therefore a laborer may not eat from it. The Gemara raises a difficulty: But why do I need this halakha; hasn't its work already been completed for tithes when the produce is brought inside the house? It was already stated that once the work has been completed for produce which is subject to tithes, a laborer may no longer partake of it.

[206] The Gemara answers: This is not difficult, since in this baraita we are dealing with places outside of Eretz Yisrael, where there is no obligation of tithes. The Gemara raises a difficulty: If so, that this is referring to a place outside of Eretz Yisrael, the obligation to separate ḥalla also does not apply. Rather, the ruling in the baraita is actually stated with regard to Eretz Yisrael, and it is not difficult, as it is referring to those seven years in which they conquered Eretz Yisrael, and to the seven in which they divided it. As the Master said: During the seven years in which the Jewish people conquered Eretz Yisrael and the seven in which they divided Eretz Yisrael, they were obligated in ḥalla but they were not obligated in the separation of tithes.

[207] The Gemara raises a difficulty concerning this answer: Is the obligation to separate tithes the decisive factor with regard to a laborer? That is not the case, as the completion of the work is the decisive factor, while the obligation to separate tithes is mentioned only because it coincides with the completion of the work. Even if there is no mitzva to separate tithes, nevertheless the work is completed at the same stage.

[208] Rather, Ravina said: One should combine the two baraitot and teach them as one, as follows: With regard to the term threshing, just as threshing is unique in that it applies to an item whose work is not yet completed for tithe, in the case of most produce, and an item which is not completed for ḥalla, in the case of species of grain, and a laborer may eat from it, so too with regard to any item whose work is not completed for tithe or for ḥalla, a laborer may eat it.

[209] § A dilemma was raised before the Sages: With regard to a laborer, what is the halakha concerning the possibility that he may singe fruit or grain in fire, to improve its taste, and eat it? The question is whether this is considered like eating grapes and something else, which is prohibited, or not? The Gemara suggests: Come and hear a resolution to this problem from a baraita: A homeowner is permitted to give his laborers wine to drink, so that they will not eat many grapes from his harvest,

and for their part the laborers are permitted to dip their bread in brine, so that they will eat many grapes. This baraita indicates that such a practice is permitted.

[210] The Gemara refutes this proof: We did not raise the difficulty with regard to the fitness of the man himself to eat, as it is obvious that one may act in advance so that he will be able to eat a great deal. When this dilemma was raised to us, it was with regard to the fitness of the produce for eating. May they be prepared by singeing? What, then, is the halakha? The Gemara offers another suggestion: Come and hear a proof from a baraita: Laborers may eat grapes at the end of their rows of vines, provided that they do not singe the grapes in fire.

[211] The Gemara rejects this claim: This affords no proof, as the prohibition there is not because of his use of the fire but due to his neglect of his labor, as he has no right to busy himself with other matters during his work time. When the dilemma is raised to us, it is with regard to a case where he does not have to stop his work, e.g., when he has his wife and children with him, who can singe the fruit for him without him having to pause in his labor. What is the halakha in a case of this kind?

[212] The Gemara again suggests: Come and hear a proof from a baraita: A laborer may not singe produce in fire and eat, and he may not heat produce in the ground and eat, and he may not break produce on rocks and eat, but he may break it little by little and eat. Once again, the Gemara refutes the proof: There too, the reason is due to his neglect of his labor. The Gemara comments: So too, it is reasonable that this is the case. As, if it enters your mind that it is prohibited due to his sweetening of the produce, what sweetening of the produce is there in his use of a rock? The Gemara responds: This is not a conclusive argument, as it is impossible that the produce would not be sweetened a little.

[213] The Gemara further suggests: Come and hear a proof from a baraita: With regard to laborers who were plucking figs, or plucking dates, or harvesting grapes, or harvesting olives, they may eat and they are exempt from separating tithes, as the Torah entitled them to eat. Nevertheless, they may not eat these fruits together with their bread unless they received permission from the homeowner. Similarly, one may not dip [lo yispot] these fruits in salt and eat. This indicates that it is prohibited to sweeten the fruit.

[214] The Gemara rejects this proof as well: Salt is certainly considered like grapes and something else, as one is adding an ingredient, which is undoubtedly prohibited. By contrast, one who singes produce in fire has not added anything, and therefore it is possible that this practice is permitted. Consequently, the Gemara’s question is left unresolved.

[215] § The baraita mentioned earlier taught: And he may not dip these fruits in salt and eat. And the Gemara raises a contradiction to this from a baraita: In the case of one who hires a laborer to till and dig a circle under olives, this one may not eat from the olives. But if he hired him to harvest grapes, or hired him to harvest olives, or hired him to gather any other fruit, this one may eat and he is exempt from separating tithes, as the Torah entitled these laborers to eat. In a case where he stipulated with the owner beforehand that he may eat even when he is not entitled to do so by Torah law, if he eats the fruit one by one, he may eat without separating tithes, but if he consumes two by two he may not eat without separating tithes. And he may dip these fruits in salt and eat.

[216] The Gemara analyzes this last statement: To which section of the baraita is this referring? If we say that it is referring to the latter clause, in which the laborer had an agreement with the owner, it is superfluous: Since the laborer stipulated that he may eat in any manner he wishes, he may certainly

eat with salt. Rather, is it not referring to the first clause of the baraita, concerning a laborer who eats by Torah law? This would prove that a laborer may dip fruit in salt without separating tithes.

217 Abaye said: This is not difficult, as here it is prohibited because he is in Eretz Yisrael, whereas there he is outside of Eretz Yisrael. The reason for the difference is as follows: In Eretz Yisrael, dipping fruit in salt establishes his consumption as a fixed meal, which renders the fruit subject to tithes. Outside of Eretz Yisrael, by contrast, dipping fruit in salt does not establish his consumption as a meal, as the mitzva of tithes does not apply outside of Eretz Yisrael by Torah law. Rava said: Is there any produce with regard to which the halakha is that in Eretz Yisrael dipping establishes it as a meal by Torah law, and yet outside Eretz Yisrael dipping does not establish it as a meal and it is even permitted ab initio? It cannot be that there is such a great difference between these places, as the enactments of the Sages are modeled on Torah law.

218 Rather, Rava rejected Abaye's answer and stated a different resolution: Whether in Eretz Yisrael or outside of Eretz Yisrael, if he ate one fruit, its dipping in salt does not establish it as anything more than a casual meal, but if he ate two, dipping in salt does establish it as a meal. Therefore, in a case where he stipulated that he may eat, whether he dipped in salt or did not dip in salt, he may eat one by one, but he may not eat two by two. If he did not stipulate and did not dip in salt, he may eat two by two. If he dips in salt he may eat one by one, but he may not eat two by two, even though he received permission to eat two at a time from the homeowner. The reason is that they have already been rendered untithed produce with regard to tithes, because the dipping established them as ready for tithing. Consequently, the laborer may not partake of them until he has separated tithes.

219 The Gemara asks: And from where do we derive this halakha that with regard to eating fruit two at a time, dipping in salt establishes that they are subject to tithes? Rav Mattana said that it is as the verse states: "For He has gathered them as the sheaves to the threshing-floor" (Micah 4:12). This verse shows that one who gathers items together, an act that involves at least two items, is considered to have brought them into his granary. Consequently, if he also dips them in salt he has established his consumption as a fixed meal, which means that he must separate tithes.

220 The Sages taught: In the case of cows that tread on produce for which the work has been completed but which is threshed again in this manner as part of its preparation into food,

221 or that thresh teruma and tithe, which one may not allow his cows to eat, if he muzzles them he does not violate the prohibition of: Do not muzzle, but due to the appearance of prohibition, as observers are unaware that he is acting in a permitted manner, he should bring a piece of that species of produce and hang it in the basket [bateraskalin] that is by the animal's mouth. Rabbi Shimon ben Yoḥai says: He does not have to use the same food that the animal is threshing, as he may bring vetches and hang them for it, as vetches are better for it than anything.

222 And the Gemara raises a contradiction against this from a baraita: In the case of cows that tread on produce, one does not violate the prohibition of: Do not muzzle, but with regard to those which thresh teruma and tithes, he does violate the prohibition of: Do not muzzle. And in the case of a gentile who threshes with the cow of a Jew, he does not violate the prohibition of: Do not muzzle, but a Jew who threshes with the cow of a gentile does violate the prohibition of: Do not muzzle, as it depends on the person who performs the action, not the identity of the animal's owner. This presents a difficulty with regard to the ruling concerning teruma in one baraita and the ruling concerning

teruma in the other baraita, and there is similarly a difficulty with regard to the ruling concerning tithe in one baraita and the ruling concerning tithe in the other baraita.

223 The Gemara comments: Granted, the contradiction between the ruling concerning teruma in one baraita and the ruling concerning teruma in the other baraita is not difficult, as here, the ruling in this baraita is stated with regard to actual teruma, which may not be fed to a cow, and there, the ruling in that baraita is stated with regard to growths of teruma, which have the status of teruma by rabbinic law, and therefore it is permitted to feed them to one's animal so as not to violate the prohibition against muzzling. But as for the contradiction between the ruling concerning tithe in one baraita and the ruling concerning tithe in the other baraita, this is difficult.

224 And if you would say that the contradiction between the ruling concerning tithe in one baraita and the ruling concerning tithe in the other baraita is also not difficult, as here, the ruling in this baraita is stated with regard to actual tithe, which may not be fed to a cow, and there, the ruling in that baraita is stated with regard to growths of tithe, which have the status of tithe by rabbinic law, and therefore it is permitted to feed them to one's animal in order not to violate the prohibition against muzzling, this answer cannot be accepted. The reason is that granted, the growths of teruma are considered like teruma by rabbinic law, but the growths of tithe are non-sacred foods. As we learned in a mishna (Terumot 9:4): The growths of untithed produce and the growths of second tithe are non-sacred.

225 The Gemara suggests a different answer: Rather, this is not difficult. The ruling of this baraita is stated with regard to first tithe, which is considered the owner's property, whereas the ruling of that baraita is stated with regard to second tithe, which is property of the Temple treasury. And if you wish, say that both this ruling and that ruling are stated with regard to second tithe, and it is not difficult, as the ruling of this baraita, according to which it is prohibited to feed it to the animal, is in accordance with the opinion of Rabbi Meir, while the ruling of that baraita, which says that one may feed it to the animal, is in accordance with the opinion of Rabbi Yehuda.

226 The Gemara elaborates: This baraita is in accordance with the opinion of Rabbi Meir, who says that second tithe is property belonging to the Most High, i.e., the owner has only the right to eat the food, and therefore he may not let his cow consume it, whereas that baraita is in accordance with the opinion of Rabbi Yehuda, who says that second tithe is non-sacred property.

227 The Gemara asks: What are the circumstances of a cow that threshes tithes? Tithes are usually separated only after the produce has been threshed and collected into a pile. The Gemara answers: This is referring to a case where the separation of tithes performed by the owner preceded the separation of teruma at the stage when the produce was still on the stalks.

228 The Gemara further asks: And according to the explanation that the baraita that permits feeding this produce to one's animal is in accordance with the opinion of Rabbi Yehuda, i.e., that this is referring to second tithe, how is the consumption of this tithe permitted before it enters Jerusalem? But one is required to bring second tithe within the city wall. The Gemara answers: This is referring to a case where he threshed inside the wall of Beit Pagei, the outer wall of Jerusalem, which enclosed a semi-rural suburb.

229 If you wish, say a different answer to the original contradiction between the baraitot: This is not difficult; here, the ruling in this baraita is stated with regard to definite tithe, which may not be fed to a cow, whereas there, the ruling in that baraita is stated with regard to doubtfully tithed produce

[demai], from which one is required to separate tithes by rabbinic law. The Gemara comments: Now that you have arrived at this answer, i.e., that this baraita is referring to demai, the contradiction between the ruling of this baraita concerning teruma and the ruling of that baraita concerning teruma is also not difficult, as one can likewise say that here, the ruling in this baraita is stated with regard to definite teruma, and there, the ruling in that baraita is stated with regard to teruma of demai.

230 The Gemara asks: Granted, with regard to demai of tithe, there is such a concept, as the Sages decreed that one must separate tithe from doubtfully tithed produce. But with regard to demai of teruma, is there teruma of this kind? But isn't it taught in a baraita: He, Yoḥanan the High Priest, also annulled the declaration of tithes (Deuteronomy 26:12–19), due to fear that the agricultural halakhot were not being properly observed and the declaration that one has separated his tithe in accordance with Torah law would therefore be false, and he decreed that one must separate demai of tithe from the produce of one who is unreliable with regard to tithes. He issued this decree because he sent messengers throughout all the borders of Eretz Yisrael and saw that they would separate only the great teruma alone, not tithes. It is clear from here that Jews were not suspected of neglecting the mitzva of teruma, and therefore was no need to separate teruma from demai.

231 Rather, the Gemara offers a slightly different answer: It is not difficult; here, the ruling in this baraita is stated with regard to definite teruma of the tithe, separated by a Levite from his tithe and given to a priest; there, the ruling in that baraita is stated with regard to teruma of the tithe from demai.

232 § The Sages raised a dilemma before Rav Sheshet: If the animal was eating from the produce it was threshing, and it was excreting diarrhea [matrezet], what is the halakha? The Gemara explains the sides of the dilemma: Is the reason that one must let the animal eat because the food is good for it, and this produce is evidently not good for it, and therefore the animal should be muzzled to prevent it from harm? Or perhaps the reason for the prohibition against muzzling is that it sees food and suffers when it cannot eat, and this one also sees food and suffers when it cannot eat.

233 Rav Sheshet said to them: You learned a baraita that provides the answer to your question. Rabbi Shimon ben Yoḥai says: One can bring vetches and hang them for it, as vetches are better for it than anything. One can learn from the baraita that the reason is because the food is good for it. The Gemara affirms: Learn from the baraita that it is so.

234 § A dilemma was raised before the Sages: What is the halakha with regard to the possibility that a person can say to a gentile: Muzzle my cow and thresh with it? Do we say that when we state the principle that speaking to a gentile and requesting of him to perform for oneself a task forbidden to a Jew is prohibited by a rabbinic decree, this matter applies only to Shabbat, when the performance of labor is a prohibition that entails stoning, but with regard to muzzling, which is merely a regular prohibition, giving an instruction of this kind to a gentile is not prohibited; or perhaps there is no difference between the prohibitions of Shabbat and other prohibitions in this regard?

235 The Gemara suggests: Come and hear a proof from the aforementioned baraita. A gentile who threshes with the cow of a Jew does not violate the prohibition of: Do not muzzle. One can infer as follows: It is a transgression by Torah law that he does not transgress, but there is a prohibition here by rabbinic law. The Gemara refutes this argument: This is no proof, as by right the baraita should have stated that there is no prohibition here either, but since the tanna of the baraita taught in the latter clause that a Jew who threshes with the cow of a gentile does violate the prohibition, he taught

the first clause in a similar style, with the phrase: He does not violate the prohibition. If so, one cannot reach any conclusions from the wording of the baraita.

[236] The Gemara suggests: Come and hear, as they sent to Shmuel's father a halakhic inquiry with regard to these oxen

[237] which gentiles steal and castrate. Since it is prohibited for Jews to castrate animals, they would sometimes arrange for a gentile to pretend to steal the animal and subsequently return it after castrating it, as it is easier to handle a castrated animal. What is the halakha with regard to a case of this kind? Shmuel's father sent to him: They used artifice; therefore, you should use artifice with them and make them sell it as a punishment. This shows that it is prohibited to instruct a gentile to perform a prohibition on one's behalf.

[238] Rav Pappa said: This provides no conclusive proof, as the inhabitants of the West, i.e., Eretz Yisrael, who are the ones who raised this question, hold in accordance with the opinion of Rabbi Ḥideka, who says: The descendants of Noah are commanded with regard to castration. They too are prohibited from performing this practice. And consequently, those Jews who cause them to do it transgress the prohibition of: "Nor put a stumbling block before the blind" (Leviticus 19:14).

[239] Rava thought to say that it is not enough that the owners may not use these animals castrated for them by gentiles, but they must even sell the animals for slaughter, but not for plowing, so that they would derive no benefit at all from the increase in the value of their property that resulted from a transgression. A castrated animal is worth more if it is sold for plowing, but not if it is sold for slaughter. Abaye said to him: It is enough for them that you penalized them by requiring them to sell the animals.

[240] With regard to the same issue, the Gemara comments: It is obvious that if one sold the castrated animal to his adult son, the son is considered like another person, i.e., there is no need to sell to a complete stranger. If the buyer was his minor son, what is the halakha? Rav Aḥai prohibited this, and Rav Ashi permitted it. Mareimar and Mar Zutra, and some say it was a certain pair of unknown pious men, would exchange such oxen with each other.

[241] § Rami bar Ḥama raises a dilemma: If one placed a thorn in the mouth of a threshing animal, what is the halakha? The Gemara is puzzled by this question: If he placed the thorn in its mouth, this is certainly considered proper muzzling. Rather, the dilemma should be formulated as follows: If a thorn settled in its mouth and one did not remove it, what is the halakha?

[242] The Gemara poses a similar question: If one made a lion crouch over it from outside, to frighten the animal and stop it from eating, what is the halakha? The Gemara responds as it did before: If he made the lion crouch over it, this is considered proper muzzling. Rather, if a lion was crouching over it and he did not get rid of it, what is the halakha? Similarly, if he placed its young on the outside, so that the animal looks toward its young and does not eat, what is the halakha? Or, if it was thirsty for water, what is the halakha? If he spread a leather blanket [katavliya] for it over the produce it was threshing, so that the animal cannot see the food, what is the halakha?

[243] The Gemara comments: Resolve at least one of the abovementioned dilemmas, as it is taught in a baraita: The owner of a cow who lent his animal to thresh the field of another is permitted to starve his cow so that it will eat plenty of the crop it is threshing, and a homeowner is permitted to untie a

bundle of straw before an animal so that it will not eat plenty of the produce it is threshing. This is similar to spreading a blanket over the produce.

[244] The Gemara refutes this comparison: No proof can be brought from here, because there it is different, as it at least gets to eat the produce. If you wish, say instead that the baraita should be explained as follows: A homeowner is permitted to untie a bundle of straw before an animal at the outset, before the threshing begins, so that it will fill itself with straw beforehand and will not eat plenty of the crop it is threshing.

[245] § Rabbi Yonatan raised a dilemma before Rabbi Simai: If one muzzled the animal from the outside, i.e., before it began to thresh, what is the halakha? The Gemara clarifies the sides of the dilemma: One can argue that the Merciful One states: "An ox in its threshing" (Deuteronomy 25:4), and this animal is not in its threshing, as it was muzzled before it was taken to thresh. Or perhaps the Merciful One states that one may not have the animal thresh while it is muzzled.

[246] Rabbi Simai said to him: You can learn from your father's house, i.e., you can derive this halakha from the case of priests, being a priest yourself. As the Torah states: "Drink no wine nor strong drink, you nor your sons with you, when you come into the Tent of Meeting" (Leviticus 10:9). Doesn't a straightforward reading of this verse lead to the conclusion that it is only when you come into the Sanctuary that it is prohibited, whereas to drink wine and then enter is permitted?

[247] This interpretation is not tenable, as with regard to the same matter the Merciful One states: "That you may make a difference between the sacred and the non-sacred" (Leviticus 10:10), which indicates that the priest must be capable of making these distinctions when he enters the Temple. Rather, just as there, with regard to the prohibition against drinking wine in the Sanctuary, the Torah means that at the time of entry there must be no drunkenness, whether the wine was drunk inside or outside the Sanctuary, here too it means that at the time of threshing there must be no muzzling.

[248] § The Sages taught: With regard to one who muzzles a cow that someone else is using for threshing, and similarly, one who plows with animals of diverse kinds together, e.g., with an ox and a donkey on the same plow, he is exempt, as only one who threshes a muzzled animal and one who leads diverse kinds of animals together are flogged.

[249] § It was stated that the amora'im disagreed about the following case: If one muzzled an animal with his voice, by berating it whenever it tried to eat, and similarly, if he led diverse kinds of animals together by means of his voice, without performing any action, what is the halakha? Rabbi Yoḥanan says he is liable; Reish Lakish says he is exempt. The Gemara explains the reasoning behind their opinions: Rabbi Yoḥanan says he is liable, as he maintains that the twisting of one's mouth to speak is considered an action, albeit a slight one, whereas Reish Lakish says he is exempt, because a mere voice is not considered an action.

[250] Rabbi Yoḥanan raised an objection to the opinion of Reish Lakish:

[251] It is taught at the beginning of tractate Temura that the Torah prohibits the substitution of a non-consecrated animal for a consecrated one. The mishna teaches (Temura 2a): That is not to say that it is permitted for a person to effect substitution; rather it means that if one substituted a non-sacred animal for a consecrated animal, the substitution takes effect. The non-sacred animal becomes consecrated, the consecrated animal remains sacred, and the one who substituted the non-sacred animal incurs the forty lashes. This indicates that one is held liable for mere speech, even without

any accompanying action. Reish Lakish said to him: In accordance with whose opinion is this mishna? It is in accordance with the opinion of Rabbi Yehuda, who says that one is flogged for violating a prohibition that does not involve an action. By contrast, the dispute between Rabbi Yoḥanan and Reish Lakish is in accordance with the opinion of the Rabbis, who maintain that one is punished only for a transgression that includes a full-fledged action.

252 The Gemara asks: But can you establish and explain that mishna in accordance with the opinion of Rabbi Yehuda? After all, it teaches in the first clause: Everyone substitutes a non-sacred animal for a consecrated animal, both men and women. And we discussed this statement by asking the following question: This term: Everyone, serves to add what? What is the tanna including by this phrase? We answered that it serves to add an heir, who can substitute an animal for an animal he inherited that was designated as an offering. And this clause is not in accordance with the opinion of Rabbi Yehuda.

253 The Gemara elaborates: As, if it were in accordance with the opinion of Rabbi Yehuda, doesn't he say that an heir cannot effect substitution, and an heir cannot place his hands on the head of an offering? The Gemara refutes this difficulty: This is not a conclusive proof, as it is possible to say that this tanna of the mishna in Temura holds in accordance with the opinion of Rabbi Yehuda with regard to one matter and disagrees with him with regard to one other matter.

254 § The Sages taught: One who muzzles a cow and threshes with it is flogged, and in addition he must pay the owner of the cow four kav for a cow, the usual amount it consumes while threshing, and three kav for a donkey. The Gemara asks: But isn't there a principle that an offender is not flogged and also punished by death, and likewise he is not flogged and rendered liable to pay? One who transgresses a prohibition is liable to receive only one punishment for a single offense. Abaye said: In accordance with whose opinion is this ruling? It is that of Rabbi Meir, who says in general that one can be flogged and be liable to pay.

255 Rava said that there is a difference between the transgression itself, which is between the offender and God, for which he is liable to be flogged, and the loss he caused the owner of the cow, for which he must pay restitution. The Torah prohibits one from bringing 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 offence. Although this man would certainly not be rendered liable to pay compensation by a court, as he is liable to receive court-imposed capital punishment, nevertheless, since he is technically liable to pay compensation, the money is subject to the prohibition as well. In this case too, despite the fact that the court cannot compel one to pay for the produce his cow ate, he does owe this sum. Furthermore, if the owner of the produce were to seize this sum from him, the court would not force him to return the money.

256 Rav Pappa stated a different answer: From the time of his pulling of the cow to rent it for threshing he was rendered obligated to provide its sustenance when it threshes, but as for flogging, he is not liable to be flogged until the actual time of muzzling. In other words, he was liable to pay the monetary payment before he incurred liability to receive lashes, which means that they are two separate liabilities.

257 In relation to the above discussion, Rav Pappa said: These matters, stated below, were raised as a dilemma to me by the members of the house of Rav Pappa bar Abba, and I resolved these matters for

them by saying that there is a prohibition in both cases. One of my decisions was in accordance with the halakha, and the other one was not in accordance with the halakha.

258 They first raised this dilemma before me: What is the halakha with regard to the possibility of kneading dough with milk? And I resolved it for them by saying that there is a prohibition, in accordance with the halakha. As it is taught in a baraita: One may not knead dough with milk, lest one eat this bread with meat, and if he kneaded dough in this manner the entire loaf is forbidden, because he will become accustomed to sin. Similarly, one may not smear over an oven with the fat of an animal's tail, and if he did smear the oven in this manner then the entire loaf baked in that oven is forbidden, lest he eat it with milk, until he heats the oven without bread for long enough to burn off the fat.

259 And the other question they asked of me was as follows: What is the halakha with regard to bringing in a male animal and a female animal of different species together into a single pen? Is there a concern that they might mate, which would violate the prohibition against crossbreeding animals? And I resolved it for them by saying that there is a prohibition, but this was not in accordance with the halakha.

260 As Shmuel says: With regard to adulterers, the witnesses must observe from when they appear as behaving in the manner of adulterers, and they do not need to directly observe the actual moment of the act of intercourse. But with regard to one who crossbreeds two animals of diverse kinds, he is liable only if witnesses attest that he inserted the male organ into the female like a brush into a tube. This clearly shows that crossbreeding is punishable only if performed manually, not if the animals were merely enclosed together.

261 Rav Aḥadvoi bar Ami raises an objection against this opinion, from a baraita: Had the Torah stated merely: "You shall not let your cattle copulate," I would have said that it is prohibited to assist animals in their mating at all, and consequently a person may not hold the female animal when a male mounts it. Therefore, the verse states: "You shall not let your cattle copulate with a diverse kind" (Leviticus 19:19), which indicates that it is prohibited to mate only different species, but not animals of the same type.

262 Can one not derive from here by inference that with regard to diverse kinds, holding the animal is also not allowed? This indicates that not only is the act of crossbreeding itself prohibited, but any type of assistance is also prohibited, e.g., restraining the female animal. But if this is the case, placing two animals in the same pen should also be considered a violation. The Gemara refutes this argument: What is the meaning of the term: Holding? It means the insertion of the sexual organ, and why does the tanna call it holding? This is a euphemism.

263 Rav Yehuda says: If one desires to mate an animal of one species with an animal of its own species, it is permitted to insert the male organ into the female like a brush into a tube, and there is not even a concern due to licentiousness and immoral thoughts here. What is the reason for this lenient ruling? It is because he is occupied with his work, and therefore his mind will not entertain sinful thoughts. Rav Aḥadvoi bar Ami raises an objection against this:

264 Had the Torah merely stated: "You shall not let your cattle copulate," I would have said that a person may not hold the female animal when a male mounts it. Therefore, the verse states: "With a diverse kind" (Leviticus 19:19). This shows that it is a crossbreed of diverse kinds that is prohibited,

from which it may be inferred that mating an animal of one species with an animal of its own species is permitted.

265 Rav Aḥadvoi bar Ami infers from the baraita: And even concerning mating an animal of one species with an animal of its own species, with regard to holding, yes, this is permitted, but with regard to inserting, no, this is not allowed. The fact that the tanna specifies the act of holding indicates that inserting is prohibited even in the case of two animals of the same species. The Gemara again rejects this claim: What is the meaning of holding in this context? It means inserting. And why does the tanna call it holding? It is a euphemism.

266 Rav Ashi said: This matter was asked of me by the members of the house of Rav Neḥemya, the Exilarch: What is the halakha with regard to bringing into the same pen an animal of one species with two other animals, one of its own species and the other of a species different from it? Is the halakha that since there is another animal of its own species, it will be drawn after its species, and therefore there is no concern whatsoever with regard to diverse kinds, or perhaps one should not act even in this manner, in case it leads to crossbreeding? And I resolved it for them by saying that there is a prohibition, but this was not in accordance with the halakha. The reason for my decision was due to the immorality of the slaves. I reasoned that if they are permitted to engage in this practice, they will intentionally crossbreed and claim that it occurred without their intervention.

267 MISHNA: If a laborer was performing labor with his hands but not with his feet, or with his feet but not with his hands, e.g., pressing grapes, or even if he was performing labor only with his shoulder, this one may eat the produce of the field. Rabbi Yosei, son of Rabbi Yehuda, says: A laborer may not eat unless he performs labor with his hands and with his feet.

268 GEMARA: The Gemara asks: What is the reason for the ruling of the Rabbis stated in the first clause of the mishna? The Gemara explains that the verse states: “When you come into your neighbor’s vineyard” (Deuteronomy 23:25). Since the Torah does not specify a particular kind of task, it is understood as referring to any labor he performs.

269 The mishna teaches that Rabbi Yosei, son of Rabbi Yehuda, says: A laborer may not eat unless he performs labor with his hands and with his feet. The Gemara asks: What is the reasoning of Rabbi Yosei, son of Rabbi Yehuda? The Gemara explains: This halakha is like that of a threshing ox; just as one is not required to let an ox feed unless it is performing labor with its hands and with its feet, as it uses all four of its legs to thresh, so too a laborer is not entitled to eat unless he is performing labor with his hands and with his feet.

270 § With regard to a similar issue, Rabba bar Rav Huna raised a dilemma: If one threshed with geese and chickens, rather than four-legged animals, what is the halakha according to the opinion of Rabbi Yosei, son of Rabbi Yehuda? The Gemara clarifies the sides of the dilemma: Do we require threshing with all its force, as it is for this reason that an ox must thresh with all four of its legs, and that condition is fulfilled here, as these birds perform labor with all their strength, or perhaps we require that the animal must actually perform labor with its hands and with its feet, i.e., with all four legs, and this is not the case here? No answer was found, and the Gemara says that the dilemma shall stand unresolved.

271 Rav Naḥman says that Rabba bar Avuh says: With regard to laborers in a vineyard, until they have walked lengthwise and crosswise in the winepress, the first stage of the making of wine, they may eat grapes, as they are performing labor with grapes, but they may not yet drink wine, since their

labor has not produced wine. Once they have walked lengthwise and crosswise in the winepress, they are now performing labor with wine as well, and therefore they may eat grapes and drink wine.

[272] MISHNA: If a laborer was performing labor with figs he may not eat grapes; if he was performing labor with grapes he may not eat figs, as he may eat only the type of food with which he is working. This is the halakha even if he was employed to perform labor with both types of produce but is currently performing labor with only one of them. But he may hold himself back from eating until he reaches a place of good-quality grapes or figs and eat from these, as they are the same type of food.

[273] And with regard to all of these cases the Sages said that he may eat only at the time of work. But due to the obligation to restore lost property to its owners, i.e., so that workers would not neglect their task, they said that laborers may eat as they walk from one row of a vineyard or plantation to another row, and upon their return from the winepress. And with regard to a donkey, it is permitted to eat when it is being unloaded. This statement will be explained in the Gemara.

[274] GEMARA: A dilemma was raised before the Sages with regard to the ruling of the mishna: If a laborer was performing labor on this vine, what is the halakha concerning the possibility that he may eat from another vine? Do we require only that the food must be from the type that you are placing into the homeowner’s vessels, and this condition is fulfilled here, or perhaps we require that it must be from that very food which you are placing into the homeowner’s vessels, and this is not the case here?

[275] And if you say that one who was performing labor on this vine may not in fact eat from another vine, a further question arises: With regard to an ox performing labor with produce attached to the ground, how can one enable it to eat? The ox is tied to the front of the wagon, while the laborers are working on a vine adjacent to the wagon. Consequently, it is impossible for the ox to eat from the vine on which labor is being performed. Rav Sheisha, son of Rav Idi, said: In the case of long branches it is possible for the animal to perform labor at one end of the branch while eating from the other.

[276] This difficulty has been resolved, but the original dilemma remains. The Gemara therefore suggests: Come and hear a resolution from the mishna: If a laborer was performing labor with figs he may not eat grapes. This indicates that if the two types of produce are figs and other figs, similar to the figs and grapes mentioned in the mishna, he may eat. Now, if you say that one who was performing labor on this vine may not eat from another vine, how can you find these circumstances? Rav Sheisha, son of Rav Idi, said: The ruling of the mishna is stated with regard to a hanging vine, and he eats from one edge of the branch while working on the other side.

[277] The Gemara offers another suggestion: Come and hear another resolution from the mishna: But he may hold himself back from eating until he reaches a place of good-quality fruit and eat. And if you say that one who was performing labor on this vine may eat from another vine, let him go and bring and eat. Why must he wait until he reaches that particular vine? The Gemara answers: There, the reason is due to the neglect of work caused by the laborer walking to the other vine. We do not raise the dilemma with regard to that case, as he may certainly not stop performing labor to go and eat elsewhere. When the dilemma was raised before us, it was with regard to a case where his wife and children are present. What is the halakha as to whether his family members, who are not performing labor, may bring him fruit?

278 Once again the Gemara suggests: Come and hear a resolution from the mishna: And with regard to all of these cases they said that he may eat only at the time of work. But due to the mitzva to restore lost property to its owners, the Sages said that laborers may eat as they walk from one row to another row, and upon their return from the winepress.

279 The Gemara explains the attempted resolution: The Sages assumed that the basic principle of this halakha is that a laborer who was walking is considered like one who was performing his labor, and it is therefore permitted for him to eat. And yet, it is due to the mitzva to restore lost property to its owner that he may eat, whereas by Torah law he may not eat. But if he is performing labor, why is he not allowed to eat? Apparently, this indicates that one who was performing labor on this vine may not eat from another vine, and therefore once he starts walking and is no longer alongside the vine he may not partake of it by Torah law.

280 The Gemara refutes this argument: No; actually, I could say to you that one who was performing labor on this vine may even eat from another vine, but a laborer who was walking is not considered like one who was performing his labor. The reason that he is not permitted to eat by Torah law is not because he is performing labor on a different vine, but because he is walking at the time.

281 The Gemara cites an alternative version of this discussion. There are those who say as follows: The Sages assumed that a worker who was walking is not considered like one who was performing his labor, and this is the reason that the baraita says that he may not eat by Torah law: Because he is not considered like one who was performing his labor. This indicates that if he is performing his labor, he may eat by Torah law. Apparently, it may be inferred that one who was performing labor on this vine may eat from another vine.

282 The Gemara rejects this claim: No; this is not a proof, as actually I could say to you that one who was performing labor on this vine may not eat from another vine,

283 but a worker who was walking is considered like one who was performing his labor. Yet, since one who was performing labor on this vine may not eat from another vine, he would not be entitled to eat while walking if not for the ordinance of the Sages.

284 § The mishna teaches: And with regard to a donkey, it is permitted to eat when it is being unloaded. The Gemara is puzzled by this statement: From where can it eat when it is being unloaded? Since the load is being removed from the animal at the time, how can the donkey eat from it? Rather, you should say: It may eat until it is unloaded. As long as it is bearing its load the donkey may eat from the food on its back. The Gemara comments: We learn in the mishna that which the Sages taught explicitly in a baraita: A donkey and a camel may eat from the load on their backs, provided that the owner of the animal does not take some of the food in his hand and feed them.

285 MISHNA: A laborer may eat cucumbers while he works, and this is the halakha even if the amount he eats is equal in value to a dinar; or he may eat dates, and this is the halakha even if the amount he eats is equal in value to a dinar. Rabbi Elazar Ḥisma says: A laborer may not eat more than the value of his wages, but the Rabbis permit it, according to the strict letter of the law. But one teaches a person not to be a glutton and thereby close the opening to other job offers in his face. When people hear of his greed they will be reluctant to hire him.

286 GEMARA: The Gemara asks: The statement of the Rabbis is identical to the statement of the first tanna. A mishna would not repeat the exact same opinion. The Gemara explains: The practical

difference between them concerns the statement: But one teaches a person not to be a glutton. According to the first tanna, he does not accept the notion that one teaches a person not to be a glutton. According to the Rabbis, they do accept this principle that one teaches a person not to be a glutton.

[287] If you wish, say instead that the practical difference between them concerns a halakha taught by Rav Asi. As Rav Asi says: Even if he hired him to harvest only one cluster, the laborer may eat. And Rav Asi further said: Even if he harvested only one cluster, he may eat it.

[288] The Gemara comments: And it was necessary for Rav Asi to state both of these halakhot, despite their apparent similarity. As, had he taught us only this first one, one might have thought that he may eat because there is no other food to place in the homeowner's vessels, as he was hired to harvest only a single cluster. The Torah permits him to eat, and if he is not allowed to eat that cluster, what else is there for him to eat? But if there is produce left over to place in the homeowner's vessels, as in the second case, one might say that he should first place some in the vessels and then eat.

[289] And had Rav Asi taught us only this second case, one might have said that the reason he may eat is that ultimately it is possible to fulfill the requirement to place produce in the owner's vessels, i.e., he can eat and still perform the task. But in a situation where ultimately it is not possible to fulfill his task, since if he were to eat the only cluster he was hired to harvest there would be nothing left for him to do, one might say that he may not eat. Therefore, both halakhot are necessary.

[290] The Gemara returns to the dispute of the mishna: If you wish, say that the practical difference between the opinions of the first tanna and the Rabbis concerns a halakha taught by Rav. As Rav says: I found a concealed scroll, a document that lists halakhot in shortened form so that they will not be forgotten. Rav discovered this document in Rabbi Ḥiyya's house, and it was written in it: Isi ben Yehuda says that with regard to the verse: "When you come into your neighbor's vineyard then you may eat grapes until you have enough at your own pleasure" (Deuteronomy 23:25), the verse is speaking of the entry of any person who passes alongside a vineyard, not only a laborer.

[291] And Rav said in response: Isi has not left any livelihood for any entity, as many people might pass by and consume all the fruit of one's vineyard. The first tanna agrees with Rav, while the Rabbis accept Isi ben Yehuda's opinion that by right even one who is not a laborer may eat.

[292] Rav Ashi said: I stated this halakha before Rav Kahana, and I suggested that perhaps Isi ben Yehuda was referring to laborers who perform labor for their meal; that is, they voluntarily enter his vineyard to perform labor and eat. In other words, Isi ben Yehuda did not mean that anyone may help themselves to produce. Rather, if one chooses to perform labor in the vineyard of another, he may eat from his grapes even if he was not hired by the owner. Rav Kahana said to me: Even so, a person prefers to hire laborers to pluck the fruit of his orchard, rather than have everyone come and eat it, as he fears that people he did not hire might not perform the work properly.

[293] § A dilemma was raised before the Sages: In the case of a laborer who eats while performing labor, does he eat from his own property, i.e., is the food he eats in addition to his wages and therefore considered his private property, or does he eat from the property of Heaven? In other words, perhaps the Torah granted him the right to eat the food with which he works as a special privilege, but it does not belong to him.

294 The Gemara asks: What is the practical difference raised by this dilemma? The Gemara answers: The difference is in a case where he says: I myself will not eat, but I will give the produce to my wife and children in my stead. If you say that he eats from his own property, we give them the food, as it belongs to him, but if you say that he eats from the property of Heaven, the Merciful One entitles the laborer himself to eat, but the Merciful One does not entitle his wife and children to do so. What, then, is the halakha?

295 The Gemara suggests: Come and hear a proof from the mishna: A laborer may eat cucumbers, and this is the halakha even if the amount he eats is equal in value to a dinar; or he may eat dates, and this is the halakha even if the amount he eats is equal in value to a dinar. If you say that he eats from his own property, is it possible that he was hired for one-sixth of a dinar and yet he may eat an amount worth a whole dinar? Would the Torah have granted him ownership over such a large sum relative to his wages? The Gemara refutes this argument: Rather, what then will you say? Will you say that he eats from the property of Heaven? Ultimately, in that case too he was hired for one-sixth of a dinar and yet in practice he may eat an amount worth a dinar. Rather, what have you to say? That the Merciful One entitles him to eat more than his wages. Here too, one can likewise say that the Merciful One entitles him to possess more than his wages.

296 The Gemara offers another suggestion: Come and hear a proof from another statement from the mishna: Rabbi Elazar Ḥisma says: A laborer may not eat more than the value of his wages, but the Rabbis permit it. What, is it not the case that they disagree with regard to this: That one Sage, Rabbi Elazar Ḥisma, holds that he eats from his own property, and therefore he may not eat an amount worth more than he earns, and one Sage, the Rabbis, holds that he eats from the property of Heaven?

297 The Gemara rejects this suggestion: No; it is possible that everyone agrees that he eats from his own property, and here they disagree with regard to the meaning of a term in the verse: “When you come into your neighbor’s vineyard, then you may eat grapes until you have enough at your own pleasure [kenafshekha]” (Deuteronomy 23:25). One Sage, Rabbi Elazar, holds that “at your own pleasure [kenafshekha],” which literally means: In accordance with your soul, is referring to a matter for which he hands over his soul, i.e., the laborer acquires the fruit by virtue of the risks he accepts upon himself as part of his work.

298 And one Sage, the Rabbis, holds that the term “kenafshekha” means: Like your own person. Just as with regard to your own person, i.e., the owner, if you muzzled yourself, you are exempt, as you yourself do not have to eat, so too, with regard to a laborer, if you muzzled him, i.e., you did not allow him to eat, you are exempt. This indicates that there are cases in which a worker is not entitled to eat.

299 The Gemara suggests: Come and hear a proof from a baraita: If a nazirite who is working in a vineyard says: Give the grapes to my wife and my children, as he is prohibited from eating them himself, they do not listen to him. But if you say that a laborer eats from his own property, why should they not listen to him? The Gemara answers: There, the reason is different, due to the well-known proverb concerning a nazirite: Go, go, we say to a nazirite, go round, go round; do not approach a vineyard. It is prohibited for a nazirite to eat any of the products of the vine. To keep a nazirite away from temptation, the Sages attempt to deter him from accepting work in a vineyard by not allowing him to give the fruit to his family. Consequently, this halakha is due to the concern about a possible transgression and has nothing to do with the rights of a laborer.

300 Come and hear a proof from a baraita: With regard to a laborer who said: Give the produce to my wife and my children, they do not listen to him. But if you say that he eats from his own property, why should they not listen to him? The Gemara refutes this argument: In this particular context, what is the meaning of a laborer? It means a nazirite laborer. The Gemara questions this response: But isn't it taught in one baraita concerning the case of a nazirite, and isn't it taught in another baraita concerning the case of a laborer? Apparently, these are two different halakhot. The Gemara rejects this suggestion: Were these baraitot taught alongside one another, such that one can deduce a halakha from the change in wording? These are two separate baraitot, and therefore no inference can be drawn from the difference in terminology, and both may be referring to a nazirite laborer.

301 The Gemara suggests: Come and hear proof from another baraita: From where is it derived with regard to a laborer who said: Give the produce to my wife and my children, that they do not listen to him? As it is stated: "But you shall not put any in your vessel" (Deuteronomy 23:25). And if you would say that so too, this is referring to a nazirite, if so, the reason is not due to the verse: "But you shall not put any in your vessel"; rather, it is due to the principle: Go, go, we say to a nazirite, do not approach a vineyard.

302 The Gemara refutes this proof: Yes, it is indeed so. This baraita is discussing a nazirite, and since it teaches the halakha by utilizing the language of a laborer, without specifying that he is a nazirite, it cites the verse that is stated with regard to a laborer. In fact, the actual source for the halakha is a decree due to naziriteship, while the practice is permitted to any other laborer.

303 The Gemara suggests: Come and hear a proof from a mishna (Ma'asrot 2:7): With regard to one who hires a laborer to prepare figs for drying,

304 this laborer may eat and is exempt from separating tithe. Since the Torah granted him permission to eat, he may do so while he is working without separating tithes, as is the case with regard to gifts due to the poor. But if the laborer stipulated: On the condition that I and my sons may eat, or that my son may eat for my wages, he himself may eat and is exempt from separating tithes, as he is permitted to eat by Torah law, and his son may eat but is obligated to separate tithes.

305 And if you say he eats from his own property, why is his son obligated? A son may eat from his father's table without rendering the food subject to tithes. Ravina said: The reason is because it looks like a sale. Although the produce belongs to the laborer by Torah law, when he makes a deal involving his son it has the appearance of a transaction. Therefore, he must separate tithes to avoid any misunderstanding on the part of observers.

306 The Gemara cites yet another relevant source: Come and hear a proof from a mishna (93a): In the case of one who hires a laborer to perform labor with his fourth-year produce, such laborers may not eat the fruit, as all fruit of the fourth year of a tree must be taken and consumed in Jerusalem. And if he did not inform them beforehand that they were working with fourth-year produce, they are considered to have been hired under false pretenses. Consequently, he must redeem the fruit and feed them.

307 And if you say that the laborer eats from the property of Heaven, why must the owner redeem the fruit and feed them? The Merciful One certainly did not entitle them to transgress a prohibition. Even if by Torah law the laborer is granted a personal right to eat, this applies only to permitted food. The Gemara explains: There, the reason is because it looks like a mistaken transaction, as they accepted

employment under the assumption that they would be permitted to eat the fruit. He is therefore obligated to compensate them.

[308] The Gemara suggests another proof: But now state the latter clause of that same mishna: If his cakes, in which he had earlier preserved his figs, broke apart and crumbled, so that they must be preserved once again, or if his barrels of wine opened and he hired laborers to reseal them, these laborers may not eat. The reason is that the figs and wine were already subject to tithes, from which point a laborer may not eat them. And if the owner did not inform them that it is prohibited for them to consume the food, he must tithe the food and feed them. But if you say he eats from the property of Heaven, why must he tithe the food and feed them? The Merciful One certainly did not entitle them to transgress a prohibition.

[309] And if you would say: Here too, is it because it looks like a mistaken transaction, that explanation is not tenable. Granted, in the case where his cakes broke apart, this does look like a mistaken transaction, as the laborers were unaware that the figs had been preserved once already, and they mistakenly thought that the fruit had not yet reached the stage at which it would become subject to tithes. But with regard to the other case, when his barrels opened, what mistaken transaction is there here? They certainly know that the wine had already been rendered untithed produce with regard to tithes, as wine is subject to tithes as soon as it has been collected into the pit alongside the winepress.

[310] Rav Sheshet said: This is referring to a case where his barrels opened in such a manner that the wine once again fell into the pit from which it came. The laborers therefore assumed that the owner was not yet obligated to set aside tithes. The Gemara raises a difficulty against this explanation: But isn’t it taught in a baraita that wine is immediately subject to tithes from when it descends into the pit?

[311] The Gemara answers: This baraita is in accordance with the opinion of Rabbi Akiva, who says that wine is subject to tithes only from when one starts to remove the seeds and the waste floats to the top, which occurs after the wine has already descended into the pit. The reason for this halakha is that the laborers can say to him: We did not know that the wine had already been removed from the pit. The Gemara asks: But let us say to them: It should have entered your minds that perhaps its waste had already floated. The Gemara responds: The ruling of the mishna is stated with regard to a place where that same man who pulls the wine from the pit is also the one who floats its waste. Consequently, it was reasonable for the laborers to assume that they had been hired to perform both tasks.

[312] The Gemara adds: And one can reach a different conclusion now that Rav Zevid has taught the following version of the above dispute, heard from the school of Rabbi Hoshaya: Wine is subject to tithes from when it descends into the pit and its waste floats. And Rabbi Akiva says: It is subject to tithes from when he drains the waste from the barrels. They would pour all of the wine into a barrel, before draining and removing the waste after fermentation. With this in mind, you can even say that the barrels were not opened into the pit, but simply opened up, as the laborers can say to him: We did not know that he had already drained the waste.

[313] The Gemara poses a question: But let us say to them: It should have entered your minds that perhaps its waste had already been drained. The Gemara answers: This is referring to a place where that same man who plugs the barrel with a stopper is also the one who drains its waste, and therefore they assumed they had been hired to perform both tasks.

[314] The Gemara suggests: Come and hear a proof from a mishna (93a): A man can stipulate on his own behalf that he receive a certain increase in his wages instead of eating the produce with which he works, and similarly, he can stipulate this on behalf of his adult son or daughter, on behalf of his adult Canaanite slave or Canaanite maidservant, or on behalf of his wife, with their agreement, because they have the basic level of mental competence, i.e., they are legally competent and can therefore waive their rights. But he cannot stipulate this on behalf of his minor son or daughter, nor on behalf of his minor Canaanite slave or Canaanite maidservant, nor on behalf of his animal, as they do not have the basic level of mental competence.

[315] The Gemara analyzes this mishna: It might enter your mind that all these examples involve cases where the father, master, or husband, depending on the case, provides his children, slaves, or wife with food, and they assist him in his work. Granted, if you say that a laborer eats from the property of Heaven, it is due to that reason that he may not stipulate this on behalf of minors, as the Torah also entitled minors themselves to eat when they work, and they cannot waive their rights. But if you say that a laborer eats from his own property, and the food he consumes is a monetary obligation, let him be allowed to stipulate on behalf of minors as well. Since in a case where a father provides sustenance for his children he keeps the profits of their labor, he should be entitled to stipulate this concerning their payment.

[316] The Gemara answers: With what are we dealing here? We are dealing with a situation in which the father does not provide his children with food. Therefore, he does not keep the profits of their labor and has no right to make stipulations concerning the terms of their employment. The Gemara raises a difficulty: If so, in the case of adult children and slaves too, the father or master should not be able to stipulate in this manner. Since he does not provide them with food, why should he be able to waive their rights? The Gemara responds: Adults are aware of the stipulation and forgive their rights to the food. He can stipulate this only with their agreement.

[317] The Gemara asks: But didn't Rabbi Hoshaya teach in a baraita: A person can stipulate on his own behalf that he receive a certain increase in his wages instead of eating the produce with which he works, and on his wife's behalf, but not on behalf of his animal; and he can stipulate this on behalf of his adult son or daughter, but not on behalf of his minor son or daughter; and he can stipulate this on behalf of his Canaanite slave or Canaanite maidservant, whether they are adults or minors. This contradicts the ruling of the previous mishna that one cannot stipulate this on behalf of his minor slave.

[318] What, is it not correct to say that this and that, both sources, are referring to cases where the master provides the slaves with food, and they disagree with regard to this: That one Sage, the tanna of the mishna, holds that a laborer eats from his own property, and therefore he can relinquish the rights of his minor slave, and one Sage, of the baraita, holds that a laborer eats from the property of Heaven, and therefore he cannot relinquish the rights of his minor slave? The Gemara refutes this suggestion: No; everyone agrees that a laborer eats from his own property, and it is not difficult. Here, in the mishna, it is referring to a case where he does not provide the slaves with food, as stated previously, and the baraita is referring to a case where he provides them with food.

[319] The Gemara asks: To what case did you interpret the baraita to be referring? Did you interpret it as referring to a case where he provides the slaves with food? If so, let him also be allowed to stipulate on behalf of his minor children that they receive no food, as presumably the baraita is

referring to a case where he provides his minor children with food. The Gemara answers: The Merciful One does not entitle him to waive the suffering of his minor son and daughter. His young children will suffer if they are prevented from eating the food they see before them.

[320] The Gemara further asks: To what case did you interpret the baraita to be referring? Did you interpret it as referring to a case where he does not provide the slaves with food?

[321] This works out well according to the one who says that a master cannot say to a slave: Work for me and I will not feed you, i.e., he is obligated to provide the slave with a livelihood. For the purposes of the case at hand, this means that the master cannot stipulate that he is relinquishing his slaves' right to eat while performing labor, and therefore it works out well. But according to the one who says that a master can say to a slave: Work for me and I will not feed you, what can be said? He should be able to stipulate to that effect with regard to his minor slave, as he is entitled to all profits that result from the slaves' labor.

[322] Rather, according to this opinion one must accept a different explanation: Both this mishna and that baraita are referring to a case when he does not provide the slaves with food, and the two tannaitic sources disagree with regard to that very issue. As one Sage, the tanna of the baraita, holds that a master can say to a slave: Work for me and I will not feed you, and one Sage, the tanna of the mishna, holds that he cannot do so. The Gemara is puzzled by this response: If so, Rabbi Yoḥanan, who says that a master can say to his slave that he will not feed him, has left aside the mishna and acted and ruled in accordance with the baraita.

[323] Rather, the Gemara retracts the previous explanation in favor of another: Everyone agrees that a laborer eats from the property of Heaven, and even if a father or master provides his child or slave with food he cannot stipulate that the child or slave should not eat when performing labor, as the father or master has no rights over that which they consume. And what is the meaning of: Stipulates, that Rabbi Hoshaya says in the baraita? That does not mean, as in the mishna, that the master relinquishes the slaves' right to food; rather, he stipulates that they should eat food before they work, so that they will be too full to eat at a later stage.

[324] The Gemara raises a difficulty: If so, in the corresponding situation, with regard to his animal, there should likewise be no discussion at all because he can stipulate in this manner and distribute straw for it before it starts work, as everyone agrees that this is permitted. Rather, the Gemara retracts this interpretation and says that in fact they disagree with regard to this: That one Sage, the tanna of the mishna, holds that a laborer eats from his own property, and one Sage, the tanna of the baraita, holds that a laborer eats from the property of Heaven. This proves that this issue is in fact a dispute between tanna'im.

[325] MISHNA: A man can stipulate on his own behalf that he receive a certain increase in his wages instead of eating the produce with which he works, and similarly, he can stipulate this on behalf of his adult son or daughter, on behalf of his adult Canaanite slave or Canaanite maidservant, or on behalf of his wife, with their agreement, because they have the basic level of mental competence, i.e., they are legally competent and can therefore waive their rights. But he cannot stipulate this on behalf of his minor son or daughter, nor on behalf of his minor Canaanite slave or Canaanite maidservant, nor on behalf of his animal, as they do not have the basic level of mental competence.

[326] In the case of one who hires a laborer to perform labor with his fourth-year fruit, such laborers may not eat the fruit. And if he did not inform them beforehand that they were working with fourth-

year fruit, he must redeem the fruit and feed them. If his fig cakes broke apart and crumbled, so that they must be preserved again, or if his barrels of wine opened and he hired workers to reseal them, these laborers may not eat, as the work of the figs or wine had already been completed with regard to tithes, from which point a laborer may not eat them. And if he did not inform them, he must tithe the food and feed them.

[327] The mishna adds: Watchmen of produce may eat the produce of the field or vineyard by local regulations, i.e., in accordance with the ordinances accepted by the residents of that place, but not by Torah law.

[328] GEMARA: The mishna mentions watchmen of produce. Rav says: They taught this halakha only with regard to watchmen of gardens and orchards, in which the produce is still attached to the ground, and therefore the watchman would have no legal right to it were it not for the local custom. But watchmen of winepresses and piles of detached produce may eat from them by Torah law, as the decisive factor is whether or not the produce is attached to the ground. Evidently, Rav maintains that one who safeguards is considered like one who performs labor, and therefore he has the status of a laborer.

[329] And conversely, Shmuel says that the Sages taught the halakha of the mishna, that they may eat by local regulations, only with regard to watchmen of winepresses and piles of detached produce. But watchmen of gardens and orchards may not eat, neither by Torah law nor by local regulations. This shows that Shmuel holds that one who safeguards is not considered like one who performs labor, and therefore no watchman is entitled to eat by Torah law. In the particular case of detached produce, there is a local custom to allow a watchman of detached produce to eat from it.

[330] Rav Aḥa bar Rav Huna raises an objection to this reasoning from a baraita: One who safeguards the red heifer after it has been burned renders his garments impure, in accordance with halakha concerning all those who take part in the ritual of the red heifer. The Torah decrees that all those who take part in the ritual of the red heifer contract impurity (Numbers, chapter 19). It is therefore necessary to establish which people are considered to have taken part in this ritual. And if you say that one who safeguards is not considered like one who performs labor, why does he render his garments impure? He has not performed any labor. Rabba bar Ulla said: He does not render them impure due to his work as a watchman; rather, this is a rabbinic decree, lest he move a limb of the heifer.

[331] Rav Kahana raises an objection: With regard to one who safeguards four or five cucumber fields, which contain various types of cucumbers and gourds belonging to different people, this one may not fill his stomach from any single one of them. Rather, he must eat from each and every one by a proportionate amount. But if you say that one who safeguards is not considered like one who performs labor, why is he allowed to eat at all?

[332] Rav Shimi bar Ashi said: They taught this halakha with regard to uprooted cucumbers, concerning which even Shmuel agrees that a watchman may eat them by local regulations. The Gemara raises a difficulty: Uprooted? But at that stage hasn’t their work already been completed with regard to tithes, and therefore no laborer should be permitted to eat them? The Gemara answers: This is referring to a case when their blossom had not yet been removed. Since the cucumbers still require work, they are not yet subject to tithes.

[333] Rav Ashi said: It stands to reason that the halakha is in accordance with the opinion of Shmuel, as we learned in a mishna (87a): And these laborers may eat by Torah law: A laborer who performs labor with produce attached to the ground at the time of the completion of its work, e.g., harvesting produce; and a laborer who performs labor with produce detached from the ground before the completion of its work. The mishna's phrase: By Torah law, proves by inference that with regard to detached produce there is one who does not eat by Torah law but by local regulations.

[334] The Gemara continues its proof: Now, say the latter clause of that mishna: And these may not eat. What is the meaning of: May not eat? If we say this means that they may not eat by Torah law but by local regulations, this is the same as the first clause. Rather, is it not correct to say that it means they may not eat at all, neither by Torah law nor by local regulations? And who are the people included in this list? They are one who performs labor with produce attached to the ground at a time when it has not reached the completion of its work, and all the more so watchmen of gardens and orchards, who do not perform any significant action.

[335] MISHNA: There are four types of bailees, to whom different halakhot apply. They are as follows: An unpaid bailee, who receives no compensation for safeguarding the item; and the borrower of an item for his own use; a paid bailee, who is provided with a salary for watching over an item; and a renter, i.e., a bailee who pays a fee for the use of a vessel or animal. If the item was stolen, lost, or broken, or if the animal died in any manner, their halakhot are as follows: An unpaid bailee takes an oath over every outcome; whether the item was lost, stolen, or broken, or if the animal died, the unpaid bailee must take an oath that it happened as he described, and he is then exempt from payment. The borrower does not take an oath, but pays for every outcome, even in a circumstance beyond his control.

[336] And the halakhot of a paid bailee and a renter are the same: They take an oath over an injured animal, over a captured animal, and over a dead animal, attesting that the mishaps were caused by circumstances beyond their control, and they are exempt, but they must pay for loss or theft.

[337] GEMARA: The Gemara asks: Who is the tanna who taught this mishna about four types of bailees? Rav Naḥman said that Rabba bar Avuh said: It is Rabbi Meir. Rava said to Rav Naḥman: Is there any Sage who does not accept the halakha concerning four types of bailees? All of the Sages agree that the Torah spoke of these four types of bailees. Rav Naḥman said to him: This is what I am saying to you, i.e., I mean as follows: Who is the tanna who maintains that the halakha of a renter is like that of a paid bailee? It is Rabbi Meir.

[338] The Gemara raises a difficulty: But didn't we hear that Rabbi Meir said the opposite, as it is taught in a baraita: With regard to a renter, whose halakha is not stated in the Torah, how does he pay, i.e., in which cases is he liable to pay? Rabbi Meir says: He pays in the same cases as an unpaid bailee; Rabbi Yehuda says he pays in the same cases as a paid bailee. The Gemara explains: Rabba bar Avuh teaches this baraita in the opposite manner to the version here.

[339] The Gemara asks a question with regard to the accepted number of bailees: If so, that the same halakha applies to a renter and a paid bailee, why does the tanna say that there are four bailees? They are only three. Rav Naḥman bar Yitzḥak said that the mishna should be understood as follows: There are four types of bailees, whose halakhot are three.

[340] § The Gemara relates: There was a certain shepherd who was herding animals on the bank of the Pappa River, when one of them slipped and fell into the water and drowned. He came before Rabba,

and Rabba exempted him from payment. Rabba stated the following reasoning in support of his ruling: What could he have done? A drowning of this kind is a circumstance beyond his control, and although a shepherd is a paid bailee he is exempt from liability in circumstances beyond his control.

341 He safeguarded them in the manner that people safeguard, and he is not required to do anything more. Abaye said to him: If that is so, in a case where he entered the city at a time when other people enter, as shepherds normally do, when their animals are grazing in a quiet and safe place, and a theft occurred at that hour, so too will you say that he is exempt? Rabba said to him: Yes. Abaye raised a further difficulty: If he slept a little at a time when people generally sleep, so too is he exempt? Rabba said to him: Yes.

342 Abaye raised an objection to him from a baraita: These are the circumstances beyond one's control for which a paid bailee is exempt: For example, as it is stated in the verse: "The oxen were plowing, and the donkeys feeding beside them. And the Sabeans made a raid and took them away, and they have slain the servants with the edge of the sword" (Job 1:15). This teaches that only a robbery by an army is considered a circumstance beyond his control, but nothing less. Rabba said to him: There it is referring to city watchmen, i.e., professionals hired to watch over city property, who are exempt due to an occurrence on that scale, i.e., a military incursion.

343 Abaye raised an objection to Rabba from another baraita: To what extent is a paid bailee obligated to safeguard? He is obligated to the extent that Jacob said to Laban: "Thus I was: In the day the drought consumed me, and the frost by night" (Genesis 31:40). Rava said to him: There too, the baraita is speaking of city watchmen, whose responsibility extends further. Abaye said to him: Is that to say that Jacob, our forefather, whose statement is the source of this halakha, was a city watchman? Rava replied: It means that Jacob said to Laban: I safeguarded for you an extra level of safeguarding, like that of city watchmen.

344 Abaye raised an objection to Rabba from another baraita: With regard to a shepherd who was herding the animals of others, and he left his flock and came to the town, if in the meantime a wolf came and tore an animal to pieces, or a lion came and trampled one of his flock, we do not say definitively that had he been there he would have rescued them and therefore he is liable due to his absence. Rather, the court estimates with regard to him: If he could have rescued his animal by chasing a beast of this kind away, he is liable, as his departure from the scene was certainly a contributing factor to the damage. If not, he is exempt from liability.

345 Abaye continues: What, is this baraita not referring to a case when the shepherd enters the town at a time when other people usually enter? If so, it presents a difficulty to the opinion of Rabba. Rabba responds: No, it is speaking of one who enters at a time when other people do not usually enter. Abaye retorts: If so, why is he exempt even if he could not have rescued the animal? This is a mishap that came about initially through negligence and ultimately by accident, and in a case of this kind he is liable due to his negligence.

346 Rabba explains: It is referring to one who heard the sound of a lion roaring and entered the city to save himself. In such a case, his actions were not initially negligent, but rather, it was a circumstance beyond his control. Abaye questions this response: If so, what is the relevance of the statement: The court estimates with regard to him? What could he have done to prevent an attack by a lion? Rabba replies: He should have faced the lion with other shepherds and with sticks to chase it away.

[347] Abaye asks: If so, why specifically state this halakha with regard to a paid bailee? The same would hold true even for an unpaid bailee, as wasn't it you, Master, who said that an unpaid bailee who had the option of facing an animal with other shepherds and with sticks and did not face it in this manner is liable, as he is considered negligent in his duty? Rabba answers: An unpaid bailee is liable only if he could have gathered together other shepherds to help him defend his animals free of charge, whereas a paid bailee is obligated to do so even for payment.

[348] The Gemara asks: And up to how much must a paid bailee pay for this extra protection? The Gemara answers: Up to the sum of the value of the animals he is responsible to safeguard. The Gemara further asks: But in that case, it seems that a paid bailee must pay from his own pocket to protect the animals from marauding beasts; where have we found with regard to a paid bailee that he is liable for circumstances beyond his control? Everyone agrees that this loss was caused by circumstances beyond the bailee's control, and yet he must bear the expenses indirectly. The Gemara responds: The halakha is that he may return and take the money that he paid for these additional guards from the owner.

[349] Rav Pappa said to Abaye: If so, what benefit does the owner of the animals receive from this? Any potential loss he avoided from the lion must be paid to the extra guards. Abaye replied: The practical difference concerns the fitness of and his familiarity with the animals. Although it makes no difference to him financially, if he had to purchase other animals he would lose those animals that he knows, and he would rather keep his own livestock. Alternatively, it matters with respect to the additional effort involved in the acquisition of new animals.

[350] As demonstrated in the above discussion, Rabba maintains that even a paid bailee is required to safeguard and take care of the animals only in the normal fashion. By contrast, Rav Ḥisda and Rabba bar Rav Huna do not hold in accordance with this opinion of Rabba, as they say that the owner can tell the bailee: It was for this reason that I gave you a wage, so that you should safeguard for me with an additional level of safeguarding, not for you to go and eat and sleep like other people.

[351] The Gemara relates: Bar Adda the porter was transporting animals across the narrow bridge of Neresh when one animal pushed another and cast it into the water, and it drowned. The case came before Rav Pappa, who deemed him liable. Bar Adda said to him: What should I have done? Rav Pappa said to him: You should have transported them one by one. The porter said to him: Do you know of the son of your sister who can transport them one by one? In other words, are you aware of anyone who can do such a thing? It is virtually impossible. Rav Pappa said to him: The very earliest scholars before you already shouted and complained about this, but none paid attention to them. Since you are an expert and were hired for this purpose, the responsibility is yours.

[352] The Gemara relates another incident: Aivu deposited flax with a bailee in the house of Ronya. A robber called Shabbu went and forcibly snatched the flax from him. Eventually the thief was identified and caught. The matter came before Rav Naḥman, who rendered the bailee liable. The Gemara asks: Shall we say that Rav Naḥman disagrees with the opinion of Rav Huna bar Avin?

[353] The Gemara explains: As Rav Huna bar Avin sent this ruling: In a case where an animal was stolen in a circumstance beyond his control, and the thief was subsequently identified and captured, if the bailee is an unpaid bailee, the following distinction applies: If he wishes, he takes an oath that he did not misappropriate the animal before it was stolen, and the owners must claim its value from the thief; if he wishes, he enters into judgment with the thief, by claiming the money directly from

him. If he is a paid bailee, he enters into judgment with the thief and does not take an oath. Since the ruling of Rav Naḥman was in the case of an unpaid bailee, why did he have to deal with the thief?

354 Rava said: The cases are not the same, as there, in the ruling of Rav Naḥman, men from the government were standing there, which means that if he had raised his voice they would have come and rescued him. Since it was his own negligence that caused the robbery, he must find a way to collect the money from the robber.

355 MISHNA: One wolf that approaches a flock and attacks is not considered a circumstance beyond one's control, as the shepherd can drive it away, but an attack by two wolves is considered a circumstance beyond one's control. Rabbi Yehuda says: At a time of wolf attacks, when many wolves come out of hiding and pounce on animals at every corner, even an attack by one wolf is considered a circumstance beyond one's control.

356 An attack by two dogs is not considered a circumstance beyond one's control. Yadua the Babylonian says in the name of Rabbi Meir: If the two dogs came and attacked from one direction it is not considered a circumstance beyond one's control, but if they attacked from two directions, this is considered a circumstance beyond one's control, as the shepherd cannot protect his flock from both of them at once. If bandits came, this is considered a circumstance beyond one's control. Likewise, with regard to an attack by a lion, a bear, a leopard, a cheetah, and a snake, these are each considered a circumstance beyond one's control.

357 When is an attack by one of the above considered beyond his control, which means that a paid bailee is exempt? It is when the dangerous beasts or bandits came of their own accord to the usual grazing spot. But if the shepherd led his flock to a place of groups of beasts or bandits, this is not considered a circumstance beyond one's control, as he is at fault.

358 If the animal died in its normal manner, this is considered a circumstance beyond one's control; if he afflicted it by overworking it or by negligent treatment and it died, this is not considered a circumstance beyond one's control. If the animal ascended to the top of a cliff and fell down and died, this is considered a circumstance beyond one's control. If the shepherd himself brought it up to the top of a cliff and it fell down and died, this is not considered a circumstance beyond one's control.

359 GEMARA: The Gemara asks: But isn't it taught in a baraita that an attack by one wolf is considered a circumstance beyond one's control? Rav Naḥman bar Yitzḥak said: That baraita is speaking of a time of wolf attacks, and it is the opinion of Rabbi Yehuda in the mishna.

360 The mishna teaches that if bandits came, this is considered a circumstance beyond one's control. The Gemara asks: Why? Let one man stand against another man. The shepherd should defend his flock and fight the bandit, as that is what he was hired to do. Rav said: The mishna is referring to armed bandits, against whom the shepherd cannot reasonably defend the flock.

361 A dilemma was raised before the Sages: If the case involved an armed bandit and an armed shepherd, what is the halakha? Do we say, let one man stand and fight against another man, or perhaps this bandit is willing to risk his life and that shepherd is not prepared to risk his life? The Gemara answers: It stands to reason that this one will risk his life and that one would not risk his life. Consequently, the shepherd is not held responsible if he refuses to fight the bandit. Abaye said to

Rava: What is the halakha if the shepherd found a known thief and said to him: You dirty thief! In such and such a place we shepherds sit;

[362] we have such and such men with us; such and such dogs with us, and such and such slings [zukata] with us. In other words, we are fully protected and you should not dare to take anything from us. If the thief subsequently went and took an animal from him, what is the halakha? Rava said to Abaye: It is as though he has taken them to a place of groups of beasts and bandits, as his taunting of the thief motivated the theft.

[363] MISHNA: The halakhot of bailees stated in the previous mishna apply to standard cases. The halakha is that in any case involving monetary matters the parties may agree to special terms. Therefore, an unpaid bailee may stipulate with the owner that he will be exempt from taking an oath if the item is lost, and similarly, a borrower may stipulate that he will be exempt from having to pay, and a paid bailee or a renter can stipulate that he will be exempt from taking an oath and from having to pay, as one can relinquish his monetary rights. With regard to matters that do not involve monetary claims, anyone who stipulates counter to that which is written in the Torah, his stipulation is void.

[364] And any condition that is preceded by an action, i.e., the agreement is formulated with the promise of an action followed by a statement that this action will be carried out only under certain terms, the condition is void and the promise remains intact. The condition must be stated before the action. And with regard to any condition that one can ultimately fulfill, but he stipulated with him initially, i.e., in practice the action is performed first, followed by the fulfillment of the condition, nevertheless, because it was formulated in the proper manner, with the condition first, his condition is valid. If the condition cannot be fulfilled at all, once the action has been carried out the condition is void.

[365] GEMARA: The Gemara asks a question with regard to the mishna’s statement that bailees can issue conditions and change the liabilities imposed on them by Torah law: Why are they able to do so? This is a case of one who stipulates counter to that which is written in the Torah, as the Torah determines who takes an oath and who must pay, and with regard to anyone who stipulates counter to that which is written in the Torah, his condition is void.

[366] The Gemara explains: In accordance with whose opinion is this mishna? It is that of Rabbi Yehuda, who says that if the condition that runs counter to that which is written in the Torah is referring to monetary matters, his condition is valid. As it is taught in a baraita: With regard to one who says to a woman: You are hereby betrothed to me on the condition that you have no claim against me to give you food, clothing, and conjugal rights, she is betrothed but his condition is void; this is the statement of Rabbi Meir. And Rabbi Yehuda said: With regard to monetary matters, i.e., her food and clothing, his condition is valid.

[367] The Gemara raises a difficulty: But can you establish the mishna in accordance with the opinion of Rabbi Yehuda? Say the latter clause of the mishna: Anyone who stipulates counter to that which is written in the Torah, his condition is void. In this clause we arrive at the opinion of Rabbi Meir. The Gemara answers: This is not difficult, as actually you can explain that the mishna is in accordance with the opinion of Rabbi Yehuda, and the latter clause is referring to non-monetary matters.

[368] The Gemara continues to question this explanation: But say the latter clause from near the end of the mishna: And any condition that is preceded by an action, the condition is void. Who have you heard who accepts this reasoning? It is Rabbi Meir, as it is taught in a baraita: Abba Ḥalafta, from the

village of Ḥananya, said in the name of Rabbi Meir: If a condition was stated before the action, this is a valid condition, but if the action came before the condition, it is not a valid condition.

[369] Rather, the Gemara retracts the previous explanation and states that the entire mishna is in accordance with the opinion of Rabbi Meir. Why, then, is the bailee exempt from payment or an oath? Because here it is different, as at the outset he did not obligate himself in the halakhot of a bailee as stated in the Torah. Before he entered into the agreement, he clearly stated that he is unwilling to accept upon himself the liabilities of a paid or an unpaid bailee by Torah law.

[370] A Sage taught in a baraita: Just as a bailee can issue a condition that he should be exempt, the converse is also possible: A paid bailee can stipulate to be like a borrower, i.e., he can accept upon himself all the responsibilities of a borrower. The Gemara asks: By what means is this commitment binding? Is it merely by speech alone? Mere speech is not sufficient to demonstrate a commitment of this kind. Shmuel said: No; it is referring to a case where the owner performed an act of acquisition with the bailee affirming this arrangement. The obligation goes into effect only if there was an act of acquisition.

[371] And Rabbi Yoḥanan said: You may even say that it is referring to a situation where the owner did not perform an act of acquisition with the bailee, and even so he is liable as a borrower. The reason is that by means of that benefit he receives from the fact that a rumor goes out about him that he is a trustworthy person, he commits wholeheartedly to obligate himself, even by means of a verbal promise alone. Therefore, there is no need for a formal act of acquisition.

[372] § The mishna teaches: With regard to any condition that ultimately can be fulfilled, if he stipulated it initially, his condition is valid. Rav Tavla says that Rav says: This is the statement of Rabbi Yehuda ben Teima, but the Rabbis say: Even though one cannot ultimately fulfill the condition, and he stipulated with regard to it initially, his condition is valid.

[373] As it is taught in a baraita: If a man said to his wife: This is your bill of divorce on the condition that you ascend to the skies, or on the condition that you descend to the depths; or on the condition that you swallow a reed of one hundred cubits in size; or on the condition that you cross the Great Sea by foot, only if the condition was fulfilled and she did as he demanded is this a valid bill of divorce, but if the condition was not fulfilled it is not a valid bill of divorce. According to this tanna, the condition is binding despite the fact that it cannot be fulfilled in practice.

[374] Rabbi Yehuda ben Teima says: A document such as this is a valid bill of divorce. The condition is negated, and therefore the bill of divorce is valid even though the condition was not fulfilled. As Rabbi Yehuda ben Teima stated a principle: With regard to any condition that one cannot ultimately fulfill, i.e., a condition that cannot be fulfilled at all, and yet he stipulated to this effect, even if he did so initially, he is considered as only exaggerating, and the document is valid. The supposed condition is not taken seriously and is not binding.

[375] Rav Naḥman says that Rav says: The halakha is in accordance with the opinion of Rabbi Yehuda ben Teima. Rav Naḥman bar Yitzḥak said: The mishna is also precisely formulated in accordance with this opinion, as it teaches: With regard to any condition that ultimately he can fulfill, and he stipulated with regard to it initially, his condition is valid. This indicates that if he cannot fulfill it, his condition is void. The Gemara affirms: One can learn from this formulation that the unattributed mishna does in fact represent the opinion of Rabbi Yehuda ben Teima.

Chapter 8

[1] MISHNA: In the case of one who borrowed a cow and borrowed the services of its owner with it, or he borrowed a cow and hired its owner with it, or he borrowed the services of the owner or hired him and afterward borrowed the cow; in all such cases, if the cow died, the borrower is exempt from liability. Although a borrower is generally liable to pay if a cow he borrowed dies, here he is exempt, as it is stated: “If its owner is with him, he does not pay” (Exodus 22:14).

[2] But if one first borrowed the cow and only afterward borrowed the services of the owner or hired him, and the cow died, he is liable to pay the owner for the cow. This is the halakha even if the owner was working for the borrower at the time, as it is stated: “If its owner is not with him, he shall pay” (Exodus 22:13).

[3] GEMARA: From the fact that the latter clause teaches: And afterward borrowed the cow, it may be inferred that when the first clause teaches: Borrowed its owner with it, the intention is: Literally with it, i.e., at the same moment. The Gemara asks: Can you find such a case where the owner obligates himself to serve the borrower literally with it? Given that one borrows the cow through pulling the cow and contracts the services of the owner through their verbal agreement, it emerges that if they agree to both matters at the same time, one borrows the services of the owner before he borrows the cow, which is the case mentioned in the latter clause of the mishna. What, then, is the case mentioned in the first clause?

[4] The Gemara answers: If you wish, say that the mishna is referring to a case such as where the cow is standing in the borrower’s courtyard, which can effect acquisition of the rights to use the cow for him, so that it does not lack, i.e., there is no need for, pulling. Accordingly, both the borrowing of the owner’s services and the borrowing of his cow will take effect simultaneously upon their agreement. Alternatively, if you wish, say that the case is where the borrower says to him: You, yourself, will not be lent to me until the moment of the pulling of your cow.

[5] § The Gemara analyses the halakhot of the four types of bailees that were delineated in the previous chapter: We learned in a mishna there (93a): There are four types of bailees: An unpaid bailee, and the borrower, a paid bailee, and the renter.

[6] The mishna there continues: If the item was stolen, lost, or broken, or if the animal died in any manner, the halakhot with regard to them are as follows: An unpaid bailee takes an oath over every outcome; whether the item was lost, stolen, or broken, or if the animal died, the unpaid bailee must take an oath that it happened as he described, and he is then exempt from payment. And the borrower does not take an oath, but pays for every outcome, whether it was stolen or lost, even in a circumstance beyond his control. The halakhot of a paid bailee and a renter are the same: They take an oath over an injured animal, over a captured animal, and over a dead animal, attesting that the mishaps were caused by circumstances beyond their control, and they are exempt; but they must pay for loss or theft.

[7] The Gemara asks: From where are these matters derived? As the Sages taught in a baraita: The verses in the Torah about bailees can be divided into three passages. The first passage (Exodus 22:6–8) is stated about an unpaid bailee; the second (Exodus 22:9–12) is about a paid bailee; and the third (Exodus 22:13–14) is about a borrower.

[8] The Gemara asks: Granted, it is clear that the third passage is about a borrower, as the verse explicitly states: “And when a man borrows from another, and it is injured or dies, if its owner is not with him, he shall pay” (Exodus 22:13). But with regard to the claim of the baraita that the first passage is about an unpaid bailee and the second is about a paid bailee, I could also say the reverse, as the verses do not state which type of bailee they are referring to.

[9] The Gemara justifies the claim of the baraita: Clearly a paid bailee carries a more severe level of liability than an unpaid bailee. Accordingly, it stands to reason that the second passage is about a paid bailee, as it states a stringency, that the bailee is liable even in cases of theft or loss (see Exodus 22:11). The Gemara challenges this claim: On the contrary, it stands to reason that the first passage is about a paid bailee, as it states a stringency, that the bailee pays the double payment in a case where he takes a false oath stating the claim that a thief stole the item he was safeguarding (see Exodus 22:6).

[10] The Gemara explains: Even so, being liable to pay the principal whenever one claims the deposit was stolen, without the ability to exempt oneself by taking an oath, is a greater stringency than being liable for the double payment, as that liability is only when one takes a false oath to that effect. Otherwise, he is exempt.

[11] The Gemara adds: Know that this is so, as a borrower bears the most severe level of liability, because he is privileged. All benefit from the transaction is his, without incurring any cost to himself. And in cases of theft he pays only the principal but is never required to pay the double payment.

[12] The Gemara questions the proof just cited: But is it true that with regard to the borrower all benefit from the transaction is his? But doesn’t the animal require food, which the borrower must provide? The Gemara answers: The halakhot of a borrower also apply when the animal is standing in a marsh, where food is freely available. The Gemara persists: But doesn’t the animal require safeguarding? The Gemara answers: The halakhot of a borrower also apply when the borrower is a city guard and does not need to do anything additional to safeguard the animal. And if you wish, say: Do not say that all benefit is his, rather say: Most of the benefit is his, and that is sufficient reason to render him liable in all circumstances. And if you wish, say that the halakhot of a borrower apply also with regard to borrowing vessels, which do not require constant care. In any event, it is clear that a borrower is uniquely privileged and accordingly bears the most severe level of liability.

[13] § The mishna cited previously states: The halakhot of a paid bailee and a renter are the same: They take an oath over an injured animal, over a captured animal, and over a dead animal, attesting that the mishaps were caused by circumstances beyond their control, and they are exempt; but they must pay for loss or theft.

[14] The Gemara asks: Granted, a paid bailee is liable in the case of theft, as it is written: “If it is stolen from him, he must pay its owner” (Exodus 22:11). But in a case of loss, from where do we derive that a paid bailee is liable? The Gemara answers: As it is taught in a baraita: From the verse: “If it is stolen [ganov yigganev],” I have derived only that a paid bailee is liable if the item he is safeguarding is stolen; from where do I derive he is liable also if it is lost? The verse states: “ganov yigganev,” repeating the verb for emphasis. This teaches that he is liable in any case, i.e., for loss as well as theft.

[15] The Gemara asks: This works out well according to the one who says: We do not say that the Torah spoke in the language of people, and so any repeated verb must serve to teach additional

halakhot. But according to the one who says: We do say that the Torah spoke in the language of people, and so the use of a repeated verb is only for stylistic reasons, what can be said? From where is it derived that the bailee is liable for losing the item?

16 They say in the West, Eretz Yisrael: It is derived through an a fortiori inference: If in a case of theft, which is near to being a case of circumstances beyond his control, the halakha is that the bailee pays the owner the item's value, then in a case of loss, which is near to being a case of negligence, is it not all the more so logical that he should pay?

17 The Gemara asks: And according to the other opinion, why is there a need for a verse to teach this halakha if it can be derived from an a fortiori inference? The Gemara answers: At times, there is a matter that can be derived through an a fortiori inference, and the verse nevertheless takes the trouble and writes it explicitly.

18 § The mishna cited above states: And the borrower does not take an oath, but pays for every outcome, whether it was stolen or lost, even in a circumstance beyond his control. The Gemara asks: Granted, the bailee is liable if the animal is injured or dies, as it is written: "And if a man borrows from another and it is injured or dies…he shall pay" (Exodus 22:13). But from where do we derive the liability of a borrower when the animal is captured?

19 And if you would say: Let us derive it from the fact the borrower is liable if the animal was injured or dies because they are all similarly cases of circumstances beyond his control, then one could counter as follows: What is notable about a case where the animal is injured or died? It is notable in that it is the type of unavoidable accident whose possibility of occurring entered one's mind, so it is reasonable that the borrower accepted responsibility for such mishaps. Can you say the same about being captured, which is an unavoidable accident whose possibility of occurring does not enter one's mind?

20 Rather, the liability of a borrower in a case where the animal is captured is derived as follows: The cases where the animal is injured or dies are stated in the passage about a borrower, and similarly the cases where it is injured or dies are stated in the passage about a paid bailee. Just as below, i.e., in the passage in the Torah concerning a paid bailee, the case in which it is captured is included with it, as the verse there states: "If a man deliver to his neighbor a donkey, or an ox, or a sheep, or any beast, to safeguard, and it die, or be hurt, or is captured" (Exodus 22:9); so too here, with regard to a borrower, the case where it is captured is included with it.

21 The Gemara explains that this derivation can be refuted as follows: What is notable about a paid bailee? He is notable in that the cases in which the animal is injured or dies are mentioned in order to exempt him from liability. Can you say this is also true with regard to a borrower, where the cases are mentioned in order to teach that he is liable?

22 Rather, the liability of a borrower in a case where the animal is captured is derived in accordance with the statement of Rabbi Natan, as it is taught in a baraita: Rabbi Natan says: The word "or" in the phrase "injured or dies" (Exodus 22:13) serves to include the case in which the animal was captured.

23 The Gemara asks: But this word "or" is required in order to divide the cases, as otherwise it could enter your mind to say that the bailee is not liable unless the animal is first injured and then also dies. Therefore, the term "or" is necessary to teach us that these are two separate cases.

[24] The Gemara comments: This works out well according to the opinion of Rabbi Yonatan, that it is obvious that the borrower is liable even if the animal died without being injured first. Consequently, “or” is unnecessary, and so it can be used for Rabbi Natan’s derivation. But according to the opinion of Rabbi Yoshiya, what is there to say? According to his opinion, it is necessary for the Torah to state “or” in this case, to teach that the borrower is liable even if the animal dies without being injured first, and so it cannot be used for a derivation.

[25] The Gemara explains: As it is taught in a baraita: From the verse: “A man who curses his father and his mother shall die” (Leviticus 20:9), I have derived only that one is liable if he curses both his father and his mother. From where do I derive that if one curses his father but not his mother, or his mother but not his father, that he is liable? The continuation of the verse states: “His father and his mother he has cursed, his blood is upon him.” In the first part of the verse, the word “curses” is in proximity to “his father,” and in the last part of the verse, it is in proximity to “his mother.” This teaches that the verse is referring to both a case where he cursed only his father and a case where he cursed only his mother; this is the statement of Rabbi Yoshiya.

[26] Rabbi Yonatan says: There is no need for this derivation, because the phrase “his father and his mother” indicates that one is liable if he curses both of them together, and it also indicates that he is liable if he curses either one of them on their own,

[27] unless the verse specifies that one is liable only where he curses both together, which it does not do in this case.

[28] The Gemara answers: You can even say that Rabbi Natan’s derivation from the word “or” is in accordance with the opinion of Rabbi Yoshiya, as here, in the verse concerning a borrower’s liability, there is no need for the word “or” to divide the cases. What is the reason? The fact that injury and death are alone sufficient to engender liability is based on logical reasoning, as follows: What difference does it make to me if it is entirely killed, and what difference does it make to me if it is partially killed, i.e., injured? Either way, the animal is not in the state in which it was borrowed, so the borrower is liable to compensate the owner.

[29] § The Gemara asks: From where do we derive the liability of a borrower in a case of theft or loss?

[30] And if you would say: Let us derive it from the fact that a borrower is liable if the animal entrusted to him was injured or died, because theft and loss are similar to injury and death in that they are cases of accidents, this derivation can be refuted. What is notable about a case where the animal was injured or died? It is notable in that it is no longer possible to make an effort and bring the animal back to its undamaged state, and so it is reasonable that the borrower is liable for such occurrences. Shall you also say this ruling about a case of theft or loss, where it is still possible to make an effort to locate and bring back the animal? Since the animal is still extant, perhaps the borrower should not be liable.

[31] Rather, a borrower’s liability for theft and loss is derived like that which is taught in a baraita: From the verse: “And it is injured or dies” (Exodus 22:13), I have derived only that a borrower is liable if the animal is injured or dies. From where do I derive that he is liable in a case of theft or loss? You can say it is an a fortiori inference: If a paid bailee, who is exempt from liability in a case in which the animal is injured or dies, is nevertheless liable in a case of theft or loss, then with regard to a borrower, who is liable in a case in which the animal is injured or dies, isn’t it logical that he

should also be liable in a case of theft or loss? And this is an a fortiori inference that has no refutation.

[32] The Gemara asks: What is added by the conclusion of the baraita that this is an a fortiori inference that has no refutation? The Gemara explains that the baraita anticipated the following rebuttal: And if you would say that the a fortiori inference can be refuted as follows: What is notable about the case of a paid bailee? It is notable in that he pays the double payment when he takes a false oath stating the claim that the deposit was taken by an armed bandit. If so, can you derive a halakha from the case of a paid bailee to that of a borrower, who pays only the principal in such a case? It would appear that a borrower does not always bear a more severe level of liability, and the a fortiori inference is thereby undermined.

[33] Anticipating this refutation, the baraita states that it is invalid because even so, the fact that a borrower is liable to pay the principal when he claims the deposit was taken by an armed bandit, without the ability to exempt himself by taking an oath, is a greater stringency than the fact that a paid bailee is liable for the double payment, but only if he takes a false oath to that effect. Consequently, a borrower has a more severe level of liability, and the a fortiori inference is valid.

[34] Alternatively, if you wish, say that the baraita holds that an armed bandit is classified as a robber. The paid bailee is not liable for the double payment if he claims that the deposit was taken by an armed bandit, as the double payment is paid only for a false claim of theft, not robbery. Consequently, the basis of the refutation is flawed.

[35] The Gemara asks: We have found sources for the liability of a borrower in a case of theft or loss; from where do we derive a source for the halakha that in a case of theft or loss he is exempt if he had also borrowed the services of the owner at the same time as borrowing the animal? The verse describing his exemption from liability is stated only with regard to a case in which the animal entrusted to him is injured or dies (see Exodus 22:13).

[36] And if you would say: Let us derive it from the fact that a borrower who also borrowed the services of the owner is exempt if the animal is injured or dies, as the type of occurrence should not make any difference, then one can counter: What is notable about a case in which it is injured or dies? It is notable in that it is an unavoidable accident, and so it is reasonable that one's liability be limited. Can you say the same in a case of theft or loss, which theoretically he could have prevented?

[37] Rather, derive the halakha that a borrower who also borrowed the services of the owner is exempt if the animal is injured or dies from the halakha of a paid bailee, who is exempt for theft and loss if he had borrowed the services of the owner at the same time as the animal. The Gemara asks: But from where do we derive that the exemption from liability also applies to a paid bailee himself? We derive the limitation of liability of a paid bailee from the limitation of liability of a borrower: Just as below, with regard to a borrower, for those cases in which the verse states that he is liable, it states that if he borrowed the animal together with the services of the owner that he is exempt, so too, here, with regard to a paid bailee, for those cases in which he is liable, if he undertook to safeguard the animal together with borrowing the services of the owner, then he is exempt.

[38] The Gemara asks: Through what method is this derived? If it is derived through an interpretive principle known as: What do we find, i.e., a comparison between cases with similar details, this can be refuted, just as we refuted the possibility of deriving a limitation on one's liability in a case of theft or loss from a case in which the animal was injured or died. Because a case in which it is

injured or dies is an unavoidable accident, it is reasonable that one’s liability be limited specifically to such circumstances.

39 Rather, the halakha that a bailee who also borrowed the services of the owner is exempt if the animal is stolen or lost is derived as follows: The verse states: “And if he borrows” (Exodus 22:13). The conjunctive “and” indicates that the passage detailing the liability of a borrower is adding to the first matter, i.e., it should be seen as a continuation of the previous passage detailing the liability of a paid bailee. And therefore, let the case of a paid bailee above be derived from the case below of the borrower, including the exemption from liability in a case in which the services of the owner were borrowed at the same time as the animal.

40 The Gemara raises a difficulty: But still, the halakhot of a borrower cannot be derived from those of a paid bailee though an a fortiori inference, as an attempt to do so can be refuted as follows: What is notable about the case of a paid bailee? It is notable in that he is exempt in a case in which the animal is injured or died. Shall you also say the same for a borrower, who is liable in a case in which the animal is injured or dies? Since a borrower has a more severe level of liability, perhaps the exemption from liability that exists in a case of theft or loss for a paid bailee is not in effect with regard to a borrower.

41 Rather, the halakha that a borrower who also borrowed the services of the owner is exempt if the animal is injured or dies is derived as follows: From where did we originally derive the liability of a borrower in a case of theft or loss? It was derived though an a fortiori inference from the fact that a paid bailee is liable. One of the principles of an a fortiori inference 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 is no more stringent than the source from which it is derived. Accordingly, just as in a case of theft or loss of a deposit entrusted with a paid bailee who undertook to look after it together with borrowing the services of its owner, the bailee is exempt, so too, in a case of theft or loss of a deposit entrusted with a borrower who had borrowed it together with the services of its owner, the borrower is exempt.

42 The Gemara asks: This works out well according to the one who accepts the principle of: It is sufficient. But according to the one who does not accept the principle of: It is sufficient, what can be said; how does he derive a borrower’s exemption from liability in a case in which he borrowed an item together with its owner’s services and the item was lost or stolen?

43 Rather, it is derived as follows: The verse states: “And if he borrows” (Exodus 22:13). The conjunctive “and” indicates that the passage detailing the liability of a borrower is adding to the first matter, i.e., the halakhot of a paid bailee. And therefore let the case of a paid bailee above be derived from the case below of the borrower, and halakhot applying to the case below, of a borrower, can be derived from the case above, of a paid bailee.

44 § An amoraic dispute was stated: With regard to a mishap that occurred due to a borrower’s negligence in safeguarding the deposit he borrowed together with the services of its owner, Rav Aḥa and Ravina disagree. One Sage says he is liable, and one Sage says he is exempt.

45 The one who says he is liable holds that the verse beginning: “And if he borrows,” which details the exemption from liability when one borrows an item together with its owner, is expounded in connection with the passage preceding it, i.e., that of a paid bailee, but not in connection with the passage preceding the one preceding it, i.e., that of a unpaid bailee.

[46] Accordingly, the verse: “If its owner is with him, he does not pay” (Exodus 22:14), which appears in the passage of a borrower, is not written in reference to an unpaid bailee, and so that exemption from liability does not apply to him. And in addition, the liability for negligence, which appears in the passage of an unpaid bailee, is not written in reference to a paid bailee or a borrower. Accordingly, the liability of a paid bailee and of a borrower in a case of negligence is derived only via an a fortiori inference from the liability of an unpaid bailee, not from an explicit verse.

[47] But it is not possible to derive that even a paid bailee and a borrower are exempt in cases where they took hold of an item together with borrowing the services of its owner and a mishap occurred due to their negligence. What is the reason for this? When it is written: “If its owner is with him, he does not pay,” that is in reference only to a borrower and to a paid bailee. Even then, it is written in reference to only those liabilities that are written explicitly with regard to them. It is not written with regard to their liability for negligence, which is derived only through an a fortiori inference. Consequently, the borrower and the paid bailee are liable for negligence even in a case where they also borrowed the services of its owner.

[48] Conversely, the one who says that a borrower is exempt holds that the verse: “And if he borrows,” which details the exemption from liability in a case where one borrows an item together with the services of its owner, is expounded in connection with the passage preceding it, i.e., that of a paid bailee, and also in connection with the passage preceding the one preceding it, i.e., that of a unpaid bailee. And accordingly, when it is written: “If its owner is with him, he does not pay,” this exemption is written also in reference to an unpaid bailee, limiting his liability even in a case of negligence.

[49] The Gemara suggests proofs for each opinion: We learned in the mishna that in the case of one who borrowed a cow and he borrowed the services of its owner together with it; or one who borrowed a cow and he hired its owner with it; or if one borrowed the services of the owner or hired him and afterward borrowed the cow; in all such cases, if the cow died, the borrower is exempt. The Gemara explains the proof: The mishna mentions the exemption from liability with regard to a borrower, whereas it does not teach it with regard to an unpaid bailee, who is liable only for a mishap that was the result of his negligence. Presumably, this is because exemption from liability does not apply to a mishap that is the result of the bailee’s negligence.

[50] The Gemara rejects the proof: But even according to your reasoning, does it teach exemption from liability with regard to a paid bailee? It does not, although it certainly applies to at least cases of theft and loss.

[51] Rather, with regard to the tanna of the mishna, the matter

[52] that is explicitly written in the Torah he teaches, and those matters that are derived through interpretation he does not teach. Consequently, no proof can be brought from the mishna.

[53] The Gemara suggests: Come and hear a proof from a baraita: If one borrowed an animal and borrowed the services of its owner with it, or rented it and hired its owner with it, or borrowed it and hired its owner with it, or rented it and borrowed the services of its owner with it; in all of these cases, although the owner performed the work for him in another place, i.e., not near the animal, and it dies, the borrower or renter is exempt.

[54] The Gemara notes: The scholars in the study hall assumed that this baraita is in accordance with whose opinion? It is in accordance with the opinion of Rabbi Yehuda, who says that one who rents an item is responsible for it like a paid bailee. According to his understanding, the baraita teaches that the exemption from liability applies to both a borrower and a paid bailee. Consequently, the baraita can serve as a proof: Doesn't this tanna teach even a matter that is derived through interpretation, i.e., the fact that exemption from liability applies to a paid bailee, while he still does not teach that it applies to an unpaid bailee? It would appear that this is a proof that exemption from liability does not apply to an unpaid bailee, since it does not apply to a mishap that is the result of the bailee's negligence.

[55] The Gemara refutes this proof, as one could counter: In accordance with whose opinion is this baraita? It is in accordance with the opinion of Rabbi Meir, who says that the liability of one who rents an item is like that of an unpaid bailee. And, according to his understanding, the baraita teaches that the exemption from liability applies to an unpaid bailee, and it is understood that the same is true for a paid bailee. Understood like this, the baraita explicitly applies the exemption from liability to a case of negligence. Since, ultimately, it is unclear according to whose opinion the baraita is taught, no proof can be drawn from it.

[56] If you wish, say that the baraita can be understood as referring to an unpaid bailee, even if it is assumed to be in accordance with the opinion of Rabbi Yehuda. As Rabba bar Avuh reversed their opinions and taught: How does one who rents an item pay in the case of a mishap? Rabbi Meir says: Like a paid bailee. Rabbi Yehuda says: Like an unpaid bailee.

[57] § Rav Hamnuna says that the exemption from liability when one borrows an item together with the services of its owner exists only in very specific circumstances: A borrower is always liable, unless the item entrusted to him is a cow and its owner plows with it in the service of the borrower, or it is a donkey and its owner drives it by walking behind it in the service of the borrower, i.e., the owner and his animal are engaged in the same work. And even so, the borrower will not be exempt unless the owner is working for him from the time of the borrowing of the animal until the time when it is injured or dies. The Gemara notes: Evidently, Rav Hamnuna holds that the phrase: "Its owner is with him" (Exodus 22:14), teaches that the exemption from liability applies only when the owner is working for the borrower for the entire matter.

[58] Rava raises an objection from the baraita cited previously: If one borrowed an animal and borrowed the services of its owner with it, or rented it and hired its owner with it, or rented it and borrowed the services of its owner with it, or borrowed it and hired its owner with it; in all these cases, although the owner performed the work for him in another place, i.e., not near the animal, and it died, the borrower or renter is exempt. Rava explains how the baraita poses a challenge: What, is it not referring to a case where the owner was engaged with different work than his animal? The baraita proves that the exemption from liability applies even in such a case.

[59] The Gemara rejects this: No, the baraita is referring to a case where the owner was engaged with the same work as the animal. The Gemara asks: But, if so, what does the baraita mean by saying: He performed the work in another place? The Gemara explains: For example, it is a case where the owner loosens the hard soil with a hoe while walking ahead of the animal. He is engaged in the same work, but not in the same place.

[60] The Gemara raises a difficulty: But from the fact that the latter clause of the baraita is referring to a case where the owner was working alongside it, it may be inferred that the first clause, i.e., the passage of the baraita cited above, is referring to a case where the owner was engaged with different work. As the latter clause teaches: If he borrowed it and afterward borrowed the services of its owner, or rented it and afterward hired its owner with it, in both these cases, although the owner was plowing alongside it and at that time it died, the borrower or renter is liable.

[61] In resolution of this difficulty, the Sages say: Both the first clause and the latter clause pertain to a case where the owner was engaged with the same work as the animal. And the difference in formulation of the two clauses is because the first clause teaches us a novelty and the latter clause teaches us a novelty. The first clause teaches us the novelty that although the owner was not actually working alongside his animal but was merely engaged with the same work, since the owner was working for the borrower at the time of the borrowing, the borrower is exempt. The latter clause teaches us the novelty that although the owner was actually working alongside his animal, since the owner was not working for the borrower at the time of the borrowing, the borrower is liable.

[62] The Gemara is puzzled: What is this? Granted, if you say that the first clause is referring to a case where the owner is engaged in different work than his animal, and the latter clause is referring to a case where he is engaged in the same work as his animal, then this is the novelty of mentioning what type of work he did: It teaches that it is irrelevant whether the owner did or did not work together with his animal. Rather, the liability of the borrower depends on whether or not the owner was working for the borrower when he entrusted the borrower with his animal.

[63] But if you say that the first clause and the latter clause both pertain to a case where the owner is engaged in the same work as his animal, what is the novelty of mentioning what type of work he did? Both this clause and that clause concern similar cases, in which the owner is engaged in the same work as his animal. It is therefore apparent that the clauses concern different cases. The first clause teaches that the borrower is exempt even in a case where the owner was engaged in different work than his animal. The first part of Rav Hamnuna's ruling, that the owner needs to be engaged in the same work as his animal, is thereby refuted.

[64] And furthermore, even the second part of Rav Hamnuna's ruling, that the exemption applies only when the owner was working for the borrower from the time of the borrowing of the animal until the time of the mishap, can be refuted, as it is taught in a baraita: From the implication of that which is stated: "If its owner is with him, he does not pay" (Exodus 22:14), do I not already know what is stated in the next verse, that "if its owner is not with him, he shall pay" (Exodus 22:13)? Rather, what is the meaning when the verse states: "Its owner is not with him"? It serves to tell you: If he was with him, i.e., working for him, at the time of borrowing, he does not need to be with him at the time when the animal is injured or dies for the exemption from liability to apply; but if he was with him at the time when the animal is injured or dies, he does need to have been with him at the time of borrowing for the exemption from liability to apply.

[65] And it is taught in another baraita: From the implication of that which is stated: "If its owner is not with him, he shall pay," do I not already know what is stated in the preceding verse, that "if its owner is with him, he does not pay"? Rather, what is the meaning when the verse states: "If its owner is with him"? It serves to tell you: Once the animal has left the domain of the lender, i.e., its owner, and has been entrusted to the borrower, with its owner working for the borrower at that time, even for

only one moment, and then it dies, the borrower is exempt. The Gemara concludes: The refutation of the opinion of Rav Hamnuna provided by these baraitot is indeed a conclusive refutation.

[66] § The Gemara explains how the first of these baraitot arrives at its conclusion: Abaye holds in accordance with the opinion of Rabbi Yoshiya, that when the Torah mentions two details together in reference to a halakha, it is presumed that the halakha applies only when both details are in effect (see 94b), and he likewise explains the two verses in accordance with Rabbi Yoshiya. Rava holds in accordance with the opinion of Rabbi Yonatan, that it is presumed that the halakha applies even when only one of the details is in effect, and he explains the verses in accordance with the opinion of Rabbi Yonatan.

[67] The Gemara clarifies: When the Torah refers to an owner working for the borrower, it should be understood as referring to the time of the borrowing and the time of the mishap. According to Rabbi Yoshiya's opinion, this indicates that the owner worked for him at both times, whereas according to Rabbi Yonatan's opinion, this implies that he worked for him at either time. Based on this, Abaye and Rava explain the verses: Abaye holds in accordance with the opinion of Rabbi Yoshiya, and he likewise explains the two verses in accordance with the opinion of Rabbi Yoshiya, thereby arriving at the conclusion of the baraita, as follows: From the verse: "If its owner is not with him, he shall pay," it appears that the reason the borrower is liable is that the owner was not working for him at either point in time. By inference, if he worked for him at one of those times but not at the other one, the borrower is exempt.

[68] The Gemara raises an objection: But isn't it written: "If its owner is with him, he does not pay"? From this verse it appears that the reason the borrower is exempt is that the owner was working for him at both points in time. By inference, if he was working for him at one of those times but not at the other one, the borrower is liable. The two verses appear to contradict each another.

[69] To reconcile the verses, one must say that the phrase "if its owner is with him" serves to tell you: If he was with him, i.e., working for him, at the time of borrowing, he does not need to be with him at the time when the animal is injured or dies for the exemption from liability to apply; but if he was with him at the time when the animal is injured or dies, he does need to have been with him at the time of borrowing for the exemption to apply.

[70] By contrast, Rava holds in accordance with the opinion of Rabbi Yonatan, and he explains the verses in accordance with the opinion of Rabbi Yonatan, thereby arriving at the conclusion of the baraita, as it is taught in a baraita: "If its owner is with him, he does not pay" teaches about the case in which the owner was working for the borrower at both points in time, and it also teaches about the case in which he was working for him at one of those times but not at the other one; in both cases the borrower is exempt.

[71] The Gemara raises an objection: But it is also written: "If its owner is not with him, he shall pay." The verse teaches about the case in which the owner was not working for the borrower at either point in time, and it also teaches about the case in which he was working for him at one of those times but not at the other one; in both cases the borrower is liable.

[72] To reconcile the verses, one must say that the phrase "if its owner is with him" serves to tell you that if the owner was with the borrower, i.e., working for him, at the time of borrowing, then he does not need to be with him at the time when the animal is injured or dies for the exemption from liability

to apply; but if he was with him at the time when the animal is injured or dies, he does need to have been with him at the time of borrowing for the exemption to apply.

[73] The Gemara raises a difficulty: I could reverse the conclusion and say that the borrower's exemption from liability is dependent upon the time when the animal was injured or died. The Gemara explains: It is reasonable that the exemption from liability should be dependent on the time of the borrowing because the borrowing is of greater significance, as with it the borrower brings the animal into his domain.

[74] The Gemara retorts: On the contrary, the time when the animal is injured or dies is of greater significance, because that point marks when the borrower is actually liable to pay for any accidents that occurred.

[75] The Gemara responds: No, the borrowing is more significant. Were it not for the initial borrowing, what liability could be caused by the fact that the animal is injured or dies? The Gemara argues: But by the same logic, were it not for the fact that the animal is injured or dies, what liability could be caused by the act of borrowing? The Gemara concludes: Even so, the borrowing is of greater significance, as with it the borrower is obligated to provide the animal's sustenance as long as it is entrusted with him.

[76] Rav Ashi said that the halakha that the borrower's exemption from liability is dependent upon the time of the borrowing can be derived from the verse itself: The verse states: "And when a man borrows from another…he shall pay" (Exodus 22:13). The precise formulation of the verse indicates that he borrowed an item from another, but that other person was not with him, i.e., working for him, at the time. It is only in such a case that that verse concludes: "He shall pay." By inference, when the other person is working with him, the borrower is exempt. Accordingly, it is clear that the critical moment is the time of the borrowing.

[77] The Gemara asks: If so, why do I need the continuation of that verse: "Its owner is not with him," and the next verse: "If its owner is with him"? According to Rav Ashi, the circumstances of the borrower's liability and exemption can be derived from the beginning of the first verse. The Gemara explains: If it were not for these additional clauses, I would say that this phrase "from another" is simply the usual manner of the verse, and is not to be expounded to teach an exemption. Since the continuation of the verse and the next verse teach the actual exemption from liability, and the apparent contradiction between them raises the question of when the critical moment is, it is apparent that the beginning of the verse was written in order to be expounded, as Rav Ashi did.

[78] § Rami bar Ḥama raises a dilemma: If one borrowed an animal in order to engage in bestiality with it, a severe transgression (see Leviticus 18:23), what is the halakha; is the borrower liable for mishaps? The crux of the dilemma is: In order for him to be liable, do we require that the borrowing be for a purpose similar to that for which people typically borrow animals, and since people do not typically borrow animals for this purpose, the borrower is exempt? Or perhaps, what is the reason that a borrower is liable? It is due to the benefit he derives from the animal, and as this borrower, too, has benefit from the animal, he is liable for mishaps.

[79] A similar question: If one borrowed an item, not to use it but to be seen with it, so that people will assume that he is wealthy, what is the halakha? In order for him to be liable, do we require that he borrow an item of monetary worth, and that exists in this case? Or, perhaps we require that he borrow

an item of monetary worth from which he also derives tangible benefit, and that does not exist in this case.

[80] Another question: If one borrowed an item to perform work with it that is worth less than the value of one peruta, what is the halakha? Do we require only that he borrow an item of monetary worth, and that exists in this case? Or, perhaps any benefit derived that is worth less than one peruta is nothing, i.e., it is legally considered to be of no monetary worth, and he is therefore exempt.

[81] Another question: If one borrowed two cows to perform work with them that will be worth the value of one peruta in total, what is the halakha? When appraising the value of the benefit derived, to see if it has monetary worth of one peruta, do we say: Follow the borrower and lender, i.e., appraise how much benefit the borrower received from the lender, and in this case there is benefit of the value of one peruta. Or, perhaps we follow the cows, and in this case, each one of the cows does not provide the borrower with monetary worth of one peruta.

[82] Another question: If one borrowed an item from two partners, and the services of one of those partners were also borrowed by him, what is the halakha? Does the exemption of borrowing an item together with its owner apply in this case? For the exemption to apply, do we require all of the item's owners to be working for the borrower, and that does not exist in this case? Or, perhaps there is no such condition, but in any event, the borrower should at least be exempt from liability for that half of the item owned by the partner who is working for him.

[83] Another question: In the case of partners who borrowed an item and its owner's services were also borrowed by one of them, what is the halakha? For the exemption to apply, do we require that the owner be working for all the borrowers, and that does not exist in this case? Or, perhaps there is no such condition, but in any event, the partner who borrowed only the item should at least be exempt from liability for the half of the animal that the partner, whom the owner worked for, had borrowed.

[84] Another question: If one borrowed an item from a woman, and the services of her husband were also borrowed by him, or where a woman borrowed an item and its owner's services were also borrowed by her husband, what is the halakha? A husband has the right to use his wife's property. These questions are dependent on whether ownership of the right to use an item and the profits it engenders is tantamount to ownership of the item itself or not.

[85] Ravina said to Rav Ashi: In the case of one who says to his agent: Go and lend your services to somebody on my behalf together with lending my cow to that person, what is the halakha? For the exemption to apply, do I require that the cow's actual owner work for the borrower, and in this case that does not exist? Or perhaps, since the legal status of a person's agent is like that of himself, it is sufficient if his agent works for the borrower, and accordingly, the necessary conditions exist.

[86] Rav Aḥa, son of Rav Avya, said to Rav Ashi: This question concerning a husband is subject to a dispute between Rabbi Yoḥanan and Reish Lakish. And the question concerning an agent is subject to a dispute between Rabbi Yonatan and Rabbi Yoshiya.

[87] The Gemara clarifies: The question concerning a husband is subject to a dispute between Rabbi Yoḥanan and Reish Lakish pertaining to the requirement to bring the first fruits of one's field to the Temple and recite the accompanying declaration (see Deuteronomy, chapter 26): As it was stated: With regard to one who sells his field to another, not outright but for its produce, Rabbi Yoḥanan

says: The buyer brings the first fruits and recites the declaration, whereas Reish Lakish says: The buyer brings the first fruits but does not recite the declaration.

88 The Gemara explains: They disagree about whether it is justifiable for the buyer to recite the declaration, since in that declaration he refers to the land as: “The land which You, the Lord, have given me” (Deuteronomy 26:10), i.e., he states that the land belongs to him. Rabbi Yoḥanan says that the buyer brings the first fruits and recites the declaration, because he holds that ownership of the right to use land and its produce is tantamount to ownership of the land itself. Accordingly, the buyer is considered to be the owner of the land and he may consequently recite the declaration. And Reish Lakish says that the buyer brings the first fruits but does not recite the declaration, because he holds that ownership of the right to use land and its produce is not tantamount to ownership of the land itself. Accordingly, the buyer is not considered to be the owner of the land and is consequently unable to recite the declaration.

89 The Gemara clarifies the second disagreement: The question concerning an agent is subject to a dispute between Rabbi Yonatan and Rabbi Yoshiya, as it is taught in a baraita: If there is one who says to a steward appointed to take care of his household: All vows that my wife will vow from now until I come back from such and such a place, you should nullify them for her in my stead, and the steward annulled them for her, one might have thought that they would be nullified. To dispel this notion, the verse states with regard to a vow taken by a wife: “Her husband sustains it and her husband nullifies it” (Numbers 30:14), which indicates that only her husband is able to do so, and no one else; this is the statement of Rabbi Yoshiya. Rabbi Yonatan says: We have found everywhere in halakha that the legal status of a person’s agent is like that of himself. Since the steward was the agent of the husband, his nullification of the vows is effective.

90 Another question: Rav Ilish said to Rava: In the case of one who says to his Canaanite slave: Go and lend your services to another together with lending my cow to that person, what is the halakha? Let the dilemma be raised according to the one who says that the legal status of a person’s agent is like that of himself, and let the dilemma be raised according to the one who says that the legal status of a person’s agent is not like that of himself.

91 The Gemara elaborates: Let the dilemma be raised according to the one who says that the legal status of a person’s agent is like that of himself, as follows: Does this matter apply only to an agent, who is obligated in mitzvot, just like the one who appointed him; but for a slave, who is not fully obligated in mitzvot, the principle does not apply? Or perhaps, even according to the one who says that the legal status of a person’s agent is not like that of himself, maybe that matter applies to an agent, who is a free, independent person. But in the case of a slave, since he has no independence from his master, as the possession of a slave is like the possession of his master, i.e., anything that the slave acquires is automatically acquired by his master, perhaps if the slave’s services are borrowed it is the same as if the master himself had been borrowed.

92 Rava said to Rav Ilish: It stands to reason that since the possession of a slave is like the possession of his master, then one who borrows both another’s item and the services of his slave is exempt from liability.

93 § Rami bar Ḥama raises a dilemma: What level of liability does a husband bear with regard to his wife’s usufruct property? This is property belonging to the wife that the husband has the right to use

and to enjoy its profits while they are married, but that is returned to her upon termination of the marriage.

94 Is he like a borrower or is he like a renter?

95 Rava said of Rami bar Ḥama: Commensurate to the sharpness of his mind is the extent of his error, as whichever way you look at it, he should be exempt: If he is like a borrower, this is a case of borrowing an item together with the services of the owner, as his wife is obligated to perform household services for him. Alternatively, if he is like a renter, this is a case of renting an item together with the services of the owner, for the same reason. Either way, he should be exempt.

96 The Gemara reinterprets Rami bar Ḥama's question: Rather, when Rami bar Ḥama raised the dilemma, it was with regard to a case in which one first rented a cow from a woman and subsequently married her. In that case, she was not working for him at the time he began renting the cow, and so the exemption of borrowing an item together with its owner does not apply. Rami bar Ḥama's question was: What is the halakha once they get married? This is dependent on whether, from that point, he is like a borrower or he is like a renter.

97 The Gemara elaborates: Since the husband initially rented the cow, if he is now like a borrower, then his status has changed, and so the new borrowing of the cow done together with borrowing the services of its owner comes and displaces the initial renting that was done without borrowing the services of the owner. Accordingly, the exemption will apply. Or perhaps even once he is married he is still like a renter, and since his status has not changed, the renting stands as it was, i.e., his current renting of the cow is considered a continuation of the initial renting that began before his wife was obligated to work for him. Consequently, the exemption would not apply.

98 The Gemara questions this logic: But what is different about these possibilities, that you say that only if he is a borrower is it so that the new borrowing of the cow done together with borrowing the services of the owner comes and displaces the initial renting that was done without borrowing the services of the owner? Say the same also if he is now like a renter, and let the new renting of the cow done together with borrowing the services of the owner come and displace the initial renting that was done without borrowing the services of the owner.

99 The Gemara reinterprets his question: Rather, when Rami bar Ḥama raised the dilemma, it was with regard to a case where a woman rented a cow from someone in the world at large, and subsequently another man married her.

100 The Gemara explains that the relevance of this dilemma is dependent upon a dispute between the Rabbis and Rabbi Yosei concerning a case in which one rents a cow, and then another person borrows it from the renter, and then a mishap occurs to it (see 35a). And according to the opinion of the Rabbis, who say that the borrower pays the renter, do not raise the dilemma, as it is certainly a case of borrowing an item and borrowing or hiring its owner with it. Evidently, the Rabbis hold that for the duration of the rental period the renter is considered to be the owner of the cow. Accordingly, in this case, the woman is considered to be the owner of the cow. Therefore, when the man marries her, he is considered to be borrowing the cow from her at the same time at which she becomes obligated to work for him.

101 When should you raise the dilemma? Raise it according to the opinion of Rabbi Yosei, who says that the value of the cow must be returned to its original owner. Rabbi Yosei holds that the renter is

not considered to be the owner of the cow, and therefore this is not a case of borrowing an item together with borrowing or renting the services of its owner. Therefore, Rami bar Ḥama asks what level of liability the husband bears; is he like a borrower or is he like a renter?

[102] Rava said: A husband is not like a borrower nor is he like a renter. Rather, he is considered to be like a buyer of his wife's property, as can be inferred from the statement of Rabbi Yosei, son of Rabbi Ḥanina, as Rabbi Yosei, son of Rabbi Ḥanina, said: In Usha the Sages instituted: In the case of a woman who sold her usufruct property during her husband's lifetime and then died, the husband can appropriate the property from the buyers, provided he compensates them for their loss of the purchase. Evidently, the wife's property is considered to be owned by the husband.

[103] § Rami bar Ḥama raises a dilemma: When a husband acquires the rights to his wife's usufruct property that includes consecrated property, acquiring property from the Temple in this way is considered misuse of consecrated property. In such a case, who is liable for having misused consecrated property?

[104] Rava said: Who could be considered to have misused consecrated property? Should the husband be considered to have misused consecrated property? Certainly not, as while it is satisfactory for him to acquire non-sacred items of his wife's property, which are permitted for him to use, it is not satisfactory for him to acquire consecrated property, which it is prohibited for him to use. Since he does not wish to acquire these items, he cannot be held liable for removing them from the possession of the Temple.

[105] Should she be considered to have misused consecrated property? Certainly not, as also with regard to non-sacred items, which are permitted for use, it is not satisfactory to her that her husband acquire them. Nevertheless, by virtue of the rabbinic ordinance, he does. Evidently, her husband's acquisition is not affected by her wishes, and therefore she cannot be held liable for it.

[106] Should the court be considered to have misused consecrated property, as it is their ordinance that granted the husband ownership? Certainly not, because when the Sages instituted the ordinance, and they said that a husband is considered to be like a buyer of his wife's property, that was only with regard to non-sacred items, which are permitted for him to use. But with regard to consecrated property, which it is prohibited for him to use, the Sages did not institute the ordinance.

[107] Rather, Rava said: The husband is liable for having misused consecrated property only when he actually takes and spends the money for himself, just as it is in the case of one who mistakenly spends consecrated coins for a non-sacred purpose.

[108] § A dilemma was raised before the Sages: If the flesh of a borrowed animal was weakened due to the labor it performed for the borrower, what is the halakha? Is the borrower liable to compensate the owner of the animal?

[109] One of the Sages, and Rav Ḥilkiya, son of Rav Avya, is his name, said to the Sage who raised the dilemma: By inference from your question, it seems that when a borrowed animal died due to ordinary labor that it performed, the borrower is liable. Why should that be? Let the borrower say: It was understood by you that I did not borrow it just to stow it in a canopy but to use it; therefore, if it died while I was using it, I should not be liable.

[110] Rather, Rava said: It is not necessary to say that if its flesh was weakened due to ordinary labor that the borrower is exempt from liability. Rather, even if the animal died due to ordinary labor, he is

also exempt, as the borrower can say to the owner: It is self-understood that I did not borrow it just to stow it in a canopy, but rather in order to use it.

111 The Gemara relates: A certain man borrowed an ax from another and it broke. The borrower came before Rava for judgment, who said to him: Go, bring witnesses that you did not deviate from its regular use, and you will be exempt from liability, as this is comparable to a case of a borrowed animal that died due to ordinary labor.

112 The Gemara asks: And if there are no witnesses, what is the halakha? The Gemara provides a precedent: Come and hear a similar case: There was an incident in which a certain man borrowed an ax from another and it broke. The borrower came before Rav for judgment, who said to him: Go and pay him the entire value of a proper ax.

113 Rav Kahana and Rav Asi said to Rav:

114 Is this the halakha? Is it not sufficient to pay him the difference between the broken ax's previous and current value? And Rav was silent; he did not answer.

115 The Gemara concludes: And the halakha is in accordance with the opinion of Rav Kahana and Rav Asi, that he returns to him the broken tool and makes up the remainder of the tool's previous value with a monetary payment.

116 The Gemara relates: A certain man borrowed a pail from another and it broke. He came before Rav Pappa for judgment. Rav Pappa said to him: Bring witnesses that you did not deviate from its regular use, and you will be exempt from liability, as this is comparable to a case of a borrowed animal that died due to ordinary labor.

117 The Gemara relates: A certain man borrowed a cat from another to hunt and kill mice for him. The mice banded together against it and killed it. Rav Ashi sat and raised a dilemma: In a case like this, what is the halakha? Is this case comparable to a case where a borrowed animal died due to ordinary labor, or not? Rav Mordekhai said to Rav Ashi: Avimi of Hagronya said this in the name of Rava: With regard to a man who women killed, there is a need for neither judgment nor a judge, i.e., it is obvious that they are liable. In this case as well, it is obvious that the borrower may bring the cat to hunt mice, and he is therefore exempt from liability.

118 There are those who say that the incident actually occurred as follows: The cat ate many mice, and was harmed by doing so and died. Rav Ashi sat and deliberated: In a case like this, what is the halakha? Rav Mordekhai said to Rav Ashi: Avimi of Hagronya said this: With regard to a man who overindulged in sexual intercourse to the extent that women killed him by exhausting him, there is neither judgment nor judge, i.e., there is no redress since it is his own fault.

119 Rava says: With regard to one who wants to borrow something from another and be exempt from liability, let him say to the lender at the time of borrowing: Pour me water. He will thereby be exempt, as it is then a case of borrowing an item and borrowing or hiring the services of its owner with it.

120 And if the lender is perspicacious and wishes to prevent the borrower from being exempt from liability, let him say to him: Borrow the item first and then I will pour the water for you. Since the owner will not yet be working for the borrower at the time of the borrowing, the exemption does not apply.

121 Rava says: A teacher of children, the local gardener, the local butcher, and the local bloodletter, and a scribe of the city, with regard to all of them, if someone borrows an item from them at the time of their work, he is exempt from liability, as the case is comparable to borrowing an item and borrowing or hiring its owner with it. These people are always considered in the employ of the residents of the place where they work.

122 The Gemara relates: The Rabbis said to Rava: Master, you are lent to us to teach us Torah, and so if we borrow an item from you, we should be exempt from liability. These Rabbis stated this based on Rava's own ruling. Rava was angered by this and said to them: Do you want to take my money away from me? On the contrary, I am not lent to you; rather, you are lent to me, since you assist me in consolidating my Torah knowledge. And this is the proof that it is you who are assisting me: Whereas I am able to deflect you from one tractate to another tractate because I am not obligated to teach specifically that which you want to learn, you are not able to deflect me from what I wish to teach.

123 The Gemara comments: But it is not so that a teacher is never lent to his students. During the days of the kalla, the gatherings for Torah study during Elul and Adar, the teacher is required to teach a specific subject, and therefore he is lent to them. During the rest of the days of the year, they are lent to him, as he can teach whatever subject matter he wishes.

124 The Gemara relates: Mareimar bar Ḥanina rented out a mule to the residents of Bei Ḥozai. He went out to raise up a load onto the mule together with those who rented it. Later they were negligent with the animal, and it died. They came before Rava for judgment, and he deemed them liable to pay. The Sages said to Rava: This is a case of a mishap that occurred due to a renter's negligence in safeguarding a deposit that was rented together with its owner, and the halakha in such a case is that the renter is exempt. Rava was embarrassed that he had ruled incorrectly. Ultimately it was revealed that Mareimar bar Ḥanina had gone out only to supervise the loading but did not actually participate in loading the animal. Accordingly, Rava's ruling that the renters were liable proved to be correct.

125 The Gemara comments: This works out well according to the one who says that in a case of a mishap that occurred because of a borrower's negligence in safeguarding a deposit that was borrowed together with its owner, the borrower is exempt; for that reason Rava was embarrassed for ruling incorrectly. But according to the one who says that in such a case the borrower is liable, why was he embarrassed; wouldn't it appear that he ruled correctly?

126 The Gemara emends the details of the incident: Those that rented the mule were not negligent with it. Rather, it was stolen from them and then it died naturally in the house of the thief. And those who rented the mule came before Rava for judgment, and he deemed them liable. The Sages said to Rava: This is a case of theft of a deposit that was borrowed together with borrowing the services of the owner, and so the borrower should be exempt. Rava was embarrassed that he had ruled incorrectly. Ultimately it was revealed that Mareimar bar Ḥanina had gone out only to supervise the loading but did not actually participate in loading the animal. Accordingly, Rava's ruling proved to be correct.

127 MISHNA: There is one who borrowed a cow. He borrowed it for half of the day and rented it for the other half of the day; or he borrowed it for today and rented it for tomorrow; or he rented one cow and borrowed another one from the same person. And in one of the first two cases, the cow died and it is not clear during which period the cow died. Or in the last case, one of the cows died and it is

not clear whether it had been the borrowed cow or the rented cow. If the lender then says: The borrowed cow is the one that died; or: It died on the day that it was being borrowed;

[128] or: It died during the period in which it was being borrowed, so that, according to his claim, the borrower is liable to pay for the cow, and the other one, the borrower, says: I do not know what happened, the borrower is liable to pay.

[129] If the renter says: The rented cow is the one that died; or: It died on the day that it was being rented; or: It died during the period in which it was being rented, and the other one, the owner of the cow, says: I do not know what happened, the renter is exempt.

[130] If this owner says with certitude: The borrowed cow is the one that died, and that renter says with certitude: The rented cow is the one that died, then the renter takes an oath that the rented cow is the one that died, and he is then exempt from liability.

[131] If this one says: I do not know what happened, and that one says: I do not know what happened, then they divide the disputed amount. The bailee is liable to pay for only half the value of the cow.

[132] GEMARA: Conclude from the mishna that in a comparable situation, where one says to another: I have one hundred dinars in your possession, and the other one says: I do not know whether or not I have your money, that the defendant is liable to pay.

[133] The Gemara suggests: Let us say that it is a conclusive refutation of the opinion of Rav Naḥman. As it was stated that the amora'im disagreed about the following case: With regard to one who approaches another and says: I have one hundred dinars in your possession, and the other says: I do not know, Rav Huna and Rav Yehuda say: The respondent is liable to pay, because he did not deny the claim. Rav Naḥman and Rabbi Yoḥanan say: He is exempt from payment.

[134] The Gemara refutes this contention: Just as Rav Naḥman says in that context: He is liable to pay only in a case where there is a matter of an oath between them, here too, it is a case where there is a matter of an oath between them. In that case, Rav Naḥman rules that he is liable to pay only if he is already liable to take an oath concerning his denial of part of the claim. Since he does not know if he owes this sum, and he is therefore unable to take the oath he is liable to take, he must pay. In this case as well, since the bailee does not know what occurred, he cannot take an oath, and must pay.

[135] The Gemara asks: What are the circumstances of a matter of an oath? The Gemara explains: This in accordance with the statement of Rava,

[136] as Rava says: One who approaches another and says: I have one hundred dinars in your possession, and the other says: You have in my possession only fifty dinars that I am sure about, and as for the rest, I do not know. As one who admitted to part of a claim, he is liable, by Torah law, to take an oath that he does not owe the other fifty dinars. Since he cannot take an oath to that effect, as he is unsure if he owes it, he must pay.

[137] The Gemara explains how the mishna can be interpreted as referring to a case in which the defendant makes a partial admission, thereby requiring him to take an oath: You find it in the first clause, i.e., in the first two cases of the mishna, in a situation where he took hold of two cows, and in the latter clause, i.e., in the third case, in a situation where he took hold of three cows.

[138] The Gemara explains: One can interpret the first clause to be referring to a case where one took hold of two cows, as follows: The case is that the owner said to the bailee: I delivered two cows to you under the agreement that one half of the day you would have them through borrowing and the

other half of the day through renting, or, alternatively, one day through borrowing and one day through renting. And I claim that both died during a period of borrowing, so you are liable to pay for both of them.

[139] And the borrower said to him: With regard to one of them, yes, I admit that it died during a period of borrowing. But with regard to the other one, I do not know whether it died during a period of borrowing or if it died during a period of renting. Because he admits to part of the claim, he is required to take an oath in order to be exempt from the rest of the claim. As he concedes that he does not know what happened, he is unable to take such an oath. The halakha is that since he is unable to take an oath, he must pay for both cows.

[140] And one can interpret the latter clause to be referring to a case where he took hold of three cows, as follows: The case is that the owner said to the bailee: I gave three cows to you; two through borrowing and one through renting. And I claim that those two that were being borrowed were the ones that died. And the borrower said to him: Yes, I admit that one of the cows that was borrowed died. But with regard to the other one that died, I do not know if it was the other cow that was being borrowed that died, and so the cow that is still alive is the one that was being rented, or if the one that was being rented died, and this one that is still alive is the one that was being borrowed. Because he admits to part of the claim, in order to be exempt from the rest of the claim he is required to take an oath. As he concedes that he does not know what happened, he is unable to take such an oath. And the halakha is that since he is unable to take an oath, he must pay for both cows.

[141] The Gemara explains how the mishna can be interpreted even according to the unique opinion of Rami bar Ḥama: And the mishna can be interpreted in accordance with the opinion of Rami bar Ḥama, who says: In order for any of the four types of bailees to be required to take an oath, they need to make both a denial of part of the owner’s claim and an admission of another part of his claim. According to his opinion, you find the bailee is liable to take an oath in the first clause, i.e., in the first two cases of the mishna, in a situation where he took hold of three cows, and in the latter clause, i.e., in the third case, in a situation where he took hold of four cows.

[142] The Gemara elaborates: One can interpret the first clause to be referring to a case where he took hold of three cows, as follows: The case is that the owner said to the bailee: I gave three cows to you under the agreement that one half of the day you would have them through borrowing and the other half of the day through renting, or, alternatively, one day through borrowing and one day through renting. And I claim that all three of them died during a period of borrowing, and so you are liable to pay for all of them.

[143] And the borrower said to him: With regard to one of them, this matter never occurred, as I took only two cows from you. And, as for the two cows I did take, with regard to one of them, yes, I admit that it died during a period of borrowing. But with regard to the other one, I do not know whether it died during a period of borrowing or if it died during a period of renting. Because the bailee admits to part of the claim and denies another part of the claim, he is required to take an oath in order to be exempt from the rest of the claim. As he concedes that he does not know what happened, he is unable to take such an oath. The halakha is that since he is unable to take an oath, he must pay for all three cows.

[144] One can interpret the latter clause to be referring to a case where he took hold of four cows, as follows: The case is that the owner said to the bailee: I gave four cows to you, three through

borrowing and one through renting. And I claim that those three that were being borrowed were the ones that died. And he said to him,

[145] i.e., the borrower said to the owner: With regard to one of the cows that you claim, this matter never occurred, as I never took that cow from you. And as for the cows that I did take that died, with regard to one of them, yes, I admit that it was a cow that was being borrowed that died; but the other cow that died, I do not know whether it was the cow that was being rented that died, and so the cow that is still alive is the one that was being borrowed, or whether the cow that was being borrowed died, and so the cow that is still alive is the one that was being rented. Because the bailee admits to part of the claim and denies another part of the claim, he is required to take an oath in order to be exempt from the rest of the claim. As he concedes that he does not know what happened, he is unable to take such an oath. The halakha is that since he is unable to take an oath, he must pay for all three cows.

[146] § The mishna teaches: The bailee rented one cow and borrowed another one. This owner says with certitude: The borrowed cow is the one that died. And that renter says with certitude: The rented cow is the one that died. In this case, the renter takes an oath that the rented cow is the one that died and then he is exempt.

[147] The Gemara asks: But why should he take an oath? That which the owner claimed from him, he did not admit to at all, and that which the bailee admitted to, the owner had not claimed from him. In order to be required to take an oath, the bailee must admit to part of the owner’s actual claim. Ulla said: The mishna is referring to a case where the owner required the bailee to take another oath by extending the oath that he had already required him to take.

[148] The Gemara elaborates: For example, this is a case where the owner said to him: Take an oath to me, in any event, that the cow died naturally, and not as a result of your negligence. The owner has a right to demand such an oath. And since the bailee is made to take an oath that the cow died naturally, that oath can be extended such that he can also be made to take an oath that it was the cow that was rented that died.

[149] The mishna concludes: If this one says: I do not know what happened, and that one says: I do not know what happened, then they divide the disputed amount. The bailee is liable to pay for only half the value of the cow. The Gemara asks: In accordance with whose opinion is this? It is in accordance with the opinion of Sumakhos, who says: When there is property of uncertain ownership, the parties divide it equally between them.

[150] § Rabbi Abba bar Memel raises a dilemma: If one borrowed a cow together with borrowing the services of its owner, and then, before returning the cow, he rented the cow from the owner without borrowing the services of its owner, what is the halakha?

[151] Do we say: The borrowing stands by itself and the renting stands by itself, i.e., they are two independent transactions, and so the bailee is liable for any mishap that occurs during the renting period, as the owner’s services were not borrowed by him during that time? Or, perhaps the subsequent renting is related to the prior borrowing and is an extension of it. It could be said that the renting is related to the borrowing because a renter is liable for theft and loss, as is a borrower. Perhaps the liability resulting from renting that immediately follows a period of borrowing is a downgraded form of the liability undertaken at the start of the period of borrowing. If so, then in this case, since the bailee bore no liability during the borrowing period, as the cow was borrowed while

the owner was providing his services to the borrower, the bailee will not bear liability during the rental period.

[152] If you say that in such a case, the subsequent renting is related to the prior borrowing and is an extension of it, then in the reverse case, where one rented a cow together with borrowing the services of its owner, and then, before returning the cow, he borrowed it from the owner without borrowing the services of its owner, what is the halakha?

[153] Do we say that the subsequent borrowing is certainly not related to or an extension of the prior renting, as a borrower undertakes a higher level of liability than a renter? Or perhaps, since the subsequent borrowing is partially related to the prior renting, as the borrower is liable for theft and loss just as a renter is, it is considered as though it were related entirely to it and is an extension of it. Consequently, the exemption of using an item together with its owner's services also applies to the subsequent borrowing.

[154] If you say: In such a case, we do not say that since the subsequent borrowing is partially related to the prior renting, it is considered as though it were entirely related to it and is an extension of it, then in a case where one borrowed a cow together with borrowing the services of its owner, and then, before returning the cow, he rented it from the owner without borrowing the services of its owner, and then at the end of the renting period, he again borrowed it without the owner's services, what is the halakha?

[155] Do we say that the second period of borrowing returns to its original place, i.e., is the third period, in which one borrowed the cow, essentially a continuation of the first period? Or, perhaps, the period of renting serves as an interruption in the middle of the two periods of borrowing, such that the third period cannot be seen as a continuation of the first period?

[156] Similarly, in another case, one rented a cow together with borrowing the services of its owner. And then, before returning the cow, he borrowed it from the owner without borrowing the services of its owner. And then, at the end of the borrowing period, he again rented it, without borrowing the services of the owner. What is the halakha? Do we say that the second period of renting returns it to its original place, i.e., is the second period essentially a continuation of the first period? Or, perhaps the period of borrowing serves as an interruption in the middle of the two periods of renting, such that the third period cannot be seen as a continuation of the first period.

[157] The Gemara concludes: These dilemmas shall stand unresolved.

[158] MISHNA: In the case of one who borrowed a cow, and the lender sent it to the borrower by the hand of his son, or by the hand of his slave, or by the hand of his agent, or by the hand of the borrower's son, or by the hand of his slave, or by the hand of the agent of the borrower; and it died on the way, the borrower is exempt, because the period of borrowing begins only once the cow reaches his domain.

[159] The borrower said to the lender: Send it to me by the hand of my son, or by the hand of my slave, or by the hand of my agent, or by the hand of your son, or by the hand of your slave, or by the hand of your agent. Or, in a case where the lender said explicitly to the borrower: I am sending it to you by the hand of my son, or by the hand of my slave, or by the hand of my agent, or by the hand of your son, or by the hand of your slave, or by the hand of your agent; and the borrower said to him: Send it as you have said, and he then sent it, and it died on the way, then the borrower is liable to pay the

lender the value of his cow. Since the borrower agreed to the cow's being brought to him by the hand of another, he bears liability from the moment the cow was transferred into that person's possession.

160 And, so too, this is the halakha at the time when the borrower returns it to the lender. The borrower is absolved of liability only once the cow is transferred to the lender himself or to someone who the lender agreed will bring it to him.

161 GEMARA: The mishna states that if the borrower agrees to have the lender send the cow by the hand of the lender's slave, and it died on the way, then the borrower is liable. The Gemara asks: But isn't the hand of a slave legally like the hand of his master; as long as the cow is in the possession of the lender's slave, it is not considered to have left the lender's possession. Why, then, is the borrower liable?

162 The Gemara presents two resolutions: Shmuel said: The mishna is referring to a Hebrew slave, whose master does not acquire his person. Therefore, property in the slave's possession is not considered to be in his master's possession. Rav said: You may even say that the mishna is referring to a Canaanite slave, as this case may be considered like one in which the borrower said to the lender: Hit the cow with a stick and then it will come on its own to me. Just as in that case the borrower is liable once the cow leaves the lender's domain, so too in this case he is liable once the cow leaves the lender's domain, irrespective of the fact it was brought by the lender's slave.

163 The Gemara raises an objection from a baraita: If one borrows a cow; and, with the agreement of the borrower, the lender sends it to him by the hand of his son or by the hand of his agent; and it dies on the way, then the borrower is liable. If the lender sent it by the hand of his slave, then the borrower is exempt. The final clause appears to contradict the mishna's ruling.

164 The Gemara elaborates: Granted, according to the resolution of Shmuel, one can explain that the mishna is referring to a Hebrew slave, whereas the baraita is referring to a Canaanite slave. But according to the resolution of Rav, who maintained that the mishna is referring to a Canaanite slave, the contradiction is difficult.

165 The Gemara presents a modified version of Rav's resolution: Rav could say to you: Do not say in explanation of the mishna that the case may be considered like one in which the borrower said to the lender: Hit the cow with a stick and then it will come on its own. Rather, say that it is referring to a case where the borrower actually said to the lender: Hit the cow with a stick and then it will come to me on its own. Accordingly, one can explain that the baraita is referring to a case where he did not say this, and therefore, as long as the cow is still in the possession of the slave, the borrower is not liable.

166 As it was stated: One said to another: Lend me your cow. And the lender said to the borrower: By whose hand shall I send it? And the borrower said to him: Hit the cow with a stick and then it will come on its own to me. Rav Naḥman says that Rabba bar Avuh says that Rav says: In this case, the halakha is that once the cow left the domain of the lender and then it died, the borrower is liable.

167 The Gemara suggests: Let us say that the following baraita supports this opinion of Rav: One said to another: Lend me your cow. And the lender said to the borrower: By whose hand shall I send it? And the borrower said to him: Hit the cow with a stick and then it will come on its own to me. The halakha is that once the cow left the domain of the lender and then it died, the borrower is liable.

[168] Rav Ashi said that the baraita is not a conclusive proof of Rav's opinion. It is possible to say: With what are we dealing here; with a case where the courtyard of the borrower is situated further in from the public domain than the courtyard of the lender, such that when the lender sends the cow to him, it will certainly go to there. Consequently, the borrower is willing to accept liability from the moment the lender sends it.

[169] The Gemara asks: If so, if that is the case addressed in the baraita, what is the purpose of stating this halakha? It is obvious. The Gemara explains: No, it is necessary for the case of a courtyard in which there are corners. Lest you say: The borrower does not rely on the possibility that the animal will come to him, as perhaps the animal will go and stand there in one of the corners and not come straight to the borrower's courtyard, the baraita therefore teaches us that even in such a case he relies on the assumption that the cow will nevertheless come to him, and so he accepts liability.

[170] § Rav Huna says: In the case of one who borrows an ax from another, once he has chopped wood with it, he has acquired it, but as long as he has not chopped wood with it, he has not acquired it.

[171] The Gemara clarifies: With regard to what matter does one acquire the ax? If we say he has acquired it for the purpose of being liable for unavoidable mishaps, i.e., his liability as a borrower begins once he uses the ax, then one could ask: What is different when one borrows a cow, that one is liable as a borrower from the moment of borrowing, even before one makes use of it? Rather, Rav Huna refers to one's right of retraction, as follows: Once the borrower has chopped wood with it, the lender cannot renege on his commitment to lend the item, but as long as the borrower has not chopped wood with it, the lender can renege on his commitment to lend the item and prevent the borrower from borrowing the item.

[172] And with this opinion, Rav Huna disagrees with the opinion of Rabbi Ami, as Rabbi Ami says: One who lends another an ax that is of property consecrated to the Temple treasury has there by misused consecrated property. He is liable to pay the Temple treasury according to the financial advantage he received from lending the ax. And despite this, that other person, i.e., the borrower, is permitted to chop wood with it ab initio.

[173] The Gemara explains how it is apparent that Rabbi Ami disagrees with Rav Huna: And if one holds that the borrower does not acquire the ax from the moment of borrowing, why has the lender misused consecrated property? To be liable for misuse of consecrated property, one must acquire the item, thereby removing it from the Temple treasury. And furthermore, why is that other person permitted to chop wood with it ab initio? If the borrower does not acquire the ax from the moment of borrowing, let the borrower return the ax and not acquire it, and consequently the lender will not have misused consecrated property, as it will have turned out that nothing significant occurred. Rather, it is evident that Rabbi Ami holds that the act of lending is fully completed as soon as the borrower takes the ax, even before he has used it.

[174] And furthermore, with this opinion, Rav Huna disagrees with the opinion of Rabbi Elazar, as Rabbi Elazar says: In the same way in which the Sages instituted for buyers that they can acquire an item by pulling it, and from that point the transaction is completed, so too they instituted for bailees that their rights and responsibilities are initiated by their pulling the item they agreed to safeguard, and from that point the transfer of the item to the bailee is completed.

[175] This opinion of Rabbi Elazar is also taught in a baraita: Just as the Sages instituted for buyers that they can acquire an item by pulling it, so too they instituted for bailees that their rights and responsibilities are initiated by them pulling the item they agreed to safeguard. And just as

[176] land is acquired either through the buyer giving money to the seller, or by the seller giving the buyer a bill of sale, or by the buyer performing an act of taking possession, so too, a rental is acquired either through the renter giving money to the owner, or by the owner giving the renter a rental document, or by the renter performing an act of taking possession. Based on the assumption that the baraita is referring to rental of movable property, the Gemara asks: With regard to the case of renting in the baraita, what is its purpose, i.e., why is it mentioned in connection with acts of acquisition that are effective with regard to land? Rav Ḥisda said: The baraita is referring to the rental of land.

[177] § Apropos the mention in the previous discussion of one who misuses consecrated property, the Gemara cites a related matter. Shmuel says: In the case of one who robs another of a cake [ḥavitza] of pressed dates, and in the cake there are fifty dates, which, when sold together, sell for fifty-less-one perutot and when they are sold one by one, they sell for fifty perutot, the sum that the robber is liable to pay as compensation to the robbery victim depends on who the robbery victim is.

[178] If one robbed, and is paying compensation to, a common person [hedyot], he pays fifty-less-one perutot. If one robbed another of a cake that was consecrated to the Temple treasury and he is paying compensation to the Temple treasury, he pays fifty perutot and an additional one-fifth of the value as a fine for having misused consecrated property for each one of the cakes. This is not so with regard to one liable for causing damage to consecrated property, who does not pay the additional one-fifth payment, as the Master says: The verse states: “And a man, if he eats sacrificial food in error, he should add its fifth on it” (Leviticus 22:14). By specifying that one who eats consecrated property is liable to pay the one-fifth payment, the verse excludes one who is liable for causing damage from that requirement.

[179] Rav Beivai bar Abaye objects to this: Why, when he pays compensation to a common person, does he pay fifty-less-one? Let the victim say to the robber: I would have sold them one by one and received fifty perutot for them; you should therefore compensate me for that entire amount.

[180] Rav Huna, son of Rav Yehoshua, said: We learned in a mishna (Bava Kamma 55b): If an animal causes damage to another’s field, 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. The court 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 court appraises not only the garden bed that was eaten or trampled, but 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. In this case as well, the value of the entire cake is evaluated, not what it would be worth were one to divide it into smaller units.

[181] The Gemara asks: Is this to say that Shmuel holds that the halakha of compensation paid to a common person is not like the halakha of compensation paid to the Most High, i.e., to the Temple treasury? But didn’t we learn in a mishna (Me’ila 19b): One who physically took a stone or a cross beam from among items consecrated to the Temple treasury is not considered to have misused consecrated property. If he gave it to another, he is considered to have misused consecrated property,

but that other person is not considered to have misused consecrated property. If, after taking a stone or cross beam that was consecrated property one built it into the structure of his house, he is not considered to have misused consecrated property until he resides underneath it, thereby deriving benefit of the value of one peruta.

[182] And Rabbi Abbahu was sitting before Rabbi Yoḥanan, and he was sitting and saying in the name of Shmuel, in reference to that mishna: That is to say: One who resides in another's courtyard without his knowledge must pay him rent. Just as one is considered to derive benefit from a cross beam by residing underneath it and must pay for that benefit, so too, one is considered to derive benefit from the courtyard by residing in it, and he must pay for that benefit. It is apparent from this statement of Shmuel that the halakhot of compensating a common person are similar to and can be derived from those of the Temple treasury. This contradicts Shmuel's previous statement in the Gemara. Rabbi Yoḥanan said to him in resolution of this difficulty: Shmuel retracted that statement of his.

[183] The Gemara asks: But from where is it apparent that he retracted that statement concerning residing in another's courtyard; perhaps he retracted this ruling, concerning one who stole a cake of pressed dates? The Gemara answers: No, it must be that statement, concerning residing in another's courtyard, that he retracted, in accordance with the statement of Rava. As Rava says: Using consecrated property without the Temple treasurer's knowledge is like using property belonging to a common person with his knowledge. Since, ultimately, the true owner of consecrated property is God, benefit from it is always considered to be have been derived with the owner's knowledge. Consequently, one cannot derive an inference from the halakha of deriving benefit from consecrated property to a case of deriving benefit from a common person's property without his knowledge. Accordingly, it is more reasonable that Shmuel retracted his ruling about residing in another's courtyard.

[184] The Gemara cites another ruling concerning differing rates of compensation: Rava says: With regard to these porters who broke a shopkeeper's barrel of wine, which on market day sells for five dinars and on other days sells for four dinars, if they restore its value to him on market day, then it is sufficient if they compensate him with a barrel of wine, which he could then sell for five dinars. If they wish to repay him on other days, i.e., on a non-market day, they must compensate him with five dinars. They cannot discharge their debt by giving him a barrel of wine, as on those days it is worth only four dinars.

[185] The Gemara qualifies Rava's ruling: And we said that the porters must pay five dinars on a non-market day only in a case in which the shopkeeper did not have other barrels of wine to sell on that market day and consequently lost out on a potential sale worth five dinars. But if he had another barrel of wine to sell, then he should have sold it. The fact he did not sell the wine he had demonstrates that the porters did not cause him to lose out on a sale worth five dinars.

[186] The Gemara further qualifies Rava's ruling: And when the porters pay the five dinars, they deduct from it the usual value of the shopkeeper's effort in selling a barrel and the usual cost of tapping a barrel, as the shopkeeper was spared these costs.

[187] MISHNA: With regard to one who exchanges a cow for a donkey, such that by virtue of the cow owner's act of acquisition on the donkey, the donkey's erstwhile owner simultaneously acquires the cow, wherever it happens to be located, and afterward the cow is found to have calved; and similarly,

with regard to one who sells his Canaanite maidservant, with the acquisition effected by the buyer giving him money, and afterward she is found to have given birth to a child, who will be a slave belonging to his mother’s master, at times it is uncertain whether the offspring was born before or after the transaction. If this seller says: The birth occurred before I sold the cow or maidservant, and so the offspring belongs to me, and that buyer says: The birth occurred after I purchased the cow or maidservant, and so the offspring belongs to me, they divide the value of the offspring between them.

188 The mishna continues: There is a case of one who had two Canaanite slaves, one large, worth more on the slave market, and one small, worth less on the slave market, and similarly, one who had two fields, one large and one small. He sold one of them, and there was a dispute between the buyer and the seller concerning which one was sold.

189 If the buyer says: I purchased the large one, and the other one, i.e., the seller, says: I do not know which I sold; the buyer is entitled to take the large one.

190 If the seller says: I sold the small one, and the other one, i.e., the buyer, says: I do not know which one I purchased; the buyer is entitled to take only the small one.

191 If this one says: The large one was sold, and that one says: The small one was sold, then the seller takes an oath that it was the small one that he sold, and then the buyer takes the small one.

192 If this one says: I do not know which one was sold, and that one says: I do not know which one was sold, they divide the disputed amount between them.

193 GEMARA: The Gemara asks: In the first clause of the mishna, why do the two parties divide the value of the offspring between them? Instead, let us see in whose domain the offspring currently is. That person has presumptive ownership of the offspring, and the other person will be considered to be the one who is exacting property from another, and accordingly, the burden of proof rests upon him. Since he cannot prove his claim, he is not entitled to take the offspring.

194 The Gemara answers: Rabbi Ḥiyya bar Avin says that Shmuel says: The mishna is referring to a case where the calf is standing in the marsh, i.e., it is in the domain of neither the buyer nor the seller, and so neither one has presumptive ownership. And with regard to the maidservant also, this is a case where the child is found in an alley which does not belong to either the buyer or the seller.

195 The Gemara asks further: But even if the offspring is not in either party’s domain, establish it to be in the presumptive ownership of its original owner, i.e., the seller, as he certainly owned the offspring when it was still a fetus. And so the other person will be considered to be the one who is exacting property from another, and accordingly, the burden of proof rests upon him. Since he cannot prove his claim, he is not entitled to take the offspring.

196 The Gemara answers: In accordance with whose opinion is the ruling of this mishna, that the parties divide the value of the offspring equally? It is in accordance with the opinion of Sumakhos, who says: When there is property of uncertain ownership, the parties divide it equally without the need to take an oath.

197 The Gemara challenges this: Say that Sumakhos says his ruling when there is a conflict between an uncertain claim and an uncertain claim, as each party admits that his claim to the property is uncertain, but did he say his ruling when there is a conflict between a certain claim and a certain claim, as each party claims to be certain that the property belongs to him?

198 The Gemara offers two opinions concerning the ruling of Sumakhos. Rabba bar Rav Huna said: Yes, Sumakhos says his ruling even when there is a conflict between a certain claim and a certain claim.

199 Another opinion: Rava said: Actually, when Sumakhos said his ruling, it applies only where there is a conflict between an uncertain claim and an uncertain claim, but when there is a conflict between a certain claim and a certain claim, he did not say his ruling. And in order that the mishna not pose a difficulty, emend it to refer to uncertain claims and teach: This seller says: Perhaps the birth occurred before I sold the cow or maidservant, and that buyer says: Perhaps the birth occurred after I purchased the cow or maidservant.

200 The Gemara challenges Rabba bar Rav Huna's opinion: We learned in the mishna: If this one says: I do not know which one was sold, and that one says: I do not know which one was sold, they divide the disputed amount between them.

201 Granted, according to the opinion of Rava, from the fact that the last clause of the mishna is referring to a case where there is a conflict between an uncertain claim and an uncertain claim, one can say that the first clause as well is referring to a case in which there is a conflict between an uncertain claim and an uncertain claim. But according to the opinion of Rabba bar Rav Huna, who said: Yes, Sumakhos says his ruling even when there is a conflict between a certain claim and a certain claim, there is the following difficulty: Now that the mishna teaches that even when there is a conflict between a certain claim and a certain claim Sumakhos says that the parties divide the disputed amount between them, is it necessary for the mishna to state that where there is a conflict between an uncertain claim and an uncertain claim the parties divide the disputed amount between them?

202 The Gemara rejects the question: If the difficulty is due only to that reason, there is no conclusive argument. One can say that the mishna taught the latter clause to shed light on the first clause, so that you will not say that the ruling in the first clause applies only where there is a conflict between an uncertain claim and an uncertain claim, but where there is a conflict between a certain claim and a certain claim the ruling in the first clause does not apply, and the disputed amount is not divided. To dispel this notion, the mishna teaches the last clause, which is referring to a conflict between an uncertain claim and an uncertain claim; and then by inference, the first clause must refer to a case where there is a conflict between a certain claim and a certain claim, and nevertheless, the parties divide the disputed amount between them.

203 The Gemara again challenges Rabba bar Rav Huna's opinion: We learned in the mishna: If this one says: The large one was sold, and that one says: The small one was sold, then the seller takes an oath that it was the small one that he sold, and then the buyer takes the small one.

204 Granted, according to the opinion of Rava, who said that when Sumakhos says his ruling it applies only where there is a conflict between an uncertain claim and an uncertain claim, but when there is a conflict between a certain claim and a certain claim he did not say his ruling, it is due to that reason that in the clause in the mishna in which each party offers a certain claim, the seller takes an oath. But according to the opinion of Rabba bar Rav Huna, who said: Yes, Sumakhos says his ruling even when there is a conflict between a certain claim and a certain claim, why does the mishna rule that the seller takes an oath; the mishna should have ruled that they divide the disputed amount between them.

[205] The Gemara answers: Sumakhos concedes that where there is a requirement for one of the parties to take an oath required by Torah law the disputed amount is not divided, as we will need to say below to resolve another challenge to Sumakhos' opinion.

[206] § The mishna teaches: In a case of one who had two Canaanite slaves, one large, worth more on the slave market, and one small, worth less on the slave market, and the buyer and seller disagree as to whether it was the large slave or the small slave that was sold, the seller takes an oath that it was the small one that he sold, and then the buyer takes the small one. The Gemara asks: Why does the seller take an oath? An oath is required only when a defendant admits to part of the claim made against him, but in this case, that which the buyer claimed from the seller, i.e., the larger slave, the seller did not admit to at all, and that which the seller admitted to, i.e., the smaller slave, the buyer had not claimed from him.

[207] And furthermore, with regard to the small slave, this is a case of: Here you are. The seller is not merely admitting that he is liable to give the slave in the future, but allows the buyer to take possession of the slave immediately. As Rav Sheshet explains on 4a, one who offers the disputed item immediately is not considered to be one who admits to part of a claim, and is exempt by Torah law from taking an oath.

[208] And furthermore, one does not take an oath concerning a claim about slaves, but only concerning claims about movable property. For these three reasons, there should be no requirement to take an oath.

[209] Rav said: The mishna is referring to a case where the buyer claims money from the seller, not a slave or a field; the buyer claims that he gave the seller money equal to the value of a large slave and the seller admits to having received money equal to the value of a small slave. And in the case of the field, the buyer claims that he gave the seller money equal to the value of a large field, and the seller admits to having received money equal to the value of a small field.

[210] And Shmuel said: The mishna is referring to a case where the buyer claims he purchased a garment of a large slave, and the seller admits to having sold him a garment of a small slave. And in the case of the field, the buyer claims he purchased the sheaves yielded by a large field, and the seller admits to having sold him the sheaves yielded by a small field.

[211] The Gemara challenges Shmuel's interpretation: If the dispute is over which size garment was sold, the seller should not be required to take an oath, as that which the buyer claimed from him, the seller did not admit to at all, and that which the seller admitted to, the buyer had not claimed from him. The Gemara answers: Shmuel was referring to a case like that which Rav Pappa said below: The dispute is with regard to a garment that was formed from several pieces of cloth that were attached together. Here too, the dispute is with regard to a garment that was formed from several pieces of cloth that were attached together, and the disagreement was about how much of that garment was actually sold.

[212] Rabbi Hoshaya found Shmuel's interpretation difficult: Does the mishna teach: A garment? No, it teaches: A slave. How can Shmuel claim the dispute was about a garment?

[213] Rather, Rabbi Hoshaya said: The mishna is referring to a case where the buyer claimed a large slave along with his garment, or where he claimed a large field along with its sheaves. Since the seller admits to the part of the claim about the garment or sheaves, he is required to take an oath

about them. Once he is required to take that oath, it can be extended to require him to take an oath even concerning the claim about the slave or field itself. The Gemara asks: But still, in the dispute over which type of garment was sold, that which the buyer claimed from him, the seller did not admit to at all, and that which the seller admitted to, the buyer had not claimed from him. The Gemara answers: Rav Pappa said: The dispute is with regard to a garment that was formed from several pieces of cloth that were attached together, and the dispute concerns how much of that garment was actually sold.

214 Rav Sheshet found Rabbi Hoshaya's interpretation difficult: Does the mishna come only to teach us the halakha of binding? But we already learned that halakha in a mishna (Kiddushin 26a): Generally, one is not obligated to take an oath concerning the denial of a claim with regard to land. In a legal dispute involving both land and movable property, if the defendant admits to part of the claim with regard to the movable property, thereby rendering himself obligated to take an oath denying any responsibility for the remaining property, the movable property binds the property that serves as a guarantee, i.e., the land, so that he is forced to take an oath concerning the land as well.

215 Rather, Rav Sheshet said: In accordance with whose opinion is this mishna? It is Rabbi Meir, who said: The legal status of a slave is like that of movable property. Even if the dispute is over the slave alone, the seller can be required to take an oath.

216 The Gemara asks: But still, if the dispute is over which slave was sold, then that which the buyer claimed from him, the seller did not admit to at all, and that which the seller admitted to, the buyer had not claimed from him. The seller should not therefore be required to take an oath. The Gemara answers: The tanna of the mishna holds in accordance with the opinion of Rabban Gamliel, as we learned in a mishna (Shevuot 38b): If one claimed wheat from another, and the defendant admitted only to owing him barley, the defendant is exempt from having to take an oath; but Rabban Gamliel deems him liable.

217 The Gemara asks: Still, with regard to the small slave, this is a case of: Here you are, as the slave is immediately available to be taken. The small slave is not considered part of the buyer's claim, as his claim is limited to the difference between the values of the slaves, and that amount is being entirely denied. Consequently, there should be no requirement to take an oath. To resolve this difficulty, Rava said: In the case of the slave, the mishna is referring to a case where, after the sale, the seller severed the slave's hand, and in the case of the field, it is a case where, after the sale, the seller dug pits, ditches and caves in it, and therefore he cannot say: Here you are.

218 The Gemara offers another challenge to Rav Sheshet's interpretation: But didn't Rabbi Meir teach us the opposite? As we learned in a mishna (Bava Kamma 96b): If one robbed another of an animal and it aged and declined in value while in his possession, or if one robbed another of Canaanite slaves and they aged, since they are no longer in the condition that they were in when he robbed them, he cannot return them in their current state to his victim; rather, he pays according to their value at the time of the robbery. Rabbi Meir says: With regard to slaves, he says to the victim: That which is yours is before you and no compensation is required. Apparently, Rabbi Meir holds that the legal status of a slave is like that of land, and not, as Rav Sheshet said, like that of movable property.

219 The Gemara answers: That is not difficult. Rav Sheshet apparently holds like Rabba bar Avuh, who reverses the attribution of the opinions in that mishna and teaches: Rabbi Meir says: He pays

according to their value at the time of the robbery. And the Rabbis say: With regard to slaves, he says to the victim: That which is yours is before you and no compensation is required.

220 Since Rav Sheshet interprets the mishna as referring to a case where the dispute is over the slave alone and interprets it to be in accordance with the opinion of Rabbi Meir, he apparently also assumes that Rabbi Meir holds that an oath is taken even with regard to a claim of land, as his explanation would need to account for the case in the mishna concerning a dispute over the small or large field. The Gemara questions this assumption: But given that Rabbi Meir said only that the legal status of a slave is like that of movable property, from where does Rav Sheshet learn that Rabbi Meir holds that we compare land to a slave, so that just as for a claim about a slave, an oath is taken, so too, for a claim about land, an oath is taken? Perhaps Rabbi Meir holds that an oath is taken only on a claim about a slave but not on a claim about land.

221 The Gemara answers: It should not enter your mind that Rabbi Meir makes a distinction between slaves and land in this regard, as it is taught in a baraita: With regard to one who exchanges a cow for a donkey, such that by virtue of the cow owner's act of acquisition on the donkey, the donkey's erstwhile owner simultaneously acquires the cow, wherever it happens to be located, and afterward the cow is found to have calved; and similarly, with regard to one who sells his Canaanite maidservant, with the acquisition effected by the buyer giving him money, and afterward she is found to have given birth to a child, who will be a slave belonging to his mother's master, at times it is uncertain whether the offspring was born before or after the transaction.

222 If this seller says: The birth occurred while the cow or maidservant was still in my possession, and that buyer remains silent, the seller is entitled to take the offspring.

223 If this one says: I do not know what happened, and that one says: I do not know what happened, they divide the value of the offspring between them.

224 If this seller says: The birth occurred while the cow or maidservant was still in my possession, and that buyer says: The birth occurred after the cow or maidservant was already in my possession, then the seller takes an oath stating that the cow or maidservant gave birth in his possession and he is then entitled to take the offspring. This is because for anyone who takes an oath required by Torah law, he takes the oath and does not have to pay. This is the statement of Rabbi Meir. And the Rabbis say: One does not take an oath, not on a claim concerning slaves and not on a claim concerning land.

225 The Gemara explains its proof from this baraita: Since the Rabbis replied to Rabbi Meir that an oath is not taken on a claim concerning slaves or land, is it not correct that by inference, Rabbi Meir holds that one can take an oath on a claim concerning either slaves or land?

226 The Gemara rejects this inference: But from where is this inferred? Perhaps the Rabbis are speaking to him utilizing the style of: Just as, and they are saying as follows: Just as you concede to us with regard to land, concede to us also with regard to slaves.

227 The Gemara adds: Know that Rabbi Meir holds that one does not take an oath for a claim concerning land, as we learned in a mishna (Shevuot 42b): Rabbi Meir says: There are some matters that have a legal status like that of land, but nevertheless, with regard to oaths they are not treated like land and so one takes an oath with regard to them. But the Rabbis do not concede to Rabbi Meir that this is the halakha. How so? If one claims: I delivered ten vines laden with grapes to you, and the other says: There were only five; Rabbi Meir deems him liable to take an oath of one who admits to

part of a claim. But the Rabbis say: Anything that is attached to the ground has a legal status like that of land, so no oath is taken with regard to them.

228 The Gemara clarifies the scope of the dispute: And Rabbi Yosei bar Ḥanina says: The difference between them is only in a case of grapes that are ready to be picked, as one Sage, Rabbi Meir, holds: They are considered as though they were already harvested, meaning that they are regarded as movable property, with regard to which an oath is taken. And the other Sage, the Rabbis, holds: They are not considered as though they were about to be picked, meaning that they are regarded as land, with regard to which an oath is not taken. Evidently, Rabbi Meir agrees that an oath is not taken concerning land.

229 Rather, actually the mishna can be explained only in accordance with the interpretation of Rabbi Hoshaya, cited above. And with regard to that which posed a difficulty to you, namely that according to his explanation, the novelty of the mishna is only that movable property binds land so that one can be required to take an oath with regard to it, and that halakha is already taught in the mishna in tractate Kiddushin, one can explain that it was necessary to also teach this in the mishna here, because it might enter your mind to say that the garment of a slave is like the slave himself, or that sheaves of a field are like the field itself. If so, there would be no basis to require an oath, even one based on the claims about the garment and sheaves themselves. Therefore, the mishna teaches us that they are considered distinct items and the claims concerning them require the seller to take an oath which can then be extended to require an oath for the claim concerning the slave or land.

230 § The Gemara analyzes one of the clauses of the baraita cited above: In a case in which it is unclear when the cow or maidservant gave birth, if this one says: I do not know what happened, and that one says: I do not know what happened, they divide the value of the offspring between them. The Gemara asks: In accordance with whose opinion is this? It is in accordance with the opinion of Sumakhos, who says: When there is property of uncertain ownership, the parties divide it equally between them.

231 The Gemara questions this attribution: If so, say and try to explain accordingly the latter clause of that baraita: If this seller says: The birth occurred while the cow or maidservant was still in my possession, and that buyer says: The birth occurred after the cow or maidservant was already in my possession, then the seller takes an oath stating that it gave birth in his possession, and he is then entitled to take the offspring. The Gemara explains the difficulty: But according to the opinion of Rabba bar Rav Huna, who says: Yes, Sumakhos said his ruling even in a case in which there is a conflict between a certain claim and a certain claim, why does the mishna rule that the seller takes an oath; the mishna should have ruled that they divide the value of the disputed offspring between them.

232 The Gemara answers: Sumakhos concedes that where there is a requirement for one of the parties to take an oath required by Torah law, that the disputed amount is not divided. And furthermore, this is not a case in which the seller could say: Here you are, because the case is where after the sale, the seller severed the slave’s hand, just like in the explanation of Rava above.

233 MISHNA: In the case of one who sells his olive trees to another so he can chop them down and use them for their wood, and before he chopped them down they yielded olives, if the olives are of a quality that could provide the value of less than a quarter-log of oil per se’a of olives, these olives are the property of the new owner of the olive trees, i.e., the buyer.

[234] If they yielded olives that could provide the value of a quarter-log or more of oil per se’a of olives, and this one, the buyer, says: My olive trees yielded the olives and so I have a right to them, and that one, the seller, says: The nourishment from my land yielded the olives and so I have a right to them, then they divide the olives between them.

[235] In the event that a river swept away one’s olive trees and deposited them in the field of another, and they took root there and yielded olives, this one, i.e., the owner of the trees, says: My olive trees yielded the olives and so I have a right to them, and that one, i.e., the owner of the field, says: The nourishment from my land yielded the olives and so I have a right to them, then they divide the olives between them.

[236] GEMARA: The Gemara asks: What are the circumstances of the sale? If this is a case where before the sale the seller said to the buyer: Cut down the trees immediately, then clearly he is particular that the buyer not derive benefit from the nourishment provided by his land. Therefore, even if the olives yielded could provide less than the value of a quarter-log of oil per se’a of olives, they will belong to the owner of the land, i.e., the seller. Conversely, if the case is where he said to him: Cut down the trees whenever you want, then it is clear that he is not particular about the buyer deriving benefit from the nourishment provided by his land. Therefore, even if the olives yielded could provide the value of a quarter-log or more of oil per se’a of olives, they will belong to the owner of the olive trees, i.e., the buyer.

[237] The Gemara explains: No, the ruling is necessary in a case where the seller said to him to cut down the trees, without specification about when he should do so. Accordingly, if the olives yielded produce less than the value of a quarter-log of oil per se’a of olives, then since people are generally not particular to receive their share of such olives, the buyer may keep them. But where the olives yielded produce the value of a quarter-log or more of oil per se’a of olives, people are generally particular to receive their share of such olives; consequently, they divide the olives between them.

[238] Rabbi Shimon ben Pazi says: And the value of the quarter-log that they mentioned in the mishna

[239] is exclusive of the expense of processing the olives to produce oil.

[240] § The mishna teaches: In the event that a river swept away one’s olive trees and deposited them in the field of another, and they took root there and yielded olives, then the olives are divided between the owner of the trees and the owner of the field. Ulla says that Reish Lakish says: They taught this only about a case where the olive trees were uprooted and relocated together with their clods of earth in which they grew; and the ruling is with regard to olives that grew after three years since the trees took root in the new field. After three years there is no longer any prohibition of orla (see Leviticus 19:23) on the olives even if one presumes that the olives were nourished from the field owner’s land.

[241] But during the first three years after the trees took root in the new field, everything that grows is the property of the owner of the olive trees, as he can say to the owner of the field: Even if you had planted the trees yourself at the time that they took root in your field, would you have eaten the olives during the first three years? If you claim that the nourishment from your land yielded the olives, the olives will be prohibited as orla. The only reason for them to be permitted is if it is assumed that they were nourished only from the clods of earth in which they were initially planted over three years ago, in which case they should belong entirely to me, as the owner of both the trees and the clods.

[242] The Gemara asks: But let the owner of the field say to him: If I had uprooted your trees from my field and instead planted my own trees, then after three years I could have consumed all of the olives yielded by them. Now that I let your trees remain and so you have a right to consume half with me, in return I should be entitled to half the yield during the first three years as well.

[243] The Gemara suggests another interpretation: Rather, when Ravin came from Eretz Yisrael to Babylonia he said in the name of Reish Lakish: They taught this only about a case where the olive trees were uprooted and relocated together with their clods of earth in which they grew, and the ruling is with regard to olives that grew during the first three years since the trees took root in the new field. But after the first three years, everything that grows is the property of the owner of the land, as he can say to the owner of the trees: If I had uprooted your trees from my field and instead planted my own trees, then after three years, could I not have consumed all of the olives produced by them?

[244] The Gemara asks: But let the owner of the trees say to him: Even if you had planted trees yourself at the time my trees took root in your field, then during the first three years you would not have consumed their fruit at all. How, then, can you come now and claim you are entitled to consume half of the olives together with me during those first three years? The Gemara answers: He has a right to demand half of the olives due to the fact that the owner of the field can say to the owner of the trees: If I had uprooted your trees from my field and instead planted my own trees, they would be slender plants that do not cast heavy shadows, and I would have planted chard [silka] and vegetables underneath the trees and made a significant profit. Since, instead, I let your trees remain, in return I should be entitled to half of the fruit during the first three years.

[245] § The Sages taught in a baraita: If the other one, the owner of the trees, said: I am uprooting and taking my olive trees back, the court does not listen to him. What is the reason? Rabbi Yoḥanan said: Due to the desire to promote the settling of Eretz Yisrael, it is inappropriate to uproot trees. Upon hearing this ruling, Rabbi Yirmeya said: For rulings such as this, it is necessary to have a great Sage explain it, as that reason is not self-evident.

[246] We learned in a mishna there (Demai 6:2): Rabbi Yehuda says that one who receives a field of his ancestors from a gentile under a sharecropping agreement, i.e., he is granted the right to cultivate the land and keep its produce in return for giving a portion of the produce to the gentile owner, must first tithe the produce grown in that field and only then give the gentile his portion from among the tithed produce.

[247] Initially, when the Sages studied this mishna, they assumed the following interpretation: What is the meaning of: A field of his ancestors? It is a reference to any field in Eretz Yisrael. And why did they call it: A field of his ancestors? Because it is a field of his forefathers, Abraham, Isaac, and Jacob.

[248] According to this interpretation, the mishna is referring to a field which was legitimately acquired by the gentile and to which the Jew has no claim. The Gemara explains why the Jewish sharecropper is required to tithe the produce he will give the landowner: And the reason the sharecropper tithes that produce is that the tanna holds that a gentile’s acquisition of land in Eretz Yisrael does not abrogate its sanctity with regard to separating tithes from its produce.

[249] And Rabbi Yehuda also holds that the obligation of one who receives a field of his ancestors, i.e., a sharecropper, to pay the landowner is like that of a tenant farmer, i.e., just as a tenant farmer,

whether the field produces a crop or whether it does not produce a crop, is required to procure produce from somewhere, tithe it, and then give it to the landowner, as he is like one paying his debt, so too, one who receives, i.e., a sharecropper, is also like one paying his debt, and he must consequently first tithe the produce and then give it to the landowner. Since his obligation to the landowner is regarded as a debt, apparently before the produce is given to the landowner, it belongs to the tenant farmer or sharecropper, who is therefore required to tithe it.

250 Rav Kahana said to Rav Pappi, and some say that he said it to Rav Zevid: But this explanation is challenged by that which is taught in a baraita: Rabbi Yehuda says that one who receives a field of his ancestors under a sharecropping agreement, from a gentile oppressor who seized it, first tithes produce and then gives the gentile his portion. According to the Sages' initial understanding, why does the baraita specifically refer to an oppressor who stole the land? Even if the gentile was not an oppressor, the ruling of the baraita would also apply.

251 Rather, the tanna of the mishna holds that a gentile's acquisition of land in Eretz Yisrael abrogates its sanctity with regard to separating tithes from its produce, and he also holds that the obligation of one who receives, i.e., a sharecropper, to pay the landowner is not like that of a tenant farmer. Since under the sharecropping arrangement the landowner retains a percentage stake in the yield, when the sharecropper provides the landowner with a portion of the produce, he is not considered to be paying a debt to him, but simply to be providing the landowner with the latter's own produce. Therefore, fundamentally the sharecropper should not have to tithe the produce before giving it to the landowner. The requirement to do so is a fine the Sages imposed upon him, as the Gemara will explain.

252 And, according to this explanation, what is the meaning of: A field of his ancestors? It is referring to a field that belonged to his actual ancestors, of whom he is their heir, and it was then seized by a gentile. And it is only him whom the Sages penalized and required to take tithes from produce before giving it to the gentile oppressor, as, since the land is dear to him, he will more readily go and receive it in a sharecropping arrangement from the gentile, despite the Sages' requirement. But with regard to another person of the world at large, the Sages did not penalize him, as no one else would be willing to receive the land under such disadvantageous terms.

253 This explains why the Sages limited the fine to a person who has an ancestral claim to the field, but what is the reason that the Sages penalized him? Rabbi Yoḥanan says: It was in order to encourage him to purchase the field, so that it will be clearly in his possession. The disadvantageous conditions will make it preferable for him to purchase the land outright from the gentile instead of entering into a sharecropping arrangement with him.

254 Upon hearing this ruling, Rabbi Yirmeya said: For rulings such as this, it is necessary to have a great Sage to explain it.

255 § An amoraic dispute was stated with regard to one who entered another's field and planted trees in it without the permission of the owner of the field. Since the owner of the field profits from the planter's actions, he is required to pay him. Rav says: The court appraises both the expenses for the one who planted the trees and the value of the improvements and the planter is at a disadvantage, i.e., the owner of the field pays the lesser of the two amounts. And Shmuel says: The court estimates how much a person would be willing to give for someone to plant trees in this field, and that is how much the owner of the field must pay.

256 Rav Pappa said: And Rav and Shmuel do not disagree. Here, Shmuel's ruling is with regard to a field that is designated for planting, while there, Rav's ruling is with regard to a field that is not designated for planting.

257 The Gemara notes: And this ruling of Rav was not stated explicitly; rather, it was stated implicitly. As there was a certain person who came before Rav after someone had planted trees in that person's field. Rav said to him: Go and have the court appraise both the expenses for the one who planted the trees and the value of the improvements. The owner of the field said to him: I do not want these trees; why should I pay for them? Rav said to him: Go and have the court appraise both the expenses for the one who planted the trees and the value of the improvements, and he is at a disadvantage, i.e., you are obligated to pay him only the lesser of the two amounts. The owner of the field again said to him: I do not want these trees; why should I pay for them? Rav did not persist with his ruling, indicating that he conceded that the owner of the field was not obligated to pay.

258 Eventually, Rav saw that the owner of the field had fenced in the field and was safeguarding the trees. Rav said to him: By doing so you have demonstrated your opinion that having those trees in your field is satisfactory to you. Therefore, I rule that you should go and have the court appraise both the expenses for the one who planted the trees and the value of the improvements, and he has the advantage, i.e., you are obligated to pay him the greater of the two amounts.

259 § An amoraic dispute was stated with regard to one who entered another's ruin and built it up using his own materials but without the landowner's permission, and then later, the builder said to the landowner: I will dismantle the structure and take my timber and my stones back. Rav Naḥman says: The court listens to him and he is allowed to do so. Rav Sheshet says: The court does not listen to him and he is not allowed to do so.

260 The Gemara raises an objection to Rav Naḥman's ruling from a baraita (Tosefta, Bava Kamma 10:6) about the same case: Rabban Shimon ben Gamliel says: Beit Shammai say that the court listens to him, and Beit Hillel say that the court does not listen to him. The Gemara explains the difficulty posed: Shall we say that Rav Naḥman said his ruling in accordance with the opinion of Beit Shammai? That is untenable, as this is not listed as one of the specific exceptions to the principle that the halakha is always in accordance with the opinion of Beit Hillel.

261 The Gemara answers: Rav Naḥman states his opinion in accordance with the opinion of that tanna, i.e., Rabbi Shimon ben Elazar, as it is taught in a baraita: According to both Beit Hillel and Beit Shammai, the court listens to him; this is the statement of Rabbi Shimon ben Elazar. Rabban Shimon ben Gamliel says: Beit Shammai say that the court listens to him, and Beit Hillel say that the court does not listen to him.

262 The Gemara inquires: What halakhic conclusion was reached about this matter? Rabbi Ya'akov said that Rabbi Yoḥanan said:

263 In the case of a house, the court listens to him, but in the case of a field, the court does not listen to him.

264 The Gemara asks: In the case of a field, what is the reason that the court does not listen to him? It is that due to the desire to promote the settling of Eretz Yisrael, it is inappropriate to uproot trees. There are those who say that it is for a different reason: It is due to the weakening of the land already caused by the tree roots, as it made the land unsuitable for other uses. Therefore, the owner of the

trees may not just take them and leave the land in its worsened condition. The Gemara asks: What is the practical difference between these reasons? The practical difference between them is whether outside of Eretz Yisrael, the one who planted the trees may uproot them.

265 MISHNA: In the case of one who rents out a house in a town to another in the rainy season, the owner cannot evict the renter from the house from the festival of Sukkot until Passover. If the rental was in the summer, he must give thirty days' notice before he can evict him. And for a house located in the cities [uvakerakim], both in the summer and in the rainy season he must give twelve months' notice. And for shops that he rented out, both in towns and in cities, he must give twelve months' notice. Rabban Shimon ben Gamliel says: For a baker's shop or a dyer's shop, one must give three years' notice.

266 GEMARA: The Gemara asks: What is different about the rainy season that one cannot evict his renter? The Gemara suggests: Because when a person rents a house during the rainy season, it is presumed that he rents it for the entire rainy season. The Gemara challenges this: But in the summer as well, the same halakha should apply, because when a person rents a house, he rents it for the entire summer. The Gemara offers a different explanation: Rather, in the rainy season, this is the reason that he cannot evict him: It is because at that time, houses for renting are not found on the market. Since alternative housing is not available, even if he is renting the house month by month, one cannot evict him.

267 The Gemara asks: If that is the reason for the first clause of the mishna, say and try to explain accordingly the latter clause that states: And for a house located in the cities, both in the summer and in the rainy season, one must give twelve months' notice. It arises from this ruling that if the twelve month rental period would be completed during the rainy season, he could evict him then. But why is this acceptable, given that houses for renting are not found on the market at that time?

268 Given this difficulty, the Gemara offers a different interpretation of the mishna: Rav Yehuda said: The mishna teaches about the requirement to give notice before eviction, and this is what it is saying: Although in general in a case of one who rents out a house to another without specification of when the rental period will end, both the landlord and the renter can end the rental whenever they so decide, the landlord cannot evict the renter during the rainy season, i.e., from the festival of Sukkot until Passover, unless he gives him notice of thirty days from the outset, i.e., before the rainy season begins. Since it would still be summer, it would be possible for the renter to find alternate housing. But if a fixed rental period was agreed upon, the renter may be evicted upon its completion without prior notice.

269 This is also taught in a baraita: When they said, in the mishna: Thirty days, and when they said: Twelve months, they said it only with regard to the requirement to give notice before eviction. And just as a landlord needs to give notice to his renter before he evicts him, so too a renter needs to give notice to his landlord before he can terminate the rental. The Gemara explains why the renter must give notice: As the landlord can say to him: Had you given me notice, I would have exerted myself to find and settle a respectable person in my house.

270 Rav Asi says: If one day of the rental enters into the rainy season without notice being given, then the landlord cannot evict the renter from the festival of Sukkot until Passover. The Gemara challenges this: But didn't we say that he must be given thirty days' notice? Rav Asi's ruling indicates that if notice was given even a day before Sukkot, that would be sufficient. The Gemara

explains: This is what Rav Asi is saying: If one day of these thirty days of notice enters into the rainy season without notice being given, i.e., if notice was given fewer than thirty days before Sukkot, then the landlord cannot evict the renter from the festival of Sukkot until Passover.

[271] Rav Huna said: And if the landlord comes to increase the rental fee, he may increase it without prior notice. Rav Naḥman said to him: One who does so is like this person who grabbed another by his testicles so that he would relinquish his cloak, i.e., he has not provided the person with a true choice. By increasing the rent, one is effectively evicting him and so he should have to give thirty days' notice. The Gemara defends Rav Huna's opinion: No, the ruling is necessary in a case where the rental of houses became more expensive. Since the landlord would lose out by preserving the rent, it is acceptable for him to increase the rent without prior notice.

[272] § It is obvious that if the house in which the landlord lives fell down, then he can evict his renter from the house that he is renting to him, without giving notice, as he can say to him: You are no better than me. Since the landlord needs to find a new house to live in, he can demand that he should move into his rental property and it should be his renter who must look for new housing. He cannot be expected to have given notice, as he could not have foreseen that his house would fall down.

[273] If a landlord sold the rental property to another, or bequeathed it to his heirs, or gave it to another person as a gift, the renter can say to the new owner: You are no better than the person from whom your ownership of the property came. Since he was required to give me notice before evicting me, so must you.

[274] If a landlord marries off his son, and wishes to evict his current renter to provide a home for the newly married couple, then we see: If it was possible for him to have given notice, as the couple had already been engaged for some time, then he is required to give notice and cannot evict his renter otherwise, but if it was not possible to give timely notice, then he can say to his renter: You are no better than me and my needs. I need the property now for my son, so it should be you who should go and find alternate housing.

[275] The Gemara relates: There was a certain man who purchased a boat laden with wine. He was unable to find a place to store it. He said to a certain woman: Do you have place to rent to me? She said to him: No. He was aware that she did own a suitable place, so he went and betrothed her, and then she gave him a lease on the place for him to bring in his wine there. He went back to his home and wrote a bill of divorce for her, which he then sent to her. Upon receiving the bill of divorce and realizing that the betrothal had been nothing more than a ruse, she went and hired porters, paying them from the wine itself, and instructed them to take the wine out of her place and put it on the road. Upon being presented with this case, Rav Huna, son of Rav Yehoshua, said, paraphrasing Obadiah 1:15: Like he did, so shall be done to him, his repayment shall come back on his head; she was entitled to do as she did.

[276] The Gemara explains Rav Huna's ruling: It is not necessary to state that the woman is entitled to evict the man if the place she rented out to him was a courtyard that did not stand to be rented out, in which case she is not expected to rent it to anyone; rather, even if it was a courtyard that stands to be rented out, she could say to him: It is amenable for me to rent the place to everyone else, but it is not amenable to me to rent it to you, as you are to me like a preying lion. Since you deceived me, I do not wish to have any dealings with you.

277 § The mishna teaches: Rabban Shimon ben Gamliel says: For a baker’s shop or a dyer’s shop, one must give three years’ notice. It was taught in a baraita (Tosefta 8:27): The need for this unusually long period of notice is due to the fact that the length of the credit extended by these businesses to their customers is extensive. They must be provided with enough time to collect their debts before being forced to relocate.

278 MISHNA: If one rents out a house to another, the landlord bears the responsibility for providing the door, for providing the bolt, for providing the lock, and for providing every item in the house that is essential for normal living and requires the work of a craftsman to provide it. But with regard to an item that does not require the work of a craftsman, the renter is responsible to make it.

279 The manure found in the courtyard of a rented house is the property of the landlord, and the renter has rights only to the ashes that come out of the oven and the stove, which can also be used as a fertilizer.

280 GEMARA: The Sages taught in a baraita: If one rents out a house to another, the landlord bears the responsibility to install doors for it, to open windows in its walls to provide light for it, to strengthen its ceiling, and to support its cross beam. And the renter bears the responsibility to make a ladder for it to provide access to the roof, to erect a parapet for its roof (see Deuteronomy 22:8), to construct a gutter for it to carry away rain which falls on the roof, and to plaster its roof so that rain does not leak through it.

281 The students in the study hall raised a dilemma before Rav Sheshet: Upon whom is the obligation to affix a mezuza (see Deuteronomy 6:9)? The Gemara expresses surprise at the question: Why did they ask about a mezuza; doesn’t Rav Mesharshiyya say: Affixing a mezuza is the obligation of the resident? It is certainly the responsibility of the renter. The Gemara emends the dilemma: Rather, their dilemma was: Upon whom is the responsibility to prepare the place where the mezuza will be affixed, e.g., to bore a slit in a stone doorpost to insert the mezuza there?

282 Rav Sheshet said to them: You learned this in the mishna: With regard to an item that does not require the work of a craftsman, the renter is responsible to make it. And this task is also something that does not require the work of a craftsman, as it is possible

283 to insert a mezuza inside a hollow reed and then affix the whole arrangement to the doorpost.

284 The Sages taught in a baraita: If one rents out a house to another, the responsibility to prepare a mezuza for it and affix it is upon the renter. And when he leaves, he may not take it in his hand and leave with it; rather, he must leave it there. But if he rented a house from a gentile, he may take it in his hand and leave with it. And there was an incident in which a renter took his mezuza in his hand and left with it, and as a punishment he eventually buried his wife and two sons.

285 The Gemara asks: Was the incident cited to contradict the ruling immediately preceding it, which permits one to take the mezuza? Rav Sheshet said: The incident relates to the first clause.

286 § The mishna teaches: The manure found in the courtyard of a rented house, is the property of the landlord, and the renter has rights only to the ashes that come out of the oven and the stove, which can also be used as a fertilizer. The Gemara asks: With what are we dealing? If we say that the mishna is referring to a courtyard that is rented out to the renter, or where the manure was produced by the oxen of the renter, then why should it be the property of the landlord? It is clearly the property of the renter. Rather, the mishna must be referring to a courtyard that is not rented out to the renter,

and the manure was produced by the oxen of the landlord. The Gemara asks: But if so, the ruling is obvious and need not have been taught.

[287] The Gemara answers: No, the ruling is necessary in a case where the manure is in a courtyard of the landlord, and the source of the manure was oxen that came from the world at large and stood in the courtyard and produced the manure. The mishna rules that in such a case, the manure belongs to the landlord.

[288] The Gemara suggests: That ruling in the mishna that any manure deposited in the landlord's courtyard belongs to him supports the ruling of Rabbi Yosei, son of Rabbi Ḥanina, as Rabbi Yosei, son of Rabbi Ḥanina, says: A person's courtyard effects acquisition for him of an item placed in it, even without his knowledge.

[289] The Gemara raises an objection to this ruling from a baraita: If one says: Any lost items that come into my courtyard today, my courtyard should effect acquisition of them for me, he has not said anything of legal significance, and does not acquire those items. The Gemara explains the objection: And if it is so, that this ruling that Rabbi Yosei, son of Rabbi Ḥanina, says is correct, i.e., that a person's courtyard effects acquisition for him of an item placed in it, even without his knowledge, then why has he not said anything of legal significance?

[290] The Gemara resolves the difficulty: With what are we dealing here in the baraita? We are dealing with a courtyard that is not secured, as the halakha is that such a courtyard does not effect acquisition of items for its owner.

[291] The Gemara questions this resolution: If so, say and try to explain accordingly the latter clause of the baraita that states: If knowledge of the existence of that lost item spread through the town, his statement stands and his courtyard acquires it. The Gemara explains the difficulty: And if the baraita is referring to a courtyard that is not secured, even where knowledge of the existence of that lost item spread through the town, what of it? Such a courtyard is unable to effect acquisition for its owner of items placed in it.

[292] The Gemara answers: Once knowledge of the existence of that lost item spreads though the town, people withdraw themselves from it, as they assume that the owner of the courtyard will take it. Therefore, no one will even try to take it and the courtyard will be like a secured courtyard which can effect acquisition of items for its owner.

[293] The Gemara raises an objection to Rabbi Yosei's ruling from a baraita: Refuse of the oven and of the stove, i.e., ashes, and that which is collected in the renter's vessel from the airspace of the courtyard, is the renter's property. And refuse that is in the cowshed and in the courtyard, i.e., the manure, is the property of the landlord. The Gemara explains the question: And if it is so, that this ruling that Rabbi Yossi, son of Rabbi Ḥanina, says is correct, i.e., that a person's courtyard effects acquisition for him of an item placed in it even without his knowledge, then with regard to refuse collected from the airspace of the courtyard, why is it the renter's property? It was first in the airspace of the landlord's courtyard, and should consequently be acquired by him immediately.

[294] Abaye said: The baraita is referring to a case where the renter attached his vessel to a cow's rear. Any manure produced by the cow would immediately enter the renter's vessel, without first entering the airspace of the courtyard, and the renter would consequently acquire it.

[295] Rava said: An item in the airspace of a courtyard that will not eventually come to rest in the courtyard itself is not regarded as though it had come to rest. Accordingly, even if the refuse traveled through the airspace of the courtyard, since it was always on course to enter the renter's vessel, it is not acquired by means of the landlord's courtyard.

[296] The Gemara asks: And is this principle really so obvious to Rava? But didn't he raise it as a dilemma? As Rava raised a dilemma: If one cast a purse through this doorway of a house and it went through the house and exited through that doorway, what is the halakha? Is an item in the airspace of a courtyard that will not eventually come to rest in the courtyard itself regarded as though it had come to rest, or is it not regarded as though it had come to rest?

[297] The Gemara explains that Rava's dilemma concerned a different case: There, in the case of the purse, nothing at all interposes between the purse and the floor of the house, and therefore Rava was unsure about the halakha. Here, where the renter's vessel interposes, it was obvious to Rava that the renter's vessel effects acquisition of the item.

[298] The Gemara analyzes the latter clause of the above cited baraita: And refuse that is in the cowshed and in the courtyard is the property of the landlord. The Gemara asks: Can these two statements coincide? By stating that the refuse in the cowshed belongs to the landlord, it indicates that the refuse in the courtyard belongs to the renter. How, then, can the baraita continue to rule that even the refuse in the courtyard belongs to the landlord?

[299] Abaye said that this is what the baraita is saying: And refuse that is in the cowshed that is located in the courtyard rented out to the renter is the property of the landlord. Extrapolating from Abaye's statement, Rav Ashi said: That is to say that one who rents out his courtyard without specification of what is included in the rental agreement has not rented out a cowshed that is located in it.

[300] The Gemara raises an objection to Rabbi Yosei's ruling from another baraita: There is a mitzva to dispatch a mother bird if one wishes to take eggs from her nest (Deuteronomy 22:6–7). The mitzva applies only if the bird and eggs are ownerless. Doves of a dovecote and doves of an attic are subject to the obligation of dispatching the mother bird, as they are ownerless. Nevertheless, they are subject to the prohibition of robbery, due to a rabbinic ordinance to maintain the ways of peace.

[301] The Gemara explains the question: And if it is so, that this ruling that Rabbi Yosei, son of Rabbi Ḥanina, says is correct, i.e., that a person's courtyard effects acquisition for him of an item placed in it even without his knowledge, then a dovecote or attic will effect acquisition for its owner of any eggs inside them. Accordingly, one should apply here the principle that the mitzva to dispatch the mother bird from upon her nest applies only: "If it happened before you" (Deuteronomy 22:6) which excludes a bird or egg that is readily accessible, such as one that one owns, from the mitzva to dispatch the mother. Yet the baraita rules that the mitzva does apply in this case.

[302] Rava said: It is from the time of the emergence of the majority of an egg from a mother bird's body that one becomes subject to the obligation of dispatching her from upon her eggs. And the owner of a courtyard does not acquire the egg until it fully emerges and falls into his courtyard. And therefore, when the baraita teaches that in the case of doves of a dovecote and of an attic, one is subject to the obligation of dispatching the mother bird, it is referring to a time before the egg falls into his courtyard.

[303] The Gemara asks: If that is so, that the baraita is referring to a case where the egg has not fully emerged, why does the baraita rule that they are forbidden by rabbinic law for others to take due to the prohibition of robbery? The Gemara answers: That ruling of the baraita is referring to their mother, i.e., the mother bird.

[304] And if you wish, say instead: Actually, that ruling is referring to the eggs, and the reason the Sages enacted that taking them is robbery is because once the majority of an egg emerges, the dovecote or attic's owner's mind is upon the eggs to acquire them, although technically he will not acquire them until they fully emerge.

[305] And now that Rav Yehuda says that Rav says: It is prohibited to acquire the eggs as long as the mother bird is upon them, as it is first stated: "Send away the mother" and only then: "And take the young for yourself" (Deuteronomy 22:7), even if you say that the eggs fully emerged and fell into his courtyard, he will not acquire them, because in any case in which a courtyard owner is able to acquire an item by himself, his courtyard can effect acquisition of it for him, but in any case in which he is unable to acquire an item by himself, his courtyard cannot effect acquisition of it for him either.

[306] The Gemara asks: If that is so, that the baraita is referring to a case where the courtyard cannot effect acquisition of the eggs for him, why does the baraita rule: They are subject to the prohibition of robbery, due to a rabbinic ordinance to maintain the ways of peace? If one dispatched the mother bird, in which case the courtyard would automatically effect acquisition of the eggs, then taking them would be full-fledged robbery, and if one did not dispatch the mother bird, doesn't he need to dispatch her before it is permitted to take the eggs? Either way, one will have transgressed Torah law. Why, then, does the baraita refer to a rabbinic prohibition of robbery, rather than one by Torah law?

[307] The Gemara answers: The baraita is referring to a minor, who is not subject to the mitzva of dispatching the mother bird. The Gemara challenges this answer based on the latter clause of the baraita: Is a minor subject to the rabbinic prohibition of robbery enacted to maintain the ways of peace? The Gemara explains: This is what the latter clause of the baraita is saying: The father of a minor who took such eggs is obligated to return them to the owner of the dovecote or attic, due to the rabbinic prohibition of robbery instituted to maintain the ways of peace.

[308] MISHNA: In the case of one who rents out a house to another for a year and then the year was intercalated, adding an additional month to that year, the fact that it was intercalated is to the benefit of the renter. Since the rental was defined in terms of a year, the additional month is automatically included, and the renter need not pay additional rent for it. If a landlord rented out a house to another for a year, with the price set as a certain sum for each of the months, and then the year was intercalated, the fact that it was intercalated is to the benefit of the landlord.

[309] An incident occurred in Tzippori involving one who rented a bathhouse from another where they stated that the rent would be: Twelve gold dinars per year, a gold dinar per month, and then the year was intercalated.

[310] And this incident came to court before Rabban Shimon ben Gamliel and before Rabbi Yosei, and they said: The two expressions have contradictory implications, and it is uncertain which expression should be followed. Therefore, the landlord and the renter should divide the intercalary month between them, i.e., the renter should pay half a gold dinar for it.

311 GEMARA: The Gemara asks: Was an incident cited to contradict the mishna’s initial ruling? The Gemara explains: The latter clause is incomplete and this is what it is teaching: But if the landlord said to the renter that the rent would be: Twelve gold dinars per year, a gold dinar per month, and then the year was intercalated, the intercalary month should be divided between them. And in addition, an incident like this occurred in Tzippori involving one who rented a bathhouse from another, and they stated that the rent would be: Twelve gold dinars per year, a gold dinar per month, and then the year was intercalated. And this incident came to court before Rabban Shimon ben Gamliel and before Rabbi Yosei, and they said: The landlord and the renter should divide the intercalary month between them.

312 Rav said: If I had been there, as a judge, I would have given the entire month to the landlord and ruled that the renter must pay for it. Rav understood that the statement defining the rent should be understood based on the final expression used, i.e., a gold dinar per month.

313 The Gemara asks: What is Rav teaching us? Could he be teaching that when a statement consists of two expressions with contradictory implications one should attend only to the last statement?

314 But didn’t Rav already say that one time before, as Rav Huna said with regard to a case in which a seller fixed the price for an item using two different expressions that indicate different amounts and the buyer agreed and took the item: They say in the study hall of Rav that if the seller said: An asteira, one hundred coins, i.e., copper perutot, then the buyer must pay him one hundred coins, despite the fact that an asteira is a coin worth ninety-six perutot. And if the seller said: One hundred coins, an asteira, the buyer must pay him an asteira. It is already apparent from this ruling that Rav holds that one should rule according to the final expression. Why did he restate his opinion with regard to the case of the intercalary month?

315 The Gemara explains: If Rav’s opinion were known from there, I would say that the second expression is explaining the first, and that is the reason to follow it. But one would still not know the halakha in a case in which the second expression undeniably contradicts the first. Therefore, Rav teaches us that in all cases one acts in accordance with the final expression.

316 And Shmuel said in explanation of the ruling of Rabban Shimon ben Gamliel and Rabbi Yosei: In the mishna, we are dealing with a case where the landlord came before the court in the middle of the month. Only in that case is the disputed month divided between them. But if he came at the beginning of the month, the entire month’s rent would be awarded to the landlord, and if he came at the end of the month, the entire month’s rent would be awarded to the renter. The reason is that it is uncertain whether or not one always acts in accordance with the final expression, and, consequently, whether the renter must pay for the extra month. With regard to upcoming days of rental, since the landlord has possession of the property, he can demand rent. And with regard to days that have already passed, where the question is whether the renter must pay for them, since he is in possession of his money, he cannot be made to pay. Shmuel does not hold that only the second statement is followed.

317 The Gemara asks: Did Shmuel actually say that we do not say that one should attend only to the last statement? But don’t Rav and Shmuel both say: If a seller says to a buyer: I am selling you a kor of grain for thirty sela, then he can renege on the sale even while transferring to him the last se’a of grain. As a kor is equal to thirty se’a, it is apparent that each se’a is being sold for one sela, but since that breakdown was not made explicit, the sale of the entire kor is considered as a single entity. Until

the entire kor has been transferred, the sale does not take effect. If the seller used two expressions: I am selling you a kor of grain for thirty sela, a se’a per sela, then the buyer acquires each of the thirty se’a of grain one by one, immediately upon each being transferred to him, and the seller cannot renege on the sale of any se’a that has taken place. Although the implications of the seller’s two expressions are contradictory, Shmuel rules that one should act in accordance with the final expression.

318 The Gemara explains: There, in the case of the grain, Shmuel’s ruling was not due to the fact that we attend to the final expression, since it is uncertain whether or not we do. Rather, what is the reason for his ruling? It is due to the fact that the buyer has already taken hold of the grain and consequently has presumptive ownership of it. Here too, in the case of the bathhouse, each party is holding onto the basis of his claim, i.e., the landlord has possession of his property and the renter has possession of his money, and it is only due to this reason that Shmuel rules as he does.

319 And Rav Naḥman said: I would have ruled that since the halakha is that land is always in its owner’s possession, even when rented out, the landlord is entitled to the entire month’s rent. The Gemara asks: What is Rav Naḥman teaching us? Could his ruling be based on saying that one should attend only to the last statement? But then this is identical to the ruling of Rav. The Gemara clarifies: Rav Naḥman’s ruling is unlike Rav’s, as Rav Naḥman would award the extra month to the landlord even where the order of the two expressions is reversed. Rather, as he explained, his ruling is based on the fact the landlord has possession of the property.

320 § The Sages raised a dilemma before Rabbi Yannai: If a renter says to his landlord: I already gave the rental fee to you, and the landlord says: I did not take any payment from you, upon whom is the burden of proof?

321 The Gemara clarifies the dilemma: When did the renter make his claim? If it was during his rental period, we already learned the halakha in this case and the Sages would not have asked about it. Similarly, if it was after his rental period, we already learned the halakha in that case as well. As we learned in a mishna (Bekhorot 49a): A father is obligated to redeem his firstborn son after the son is thirty days old by paying five shekels to a priest. If the father died within thirty days of the birth, the son has the presumptive status of being unredeemed, until he brings a proof that he was redeemed. If he died after thirty days, the son has the presumptive status of having been redeemed, until people tell him that he was not redeemed. It is apparent from this mishna that a person is presumed not to pay money before he must, and he is presumed to have paid money once he is required to do so. This logic can be applied to the paying of a rental fee.

322 The Gemara explains: No, it is necessary to raise the dilemma in a case where the renter makes his claim on the day on which his rental period is completed. The dilemma is whether a person is apt to pay his debts on the very day on which the period in which to pay them is completed, or he is not.

323 Rabbi Yoḥanan said to them: Also this, you have already learned in a mishna (111a):

324 If a hired laborer claims his wages at the proper time, on the day his wages are due, and the employer claims to have already paid him, the laborer takes an oath that he did not receive his wages and takes his wages. So too, in the case of rent, if the landlord demands payment, and the renter claims to have paid, the landlord should be able to take an oath and then take the payment.

[325] The Gemara explains: Generally, one takes an oath to exempt oneself from paying, not to collect. And it is specifically in the case of a hired laborer that the Sages imposed an oath upon him, due to the fact that the employer is busy with his workers and might mistakenly think he paid a particular worker when in fact he had paid a different one. But here, in the case of rent, where there is no such concern, the renter is deemed credible that he already paid the rent, provided that he takes an oath.

[326] § Rava says that Rav Naḥman says: In the case of one who rented out a house to another for ten years and had written him an undated document attesting to that fact, and later the landlord said to the renter: You have already taken five years of your rental period, he is deemed credible. The burden of proof is not on the landlord, and the renter cannot use the document to demonstrate that he has a right to rent for ten more years. Rav Aḥa of Difti said to Ravina: If that is so, then if one lent a hundred dinars to another, with a promissory note, and later, the borrower said to him: I have already repaid you half the loan, so too should he be deemed credible? This is not the halakha.

[327] Ravina said to him: How can these cases be compared? There, in the case of the loan, the promissory note exists to allow the lender to collect the debt, and if it is so that the borrower repaid part of the debt, the lender should have written that fact on the note itself; alternatively, he could have written a receipt to enable the borrower to prove he had paid. But here, in the case of rent, the landlord could say to the renter: The fact that I wrote the document for your rental of the property was only in order to ensure that you would not be able to establish a presumptive ownership of the property and thereby be able to claim it belongs to you. Therefore, the bill cannot be used to prove that the renter has a right to occupy the property.

[328] § Rav Naḥman says: A person may borrow another’s utensil in its good working order forever, i.e., if he requests to borrow it as long as it is in good working order, then even after returning it to the owner, he may continue to take it and use it indefinitely and the owner cannot prevent him from doing so.

[329] Rav Mari, son of the daughter of Shmuel, said: And that is only if he performed an act of acquisition concerning this right with the owner. Otherwise, once he returns the utensil to the owner, he can no longer borrow it again without his consent.

[330] Rav Mari, son of Rav Ashi, said: And if the utensil breaks, the borrower may no longer keep it but must return its handle, i.e., the remaining parts, to the owner.

[331] Rava says: In the case of one who says to another: Lend me a hoe in order to dig up this orchard, he may use it only to dig up that orchard that he specified. If he said: Lend it to me to dig up an orchard, then he may use it to dig up any one orchard that he desires. If he said: Lend it to me to dig up orchards, then he may use it to dig up all the orchards he has, however numerous they are. And in all these cases, if it breaks, he must return its handle, i.e., the remaining parts, to the owner.

[332] Rav Pappa says: In the case of one who says to another: Lend me this well for me to use to irrigate my fields, and then its walls fell down, the borrower may not rebuild it and then use it, as he had specified that he was borrowing that particular well. If he said: Lend me a well, and then its walls fell down, the borrower may rebuild that well and use it, but may not take a different well. If he said: Lend me a place in your land for a well, he may continually dig many different wells in the lender’s land until he happens upon a water source that is suitable for his needs. But in order to have this indefinite right, he needs to perform an act of acquisition concerning this right with the owner.

[333] MISHNA: In the case of one who rented out a house to another, and then the house fell, the landlord is obligated to provide the renter with another house. If the original house was small, the landlord may not construct a large house as a replacement, and if the original was large, he may not construct a small house as a replacement. If the original had one room, he may not construct the replacement with two rooms, and if the original had two rooms, he may not construct the replacement with one. He may not reduce the number of windows, nor add to them, except with the agreement of both of them.

[334] GEMARA: What are the circumstances of the mishna's case? If it is a case where the landlord said to the renter: I am renting this house to you, once it has fallen, it has gone and the rental agreement does not obligate the landlord to provide another one. If it is a case where the landlord said to him: I am renting a house to you, without specification, then even if the original house had one room, why may the landlord not construct its replacement with two rooms, and if the original was small, why may the landlord not construct a large house as a replacement?

[335] Reish Lakish said: The case is where he said to him: The house that I am renting to you, the measurement of its length is such and such, and its width is such and such. Since he did not specify a specific house, he is obligated to provide a replacement, but it must be of a similar size and structure.

[336] The Gemara asks: If that is so, what is the purpose of stating this ruling; it is obvious?

[337] Rather, when Ravin came, he said that Reish Lakish said: The case is where he said: I am renting to you a house like this. The Gemara persists: But still, what is the purpose of stating this ruling; it is obvious. The Gemara answers: No, the ruling is necessary where the house the landlord spoke of was standing on the bank of a river. Lest you say that what the landlord meant by saying: A house like this, was that he would provide the renter with a house that stands on the bank of a river, therefore, the mishna teaches us that if he uses such an expression, it is taken to refer to the dimensions and structure of the house.

Chapter 9

[1] MISHNA: With regard to one who receives a field from another to cultivate, either as a tenant farmer, who, in exchange for the right to farm the land, gives a set amount of the produce to the owner, or as a sharecropper, who cultivates the land and receives a set proportion of the produce, the halakha is as follows: In a location where those cultivating the land were accustomed to cut the produce, this one must cut it as well. In a location where they were accustomed to uproot the produce, not to cut it with a sickle or a scythe, this one must uproot it as well. If they were accustomed to plow the land after harvesting the produce, this one must plow as well. All farming of the land shall be conducted in accordance with regional custom. Just as the halakha is that the owner of the field and the one cultivating it divide the produce, so too the halakha is that they divide the stubble and the straw. Just as the halakha is that the owner of the field and the one cultivating it divide the wine, so too the halakha is that they divide

[2] the branches pruned from the vines and the poles. And the two of them, i.e., the landowner and the one cultivating the field, both supply the poles.

[3] GEMARA: It was taught in a baraita: In a location where those cultivating the land were accustomed to cut the produce, the one cultivating this field is not permitted to uproot it, and in a location where they were accustomed to uproot the produce, he is not permitted to cut it. And the two of them, i.e., the owner and the one cultivating the field, can each prevent the other from deviating from the custom.

[4] The Gemara explains the baraita: In a location where those cultivating the land were accustomed to cut the produce, the one cultivating this field is not permitted to uproot the produce even if he wants to, because this one, i.e., the owner, who wants the produce cut, can say: I want my land to be fertilized with stubble, i.e., the remains of the plants. And if the owner wants him to uproot the produce, that one, i.e., the one cultivating the field, can say: I cannot uproot the produce, since that is too labor intensive. Similarly, if the custom is to uproot the produce, the one cultivating this field is not permitted to cut it even if he wants to, because this one, i.e., the owner, who wants the produce uprooted, can say: I want my land to be cleared of stubble. And if the owner wants him to cut the produce, that one, i.e., the one cultivating the field, can say: I want to uproot what remains so that I can use the stubble.

[5] The baraita teaches: And the two of them, i.e., the owner and the one cultivating the field, can each prevent the other from deviating from the custom. The Gemara asks: Why do I need this statement and what is its purpose? The Gemara answers that the baraita is saying what the reason is for its ruling: What is the reason that in a location where those cultivating the land were accustomed to cut the produce, the one cultivating this field is not permitted to uproot the produce, and in a location where they were accustomed to uproot the produce, he is not permitted to cut it? It is because the two of them can each prevent the other from deviating from the custom, as each has a justified reason for opposing the deviation desired by the other.

[6] The mishna teaches: If they were accustomed to plow the land after harvesting the produce, this cultivator must plow as well. The Gemara asks: Isn’t it obvious that he cannot deviate from the custom? The Gemara answers: No, it is necessary for the situation of a place where the custom is not to weed the fields, and the one cultivating this field went and weeded anyway. Lest you say that he could say to the landowner: When I weeded the field, I did so with the intention of not plowing it subsequently. Therefore, he should not be obligated to plow it. To counter this, the mishna teaches us that the renter should have specified this intention explicitly to the landowner beforehand in order to exempt him from the requirement to plow.

[7] The mishna teaches: All farming of the land shall be conducted in accordance with regional custom. The Gemara asks: What is added by the use of the term all? The Gemara answers: It serves to add that which the Sages taught: In a location where landowners were accustomed to rent out the trees in a field together with the land so that the one cultivating the field receives a share of the fruits despite not needing to care for the trees, the trees are presumed to be rented out. In a location where landowners were not accustomed to rent out the trees in a field together with the land, and the one cultivating the field does not receive a share of the fruits, the trees are not presumed to be rented out.

[8] The baraita teaches: In a location where landowners were accustomed to rent out the trees in a field together with the land so that the one cultivating the field receives a share of the fruit despite not needing to care for the trees, the trees are presumed to be rented out. The Gemara asks: Isn’t this obvious? The Gemara answers: No, it is necessary to state this ruling in order to include the case

where everyone in that region gives land to sharecroppers to cultivate in return for one-third of the yield, and he, the landowner, went and gave it for one-quarter. Lest you say that the landowner can say to him: This concession on my part, that I reduced my portion of the yield for you, was done with the intention that I would not give you a share of the fruits of the trees in the field, the baraita teaches us that the landowner should have specified this to him in advance.

[9] The baraita teaches: In a location where landowners were not accustomed to rent out the trees in a field together with the land, and the one cultivating the field does not receive a share of the fruits, the trees are not presumed to be rented out. The Gemara asks: Isn't this obvious? The Gemara answers: No, it is necessary to state this ruling in order to include the case where all the cultivators in that region receive land in return for giving one-quarter of the yield to the owner, and this cultivator went and received the land in return for giving one-third of the yield to the owner. Lest you say that the cultivator can say to him: This concession on my part, that I added to your portion, was done with the intention that you would also give me a share of the fruit from the trees, the baraita teaches us that the cultivator should have specified this to him in advance.

[10] § The mishna teaches: Just as the halakha is that the owner of the field and the one cultivating it divide the produce, so too the halakha is that they divide the stubble and the straw. Rav Yosef said with regard to this statement: In Babylonia those who enter into such arrangements are accustomed not to give stubble to the sharecropper. The Gemara asks: What is the practical difference resulting from the assertion that this is the practice in Babylonia? The Gemara answers: The difference is that if there is a person in Babylonia who gives the sharecropper the stubble in addition to the produce, it is considered merely as though he has a generous disposition, but we do not learn from his actions that this is the general practice.

[11] Rav Yosef says: The first, second, and third elements of the earthen barrier surrounding the field and the poles used to support a thorn fence are the responsibility of the owner of the land, but the fashioning of the thorn fence itself is the responsibility of the sharecropper. The Gemara explains: The principle of the matter is that the main part of the boundary of the field is the responsibility of the owner of the land, while any additional protection required is the responsibility of the sharecropper. Rav Yosef says: The hoe and the shovel and the bucket and the irrigation device must be provided by the owner of the land, while the sharecropper must make the irrigation channels.

[12] The mishna teaches: Just as the halakha is that the owner of the field and the one cultivating it divide the wine, so too the halakha is that they divide the branches pruned from the vines and the poles. The Gemara asks: What is the purpose of the poles used for the vines? They said in the school of Rabbi Yannai: This is referring to long poles that were divided in half, with which they support the vines.

[13] The mishna teaches: And the two of them, i.e., the landowner and the one cultivating the field, both supply the poles. The Gemara asks: Why do I need the mishna to state this? The Gemara answers that the mishna is saying what the reason is for its ruling: What is the reason that the two of them divide the poles? It is because the two of them supply the poles.

[14] MISHNA: In the case of one who receives a field from another to cultivate and it is an irrigated field or a field with trees, if the spring that irrigated the field dried up or the trees were cut down, he does not subtract from the produce he owes the owner as part of his tenancy, despite the fact that he presumably considered these factors when agreeing to cultivate the field. But if the cultivator said to

the landowner explicitly: Lease me this irrigated field, or he said: Lease me this field with trees, and the spring dried up or the trees were cut down, he may subtract from the produce he owes as part of his tenancy.

[15] GEMARA: The Gemara asks: What are the circumstances of the ruling of the mishna? If we say that the large river from which all the channels originate dried up, why does he not subtract from the produce he owes as part of his tenancy? Let the cultivator say that it is the result of a regional disaster. Consequently, he should be able to subtract from the produce he owes. Rav Pappa said: The case in the mishna is where a small river that irrigates this field alone dried up, as the landowner can say to him:

[16] You should have brought water in a bucket.

[17] Rav Pappa said: With regard to these first two mishnayot, you find that they are correct, concerning both tenancy, where the tenant farmer gives a certain amount of produce to the owner and keeps the rest, as well as the case of a contractor, who gives a set proportion, e.g., one-quarter or one-third, of the yield to the owner, and keeps the rest. From this point forward, i.e., from the third mishna of the chapter until its end, that which is relevant to the case of a contractor is not applicable to tenancy, and that which is relevant to tenancy is not applicable to the case of a contractor.

[18] § The mishna teaches: If the cultivator said to the landowner explicitly: Lease me this irrigated field, or he said: Lease me this field with trees, and the spring dried up or the trees were cut down, he may subtract from the produce he owes as part of his tenancy. The Gemara asks: But why is this so? Let the owner say to him: I told you only the name, i.e., the type, of the field, but this does not mean it would actually be irrigated during the time you are cultivating it. Isn’t it taught in a baraita: In the case of one who says to another: I am selling you a beit kor field of dirt, although the field contains only a half-kor, once the buyer purchases the dirt it has come to him, i.e., he may not retract from the transaction, as the seller sold him the dirt only by the name, and he did not mean that its size was precisely a beit kor. The baraita adds: And this is the halakha only where that field is called by people a beit kor.

[19] The baraita continues: Similarly, if he said: I am selling you a vineyard, then although it does not have vines, once he purchases the land it has come to him, as the seller sold him the field only by the name; and this is the halakha only where it is called a vineyard. Likewise, if he said: I am selling you an orchard, then even though it does not have pomegranates, once he purchases the land it has come to him, as he sold him only by the name; and again this is the case only where it is called an orchard. Apparently, the seller can say to him: I told you only the name. So too here, let the seller say to him: I told you only the name.

[20] Shmuel said: It is not difficult; this baraita is comparable to a case where the owner of the land said to the tenant farmer what he was leasing him, while in that mishna the tenant farmer said to the owner of the land what he was leasing from him. The reason for the difference is that if the owner of the land said the terms to the tenant farmer, then he can claim that he told him only the name, and the tenant farmer cannot object. But if the tenant farmer said the terms to the owner of the land, then he was clearly particular to receive a field that would be irrigated when he cultivated it.

[21] Ravina said: Both this baraita and that mishna are referring to a case where the owner of the land told the tenant farmer what he was leasing him, as implied by the mishna, but since the owner said: This irrigated field, by inference we are dealing with one who is standing inside it. Why, then, does

the owner need to state the fact that it is an irrigated field? It is obvious simply from looking at it that it is irrigated. Rather, the owner must have said to him by way of emphasis that he is providing an irrigated field as it currently stands.

[22] MISHNA: With regard to one who receives a field from another as a contractor and then lets it lie fallow and does not work the land at all, the court appraises it by evaluating how much it was able to produce if cultivated, and he gives his share of this amount to the owner. The reason is that this is what a cultivator writes to the owner in a standard contract: If I let the field lie fallow and do not cultivate it, I will pay with best-quality produce.

[23] GEMARA: Rabbi Meir would expound common language used in legal documents written by ordinary Jews to deduce halakhic conclusions. Although these formulations were not prescribed by the Sages, one can nevertheless infer halakhot from them if they are used in legal documents. As it is taught in a baraita that presents a similar case to the mishna: Rabbi Meir says he is liable to pay, as the document states: If I let the field lie fallow and do not cultivate it, I will pay with best-quality produce.

[24] Likewise, Rabbi Yehuda would also expound common language, as it is taught in a baraita: Rabbi Yehuda says: In a case where a woman who has given birth is commanded to bring the offering of a childbearing woman and her husband is sufficiently wealthy, a person brings the offering of the rich on behalf of his wife. This is so even if his wife does not possess money of her own and perhaps should have been considered poor. Similarly, he may bring every offering that she is obligated to bring, such as a sin offering or guilt offering. He pays for all these offerings because this is what he writes to her in her marriage contract: I accept upon myself to repay you for all obligations that you have, even those from beforehand. Consequently, he must fund all of her offerings.

[25] Similarly, Hillel the Elder would expound common language as well, as it is taught in a baraita: The inhabitants of Alexandria would betroth their wives a significant amount of time before the wedding, as was customary in those days, and at the time of their entry to the wedding canopy, others would come and snatch the women from their husbands. The Sages consequently sought to establish the children of these women as mamzerim. This is because with regard to sexual intercourse with other men, a betrothed woman has the status of a married woman. Consequently, if she is taken by another man, her children fathered by that man are mamzerim, just like children of a married woman who were fathered by a man other than her husband.

[26] Hillel the Elder said to the children who came before him for a ruling on their status: Bring me your mother’s marriage contract for examination. They brought him their mother’s marriage contract, and he found that the following formulation was written in it: When you will enter the wedding canopy, be for me a wife. This shows that the marriage would not take effect at the time of her betrothal, but only after she would enter the wedding canopy. Consequently, the marriage did not occur at all, as she never entered the wedding canopy, and therefore these women did not cause their children to be mamzerim by engaging in intercourse with the other man.

[27] The Gemara adds: Rabbi Yehoshua ben Korḥa would also expound common language. As it is taught in a baraita: Rabbi Yehoshua ben Korḥa says: One who lends money to another may not take more collateral from him than the value of his debt, as this is what the debtor writes to the creditor if the creditor temporarily returns a deposit for the debtor’s use: The payment to which you have a

right, which it is upon me to pay, corresponds to the entire value of this item, indicating that the item cannot be greater in value than the debt itself.

[28] The Gemara infers: The reason the creditor acquires the collateral is that he wrote this to him. But if the creditor did not write this to the debtor, would the creditor not acquire the collateral? But doesn't Rabbi Yoḥanan say: If a creditor took collateral from the debtor and returned the collateral to him and then the debtor died, the creditor removes the collateral from the debtor's children. The reason for this is that although movable property of orphans is not acquired by their father's creditor, the collateral is considered to belong to the creditor, and he can collect the debt from it.

[29] The Gemara answers: The writing of this statement in the document is effective for depreciation. If the collateral depreciates in value, the creditor may claim the remainder of the debt from the debtor's property.

[30] § The Gemara continues: Rabbi Yosei would also expound common language, as it is taught in a baraita that Rabbi Yosei says: In a location where they were accustomed to formulate the terms of a marriage contract as one would formulate the terms of a loan, i.e., the precise value of her dowry is written in the marriage contract, then upon the termination of the marriage due to divorce or the husband's death, the wife collects the sum of her dowry as a creditor would collect payment of a loan. In other words, she receives the entire sum recorded as her dowry. Conversely, in a place where the custom is to double the written sum of the dowry in the marriage contract to honor the bride, so that it should appear as though her father is providing her husband with a considerable dowry, she collects only half of the sum written in the marriage contract.

[31] The Gemara relates: The Sages of Neharbela collected, i.e., allowed the wife to collect, one-third of the stated sum, as the custom in their location was to write three times the actual amount of the dowry in the marriage contract. Mareimar would allow the wife to collect even the added value of those sums that the father of the bride had written in the marriage contract in honor of his daughter.

[32] Ravina said to Mareimar: But isn't it taught in the baraita that in a location where the custom is to record double the amount, she collects only half? The Gemara answers: This is not difficult; in this case, where Mareimar allowed the wife to collect the full sum, the husband performed an act of acquisition for the entire written amount with the father of the bride; whereas in that case, where the baraita rules that she collects only a portion of the sum written for the dowry, the husband did not perform an act of acquisition for the entire written amount with the father of the bride. Therefore, the wife would collect the sum of her dowry only in accordance with the regular custom.

[33] The Gemara relates: Ravina wrote an enhancement of the value of the dowry for his daughter in her marriage contract, in keeping with the accepted custom. The groom's family said to Ravina: Let us perform an act of acquisition with the Master, so that he would be required to give that entire sum as the dowry. Ravina said to them: If you wish to perform an act of acquisition, I will not double the sum of the dowry, but will record the actual sum I intend to provide; if you prefer that I record double the sum of the dowry in the marriage contract, I will not allow you to perform an act of acquisition.

[34] The Gemara cites a related incident: There was a certain man who said to his inheritors before his death: Give four hundred dinars to my daughter in her marriage contract. Rav Aḥa, son of Rav Avya, sent the following question to be asked before Rav Ashi: What was that man's intention? Did he mean an actual dowry of four hundred dinars, which are written as eight hundred, or four hundred

dinars written in the marriage contract, which are actually a dowry of two hundred dinars? Rav Ashi said: We examine the matter. If he said: Give her, then he meant to give her four hundred dinars, which are written as eight hundred. But if he said: Write for her, then he meant to write four hundred dinars, which are two hundred in practice.

[35] There are those who say a different version of Rav Ashi's ruling. Rav Ashi said: We examine the matter. If he said: For her marriage contract [likhtubatah], he meant four hundred dinars, which are written as eight hundred, because he indicated that this is the sum he wants to give for her dowry. But if he said: In her marriage contract [bikhtubatah], he was clearly referring to the written amount, and it is assumed that he meant to write four hundred dinars, which are two hundred in practice.

[36] The Gemara comments: And that is not so. There is no difference whether he said: For her marriage contract, and there is no difference whether he said: In her marriage contract. In either case her dowry is written as four hundred dinars, which are two hundred in practice, unless he simply said: Give her, without specification, i.e., without mentioning the marriage contract. In that case the full sum is given as a dowry.

[37] § The Gemara relates another incident: There was a certain man who received land from another to cultivate. He said: If I fail to work the land and instead let it lie fallow, I will give you one thousand dinars. He let one-third of it lie fallow. The Sages of Neharde'a said: The halakha is that he gives him 333⅓ dinars, one-third of the stipulated amount, as compensation for neglecting one-third of the field. Rava said: This kind of agreement is a transaction with inconclusive consent [asmakhta]. And since an asmakhta does not effect acquisition, he need not pay.

[38] The Gemara asks: And according to Rava, in what way is it different from that which we learned in the mishna concerning one who wrote: If I let the field lie fallow and do not cultivate it, I will pay with best-quality produce? The Gemara answers: There he did not exaggerate, but simply said he will pay for the owner's losses from best-quality produce; whereas here, since he said something extra, i.e., he promised to give an excessively large sum of money, he is merely exaggerating. It is therefore not viewed as an actual monetary obligation but an asmakhta.

[39] § The Gemara relates: There was a certain man acting as a sharecropper who received land for planting sesame, which typically weakens the land but yields larger short-term profits, but he planted it with wheat instead. That year, the field produced wheat at a value similar to that of sesame. Rav Kahana thought to say that the owner must deduct the usual amount of the deterioration of the land from planting sesame from his own share, since by planting wheat the sharecropper had spared the owner the damage to his field, while the owner had received the same profit.

[40] Rav Ashi said to Rav Kahana: People say the following proverb: Let the land be weakened, but do not weaken its owner. People prefer a quick profit and discount the damage to their land. Therefore, the sharecropper is not entitled to a larger share of the yield for having spared the owner from the weakening of his field.

[41] The Gemara relates another incident: There was a certain man who received land for planting sesame and he planted it with wheat. Ultimately, it produced more wheat than the usual value of sesame. Ravina thought to say that the owner must give the cultivator the added value that is the difference between this, the actual value of the wheat, and that, the expected value of the sesame. Rav Aḥa of Difti said to Ravina: Is that to say that the cultivator alone enhanced its value, but the land did not help to enhance it? Rather, they should divide the extra sum between them.

42 § A common type of business venture was one where the capital or merchandise was supplied by one person and managed by another, who would receive a share, commonly half of the profits, for his efforts. This arrangement can also be viewed as one where the investor is lending half of the invested capital or merchandise to the manager, with the manager agreeing to supervise the venture in exchange for receiving the loan. In order to avoid violating the prohibition of interest, the investor agrees to accept a greater share of the possible loss, e.g., two-thirds, than of the profits, e.g., one-half. The Sages of Neharde'a said: With regard to its halakhic status, this joint venture is considered a half-loan and half-deposit, as the Sages formulated an enactment that would be satisfactory for the borrower, i.e., the manager, and equally satisfactory for the lender, i.e., the investor.

43 Now that we have said that half of the capital is viewed as a loan, it would appear that the manager may use the money in any way he chooses: If he wants to drink alcohol with it, he may well do so, regardless of any objection on the part of the investor. Rava disagreed and said: It is for this reason that it is called a joint venture, as the investor can say to the manager: When I gave the money to you it was to use it for business and not to drink alcohol with it.

44 Rav Idi bar Avin said: And according to this reasoning, if the manager died, it becomes movable property in the possession of his children. Therefore, it may not be taken from them, as movable property inherited by orphans is liened for the payment of their father's debts. Rava disagreed and said: It is for this reason that it is called a joint venture, so that if he died it does not become movable property in the possession of his children, as it is considered a partnership, not a loan.

45 Rava says: If two people conducted one joint venture and drafted it as separate ventures of equal value in two separate documents, and they suffered a heavy loss from the venture recorded in one of the documents and had a slight gain from the other, the halakha is as follows: The two documents are treated as two separate agreements, and one does not calculate the profits and losses from the two ventures together. Therefore, this will be to the detriment of the lender. According to the common arrangement, he will gain half of the profits from one venture and suffer two-thirds of the loss of the other.

46 Conversely, if two people engaged in two joint ventures and recorded both in one document, this will be to the detriment of the borrower. They calculate the profits and losses of the two transactions together, and therefore as long as the profits of one joint venture are greater than the losses of the other, the investor will not have to suffer a loss.

47 And Rava says: This one, who receives merchandise for a joint venture from another, and lost money in the process, and then made the effort to replace the loss but did not inform the investor that he had done so, he may not later say to the investor: Bear this original loss together with me. This is because the investor can say to him: It is for this reason that you made the effort to replace the loss, so that you should not be called a loser of ventures. You wanted to preserve your reputation in order to improve your future business prospects but did not intend to be reimbursed.

48 And Rava said: With regard to these two managers who engaged in a joint venture together, i.e., they both received merchandise together from an investor, and profited from it, and one of them said to the other: Come, let us divide the profits and terminate the venture, the halakha is as follows: If the other said to him: Let us wait and profit more, the halakha is that the second manager indeed prevents the first from executing his request. And if, instead of requesting the final division of the profits and the termination of the venture, one said to the other: At least give me half the profits, the

latter can say to him: The profit is liened to the principal, meaning that the profits and the principal are considered a single unit, and we can earn much more if we do not set aside the profits.

[49] Rava continues: And if one says to the other: Give me half the profits and half the principal, the latter can say to him: The merchandise for the joint venture is liened to both of us. As we are equal partners in this venture, you cannot force me to divide it. And if one says to the other: Let us divide the profits and divide the principal, and if you suffer a loss as a result, I will bear the loss with you, his partner can say to him: No, I do not desire to do that, since the luck of two people is better. Consequently, I want to continue working together. In all these cases, the claims of the second manager are accepted.

[50] MISHNA: With regard to one who received a field from another to cultivate and did not want to weed it, and he then said to the owner: What do you care if I neglect the land? You will not suffer a loss since I will give you the amount of produce I owe you for your granting me tenancy, regardless of the state of the field. Nevertheless, they do not listen to him. The reason is because the owner of the land can say to him: Tomorrow you will depart from the field, and it will grow weeds for me, which will remain there and disrupt the yield of the field for years to come.

[51] GEMARA: If the cultivator said to the owner: Afterward, when I have reaped the field, I will plow it and remove the weeds, the owner can say to him: I want superior wheat, not wheat that sprouted among weeds. And if he says to the owner: I will buy good wheat for you from the market, the owner can say to him: I want wheat from my land. And if he says to the owner: I will weed for you according to the measure of your portion, but no more, the owner can say to him: You are giving a bad name to my land, as everyone will see that it is full of weeds.

[52] The Gemara asks: But didn’t we learn in the mishna that the reason they do not listen to him is: Because it will grow weeds for me, indicating that these other claims are not accepted? Rather, the explanation must be because the owner can say to him: The seed that fell has fallen. In other words, even if the cultivator later plows the land and uproots all of the weeds, their seeds remain in the ground and will sprout in the following years.

[53] MISHNA: With regard to one who receives a field from another to cultivate and it did not produce a sufficient crop to cover the expenses of its upkeep, if it has enough produce to form a pile he is obligated to take care of it and give the owner his share. Rabbi Yehuda says: What fixed measure is a pile? There is no inherent measure of produce that is considered significant, as it all depends on the size of the plot of land in question. Rather, the relevant issue is whether it has a crop equivalent to the measure of seeds for dropping in a field in order to sow it.

[54] GEMARA: The Sages taught: With regard to one who receives a field from another to cultivate and it did not produce a sufficient crop, if it has enough produce to form a pile he is obligated to take care of it and provide the owner with his share. This is because this is what he writes to him in the cultivator’s contract: I will stand and plow and plant and reap and bind and thresh and winnow and establish a pile before you, and you will come and take half, and I, for my work and expenses, will take the other half. Based on this contract, if there is sufficient produce to form a pile, the cultivator must fulfill the terms of the agreement.

[55] The Gemara asks: And how much is the amount of: Enough to form a pile? How large must the pile be? Rabbi Yosei, son of Rabbi Ḥanina, said: Enough for the winnowing shovel to stand in it. If the pile is big enough that the shovel can be placed there and stand independently without falling, it

is considered a sufficiently large pile. A dilemma was raised before the Sages: With regard to a winnowing shovel that protrudes from this side to that side, i.e., whose edges extend beyond the pile, what is the halakha? Is this considered a pile in which a winnowing shovel can stand or not?

[56] The Gemara suggests: Come and hear a proof from that which Rabbi Abbahu said: This was explained to me by Rabbi Yosei, son of Rabbi Ḥanina: Any pile in which the blade of the winnowing shovel cannot see the face of the sun because it is covered by the pile is considered a significant one. It was stated that the amora'im engaged in a dispute concerning this issue: Levi says: This pile must be three se'a in size, while the Sages of the school of Rabbi Yannai say: Two se'a. Reish Lakish says: The two se'a of which they spoke is without deducting the expenses. Consequently, if he has paid the expenses and a profit of two se'a remains, in that case alone it is considered worthwhile to work the field. But if it cannot produce this amount, the cultivator may neglect the land if he so chooses.

[57] The Gemara cites a dispute from a different area of halakha that discusses a similar measurement: We learned in a mishna there (Okatzin 3:6) concerning the halakhot of food impurities: With regard to unruly olives and grapes, Beit Shammai hold that they become susceptible to ritual impurity, as they are considered food, and Beit Hillel hold that they do not become susceptible to ritual impurity because they are of inferior quality and are unfit for consumption.

[58] The Gemara asks: What is the meaning of unruly [peritzei] olives? Rav Huna said: Wicked olives, i.e., olives that barely produce any oil. Rav Yosef said: And what is the verse from which it is derived? "Also the children of the wicked [peritzei] among your people shall raise themselves up to establish the vision but they shall stumble" (Daniel 11:14). This verse indicates that the word peritzei means wicked. Rav Naḥman bar Yitzḥak said that the meaning of this word can be derived from here: "If he beget a son that is a robber [paritz], a shedder of blood" (Ezekiel 18:10).

[59] The Gemara asks: And how much is the amount of unruly olives? When are olives classified as unruly? Rabbi Elazar says: They are classified as such if it is possible to extract only four kav of oil from one press of the beam when the fruits are brought in together to the olive press. The Sages of the school of Rabbi Yannai say: They are classified as such if it is possible to extract only two se'a of oil from one press of the beam.

[60] The Gemara comments: And these Sages do not disagree with regard to the halakha itself, as the difference between their rulings stems from divergent local practices. This statement of Rabbi Elazar is referring to a place where one kor is brought into the press, from which he must be able to extract four kav, whereas that halakha of the school of Rabbi Yannai is referring to a place where three kor are brought into the baskets of the oil press. Since they bring in three times the amount of fruit, it must produce exactly three times as much oil.

[61] The Sages taught:

[62] If a zav and a ritually pure person climbed a tree that has little strength, which shook as they climbed it, or if they climbed onto a branch that has little strength, the ritually pure person is rendered ritually impure. One of the ways a zav imparts impurity is by movement, and here the zav is viewed as having moved the pure person.

[63] The Gemara asks: What are the circumstances of this tree that has little strength, i.e., how is a tree with little strength defined? The Sages of the school of Rabbi Yannai say: It is any tree whose trunk is not broad enough that one can hollow out a vessel of a quarter-kav from it. What are the

circumstances of a branch that has little strength? Reish Lakish said: It is any branch concerning which its circumference can be hidden, i.e., inserted, in a person’s fist. A branch of this size is generally not strong enough to hold two people without shaking.

64 We learned in a mishna elsewhere (Oholot 18:6): With regard to one who walks in an area in which uncertainty exists concerning the location of a grave or corpse [beit haperas], if he treads over stones that he can move as he walks, raising concerns that he might have moved a bone of a corpse and thereby rendered himself impure, or if he was in that location, on the back of a person or riding on an animal that had little strength, he is impure, as he is considered to have moved the impurity himself.

65 The Gemara asks: What are the circumstances of a person that has little strength? Reish Lakish said: Any person whose knees knock against each other when someone rides upon him. What are the circumstances of an animal that has little strength? The Sages of the school of Rabbi Yannai say: Any animal that releases excrement due to strain when a person rides upon it.

66 § As the Gemara has cited the rulings of the school of Rabbi Yannai with regard to measurements, it now cites similar halakhot that the Sages of the school of Rabbi Yannai state: With regard to prayer and with regard to phylacteries, the measure is four kav.

67 The Gemara inquires: What is the relevance of this measure with regard to prayer? This is as it is taught in a baraita: With regard to one who carries a load on his shoulder and the time for prayer arrives, if the load is less than four kav, he lowers it behind him while still holding it and prays, as a light load of this size does not interfere with prayer. If the load is four kav, he places it on the ground and prays.

68 What is the relevance of this amount with regard to phylacteries? This is as it is taught in a baraita: If a man was carrying a load on his head and he had phylacteries on his head, if the phylacteries were being crushed under the load it is forbidden to leave them on his head, but if they were not being crushed, it is permitted. With regard to which load did the Sages state this halakha? They stated it with regard to a load of four kav.

69 Rabbi Ḥiyya teaches: With regard to one who removes garbage by carrying it on his head and has phylacteries on his head, he may not move the phylacteries to the side to prevent them from being crushed, and likewise he may not tie the phylacteries of the head to his loins because he thereby treats them in a manner of degradation. But he may tie them on his arm in the location where the phylacteries of the hand are placed.

70 The Sages said in the name of the school of Sheila: It is forbidden to place on the head of one that has phylacteries on it even the scarf in which they are wrapped. The Gemara asks: And how much does Rabbi Sheila permit one to place on his head while wearing phylacteries? Abaye said: Even as little as one-quarter of one-quarter of the smallest measurement of Pumbedita is still forbidden from being placed on one’s head.

71 § The mishna teaches: Rabbi Yehuda says: What fixed measure is a pile? Rather, the relevant issue is whether it has a crop equivalent to the measure of seeds for dropping in a field in order to sow it. The Gemara asks: And how much is equivalent to the measure of seeds for dropping in a field in order to sow it? Rabbi Ami says that Rabbi Yoḥanan says: Four se’a for the amount of land sufficient to grow a kor. Rabbi Ami himself, though, says eight se’a for the amount of land sufficient to grow a

kor. A certain elder said to Rav Ḥama, son of Rabba bar Avuh: I will explain it to you: In the years of Rabbi Yoḥanan the land was fat, while in the years of Rabbi Ami the land was lean, and it was therefore necessary to double the amount of seed for each unit of land.

[72] We learned in a mishna elsewhere (Pe'a 5:1): If the wind scattered the standing sheaves so that it is no longer known which gleanings fell from the sheaves during the harvest and belong to the poor, one evaluates how many gleanings it was fit to produce, and he gives these to the poor. Rabban Shimon ben Gamliel says: He gives to the poor the amount equivalent to the measure of seeds dropping in the course of harvesting.

[73] The Gemara asks: And how much is the amount equivalent to the measure of seeds dropping in the course of harvesting? When Rav Dimi came from Eretz Yisrael he said that Rabbi Elazar said, and some say it was Rabbi Yoḥanan: Four kav for a kor. Rabbi Yirmeya raised a dilemma: Does this mean for a field that requires a kor of seed to plant it, or for a kor of produce? And if it is the former, does it refer to sowing by hand or to sowing by oxen?

[74] The Gemara answers: Come and hear, as when Ravin came from Eretz Yisrael he said that Rabbi Avuh said that Rabbi Elazar said, and some say that Rabbi Yoḥanan said: Four kav for a field sown with a kor of seed. The Gemara comments: And the other question should still raise a dilemma for you: Does this refer to sowing by hand or to sowing by oxen? No answer was found for this question, and the dilemma shall stand unresolved.

[75] MISHNA: In the case of one who receives a field from another to cultivate and grasshoppers consumed it or it was wind blasted, if it is a regional disaster which affected all the fields in the area, the cultivator subtracts from the produce he owes as part of his tenancy. If it is not a regional disaster, the cultivator does not subtract from the produce he owes as part of his tenancy. Rabbi Yehuda says: If the cultivator received it from the owner for a fixed sum of money, whether this way, i.e., there is a regional disaster, or whether that way, i.e., there was no regional disaster, he does not subtract the produce he owes as part of his tenancy.

[76] GEMARA: The Gemara asks: What are the circumstances of a regional disaster? Rav Yehuda said: If, for example, most of that valley in which the field was located was wind blasted, it is considered a regional disaster. Ulla said: If, for example, four fields were wind blasted on its four sides, it is considered a regional disaster.

[77] Ulla also said: They raise the following dilemma in the West, Eretz Yisrael: If one furrow was wind blasted along its entire length, adjacent to other fields that were wind blasted, what is the halakha? Is this considered to be part of the regional disaster? Conversely, if one furrow remained undamaged along its entire length, what is the halakha? Does the remaining furrow mean that the entire field is not considered to be part of the regional disaster? If a fallow field divided between the cultivated fields and the fields that were wind blasted, what is the halakha? Alternatively, if there was a field of fodder between this field and the others that were wind blasted,

[78] what is the halakha? If the surrounding fields were planted with a different type of seed, what is the halakha? Likewise, is wheat, in relation to barley, considered like a different type of seed or not? Furthermore, if the entire world, i.e., all the surrounding fields, were blighted by windblasts and his was affected by mildew; or alternatively, if the fields of the entire world were struck by mildew, and his were blighted with windblasts, what is the halakha? The Gemara responds: No resolution is found to any of these dilemmas, and the dilemmas shall stand unresolved.

[79] The Gemara poses another question: If the owner said to the tenant farmer: Plant the field with wheat, and he went and planted it with barley, and most of the valley was wind blasted, and these fields with barley of his were also wind blasted, what is the halakha? Do we say that the tenant farmer can say to him: Even if I had planted it with wheat it would likewise have been wind blasted, as all the surrounding fields suffered the same fate, or perhaps the owner can say to him: Had you planted it with wheat, the following verse would have been fulfilled for me: “And you shall decree a matter and it will be established for you, and the light shall shine upon your ways” (Job 22:28), since you might have merited greater success by following my wishes.

[80] The Gemara responds: It stands to reason that the owner can say to him: Had you planted it with wheat it would have fulfilled for me: “And you shall decree a matter and it will be established for you, and the light shall shine upon your ways.”

[81] The Gemara presents another question: If all the fields of the owner of the land were wind blasted and this one was also wind blasted with them, but the majority of the valley was not wind blasted, what is the halakha? Do we say that since the majority of the valley was not wind blasted the tenant farmer does not subtract for the owner the amount owed for his tenancy, as this is not a regional disaster, or perhaps could one claim that since all the lands of the owner were wind blasted the tenant can say to the owner: This happened due to your bad fortune, as all your fields were wind blasted?

[82] The Gemara responds: It stands to reason that the owner can say to the tenant: If it was due to my bad fortune, a little would have been left for me, as it is written: “For we are left but a few from many” (Jeremiah 42:2), which indicates that even one suffering from misfortune does not lose all he has.

[83] The Gemara discusses a similar case: If all the fields of the tenant farmer were wind blasted and most of the valley was wind blasted and this field was also wind blasted with them, what is the halakha? Do we say that since most of the valley was wind blasted the tenant farmer subtracts for the owner the amount owed for his tenancy and does not pay, or perhaps, since all the tenant’s lands were wind blasted, the owner can say to the tenant: The damage is due to your bad fortune, as all your fields were wind blasted. The Gemara responds: It stands to reason that the owner can say to him: It occurred due to your bad fortune.

[84] The Gemara asks: Why should this be so? Here too, let us say to the owner: If it was due to my bad fortune, a little would have been left for me, as the following verse would have been fulfilled for me: “For we are left but a few from many.” The Gemara answers: This is not a valid claim because the owner can say to the tenant: Had you been worthy of something being left for you, it would have been left from your own private land, not the field you paid to cultivate.

[85] The Gemara raises an objection from a mishna to the ruling that if there is a regional disaster the cultivator subtracts from the produce he owes as part of his tenancy. The halakha is that if one sells his field in Eretz Yisrael in a time when the halakhot of the Jubilee Year are in effect, he does not have the right to purchase it from the buyer until two years have passed. The mishna teaches (Arakhin 29b): If it was a year of wind-blasted crops or mildew or it was the Sabbatical Year, or if those years were like the years of Elijah in which no rain fell (see I Kings 17:1, 18:1–2), they do not count as part of his tally of years before he may repurchase his land.

[86] The Gemara analyzes the mishna: This tanna teaches that the cases of windblasts and mildew are similar to the case where the years were like the years of Elijah. Just as the years of Elijah is referring

to a time when there was no produce at all, so too, here, windblasts and mildew are referring to cases when there was no produce at all. But by inference, one can learn that if there was some produce, it counts toward his tally of years before he may repurchase his land, and we do not say that it is a regional disaster.

87 The Gemara answers: Rav Naḥman bar Yitzḥak said: There, the case with regard to the sold field is different, as the verse states with regard to the sale and leasing of fields: “According to the numbers of years of the crops he shall sell to you” (Leviticus 25:15), which is referring to years in which there is produce harvested in the world.

88 Rav Ashi said to Rav Kahana: If that is so, the Sabbatical Year should count for him as part of his tally of years, as at least there is produce outside of Eretz Yisrael. Rav Kahana said to him: The Sabbatical Year is an abrogation of the King, i.e., God. Therefore, it should not be included in the number of the years before land is repurchased.

89 Mar Zutra, son of Rav Mari, said to Ravina: If that is so, that the Sabbatical Year is entirely disregarded, then in the case of one who consecrates his field and wants to redeem it, the Sabbatical Year should not count for him for the deduction of the price of the field when it is redeemed. Why did we learn in a mishna (Arakhin 25a) that the one who consecrated his field gives a sela and a pundeyon coin, which is worth 16 perutot, to the Temple treasury for each year remaining until the Jubilee Year, including the Sabbatical Year, in accordance with the payment prescribed by the Torah (see Leviticus 27:16–19)? The amount to be paid per year, which is fifty shekels divided by the years remaining until the Jubilee Year, should not take the upcoming Sabbatical Years into account. Ravina said to him: There it is different, as it is suitable for laying out produce on it. Although one may not plant the field during the Sabbatical Year, one may use it for other purposes.

90 Shmuel said: They taught the halakha that if there is a regional disaster the cultivator subtracts from the produce he owes as part of his tenancy only if the tenant planted the field and it sprouted and then grasshoppers consumed it, or if he planted it with a different seed, but if he did not plant it at all, the tenant is not entitled to subtract from the amount he owes even if there was a regional disaster. This is because the owner can say to him: Had you planted it, perhaps my merit would have prevented the field from being affected by the epidemic, and the following verse would have been fulfilled for me: “They will not be shamed in the time of evil, and in the days of famine they shall be satisfied” (Psalms 37:19).

91 Rav Sheshet raises an objection from a baraita: In the case of a shepherd who was herding the animals of others, and he left his flock and came to the town, and in the meantime a wolf came and tore an animal to pieces, or a lion came and trampled one of the flock, we do not say definitively that had he been there he would have rescued them and therefore he is liable due to his absence. Rather, the court estimates with regard to him: If he could have rescued his animal by chasing a beast of this kind away, he is liable, as his departure from the scene was certainly a contributing factor to the damage. If not, he is exempt from liability. According to Shmuel’s opinion, why is the shepherd exempt from liability? Let the owner say to him: Had you been there, the following verse would have been fulfilled for me: “Your servant smote both the lion and the bear” (I Samuel 17:36).

92 The Gemara answers: This is because the shepherd could say to the owner: If you were worthy of a miracle occurring to you, a miracle would have indeed occurred to you as it did to Rabbi Ḥanina ben Dosa, when his goats brought bears impaled on their horns without any assistance on the part of

a shepherd (see Ta’anit 25a). The Gemara asks: And let the owner say to him: Granted that I was not worthy of a great miracle, but of a small miracle

93 I was worthy. The Gemara concludes: Indeed, this is difficult.

94 § It is taught in one baraita: With regard to one who cultivates a field, the first and second time he plants the field again if the crops were destroyed by some mishap, but the third time he is not required to plant it again. And it is taught in another baraita that on the third occasion, he must plant it the field again, but after the fourth time the crops are destroyed, he is not required to plant it again. These two baraitot appear to contradict one another. The Gemara explains: That is not difficult, as this baraita is in accordance with the opinion of Rabbi Yehuda HaNasi, whereas that baraita is in accordance with the opinion of Rabban Shimon ben Gamliel.

95 The Gemara clarifies: This baraita is in accordance with the opinion of Rabbi Yehuda HaNasi who says that presumptive status is established by two occasions, while that baraita is in accordance with the opinion of Rabban Shimon ben Gamliel, who says that presumptive status is established by three occasions.

96 Reish Lakish said: They taught that a cultivator plants a limited number of times only if he planted the field and it sprouted and locusts consumed the crops, but if he planted it and the crops did not sprout at all, the landowner can say to him: You should continue planting it on all the days that are fit for planting. The Gemara asks: And until when does the period of planting last? The Gemara answers: Rav Pappa said: Until such time that the sharecroppers come in from the field and the stars of Pleiades are stationed over their heads, which occurs roughly during the month of Shevat.

97 The Gemara raises an objection to this from a baraita that discusses the verse: “While the earth remains, planting and harvest, and cold and heat, and summer and winter, and day and night shall not cease” (Genesis 8:22). The baraita interprets this verse as referring to six seasons of the year: Rabban Shimon ben Gamliel says in the name of Rabbi Meir, and similarly, Rabbi Shimon ben Menasya would say in accordance with his statement: The second half of Tishrei, all of Marḥeshvan, and the first half of Kislev are the days of planting.

98 The second half of Kislev, all of Tevet, and the first half of Shevat are the winter days. The second half of Shevat, all of Adar, and the first half of Nisan are the period of cold; the second half of Nisan, all of Iyar, and the first half of Sivan are the harvest period. The second half of Sivan, all of Tammuz, and half of Av are the summer season, while the second half of Av, all of Elul, and the first half of Tishrei are the season of heat.

99 The baraita adds: Rabbi Yehuda also would divide the year into these six seasons, but he counts from the beginning of Tishrei rather than from the middle. Rabbi Shimon counts from Marḥeshvan, so that Marḥeshvan and Kislev constitute the season of planting, and so on.

100 The Gemara states its objection: Who is the most lenient of all of them in that the period of planting occurs at the latest time of the year? It is Rabbi Shimon, and even he did not say that the planting season extends that far to the time when Pleiades is above their heads. The Gemara responds: That is not difficult, as this is referring to a cultivator who accepted from the owner the planting of early crops, while that case involves a cultivator who accepted from the owner the planting of late crops, performed at a much later date.

101 § The mishna teaches: Rabbi Yehuda says: If the cultivator received it from the owner for a fixed sum of money, whether a regional disaster occurred or not, he does not subtract the produce he owes as part of his tenancy. The Gemara relates: There was a certain man who received land to plant garlic on it on the bank of the river Malka Sava in exchange for a specified sum of money. The bank of the river Malka Sava became dammed up. The case came before Rava, who said to the cultivator: The river Malka Sava does not usually dam up. Therefore, it is classified as a regional disaster; go subtract this loss from the payment you owe to the owner.

102 The Gemara continues the story: The Rabbis said to Rava: Didn't we learn in the mishna here: If the cultivator received it from the owner for a fixed sum of money, whether this way or whether that way, i.e., whether a regional disaster occurred or not, he does not subtract the produce he owes as part of his tenancy. Rava said to them: There is no one who is concerned for the ruling of Rabbi Yehuda since it is a minority opinion that is rejected.

103 MISHNA: In the case of one who receives a field from another to cultivate in return for the payment of ten kor of wheat per year, and its produce was blighted by a crop disease or the like, the cultivator gives the owner the ten kor of wheat from it but does not have to provide him with high quality wheat. If the wheat stalks produced by the field were particularly good stalks of wheat, the cultivator may not say to the owner: I will buy regular wheat from the market; rather, he gives him from inside the field itself.

104 GEMARA: The Gemara relates: There was a certain man who received land to grow hay in exchange for paying the owner several kor of barley. After the field produced hay, the recipient plowed and sowed it with barley, and that barley was blighted. The worker sought to pay the owner from the damaged barley he had cultivated. Rav Ḥaviva from Sura in the Euphrates sent the following question before Ravina: What is the halakha with regard to a case of this kind? Is it considered similar to an instance of: If it was blighted, he gives him from inside the field, or not?

105 Ravina said to him: Is it comparable? There, in the mishna, the land did not perform its owner's mission, and the cultivator also received blighted produce, whereas here, the land did perform its owner's mission, as the cultivator took the land for the purpose of growing hay, which it produced. His additional crop of barley was not part of their agreement and therefore he cannot pay his debt with blighted barley.

106 The Gemara relates: There was a certain man who received an orchard from another to cultivate in exchange for paying the owner ten barrels of wine, but that wine produced from the orchard's grapes turned sour. Rav Kahana thought to say that this is an example of the ruling of the mishna that if it was blighted he may give him from inside the field. Rav Ashi said to him: Is it comparable? There, in the mishna, the land did not perform its owner's mission, as the crop was blighted, whereas here, the land did perform its owner's mission, as there was nothing wrong with the grapes themselves, and the wine turned sour in the cultivator's possession.

107 The Gemara comments: And Rav Ashi concedes with regard to grapes that shrunk over the course of their growth and with regard to a field whose sheaves were blighted that since the damage occurred to the crop itself, the cultivator can pay his debt from the produce of the field.

108 MISHNA: With regard to one who receives a field from another in order to plant it with barley, he may not plant it with wheat, as wheat weakens the field more than barley does. But if he receives it in order to plant wheat, he may plant it with barley if he wishes, but Rabban Shimon ben Gamliel

forbids it. Similarly, if he receives it to plant it with grain he may not plant it with legumes, as they weaken the field more than grains do, but if he receives it in order to plant legumes he may plant it with grain, but Rabban Shimon ben Gamliel forbids it.

109 GEMARA: Rav Ḥisda said: What is the reason of the ruling of Rabban Shimon ben Gamliel? The landowner has apparently suffered no loss from the cultivator's actions. His reasoning is as it is written: "The remnant of Israel shall not do iniquity, nor speak lies, neither shall a deceitful tongue be found in their mouth" (Zephaniah 3:13). In other words, one may not retract from an obligation accepted upon oneself, even if no one suffers as a result.

110 The Gemara raises an objection to this from a baraita: The Purim collection is only for the Purim feast, but one does not scrutinize the matter by limiting the allocation for the poor to the exact costs of the meal and no more. And it is not permitted for a poor person to purchase even a strap for his sandal from it unless he stipulated in the presence of the people of the city that he may do as he wishes with the money he receives. This is the statement of Rabbi Ya'akov, who said it in the name of Rabbi Meir. Rabban Shimon ben Gamliel

111 is lenient, as he maintains that donors are not particular in this regard. This shows that Rabban Shimon ben Gamliel is not bothered by a change of mind if no harm results.

112 Abaye said: Rabban Shimon ben Gamliel's reason is as explained by the Master, Abaye's teacher Rabba, as the Master says: One for whom it is preferable to grow crops and yet have his land remain as fertile as if it lay fallow should plant wheat one year and barley the next year. In addition, he should plant one year lengthwise and the following year crosswise. In this manner, he will prevent the field from being weakened.

113 The Gemara comments: And we said that his use of the land with-out following these dictates would weaken it only where he does not plow and repeat his plowing, i.e., plow the field twice before reseeding it, but if he plows and repeats his plowing, we have no problem with it. Consequently, the reasoning of Rabban Shimon ben Gamliel is that a change of crops at the wrong time can weaken the field.

114 § The mishna states that one who receives a field to plant it with grain may not plant it with legumes. Rav Yehuda taught Ravin that the halakha is that one who receives a field to plant it with grain may plant it with legumes. Ravin said to him: But didn't we learn in the mishna that one who receives a field to plant it with grain may not plant it with legumes? Rav Yehuda said to him: This is not difficult, as this halakha is for us, the residents of Babylonia, and that halakha is for them, the residents of Eretz Yisrael. Since what type of seed to plant depends on the quality of the land, in Eretz Yisrael, where the land is weak, there is concern that the land will be weakened. This concern does not apply to Babylonian fields.

115 Rav Yehuda said to Ravin bar Rav Naḥman: Ravin my brother, those cress plants that grow among flax are not subject to the prohibition of robbery, as the one taking them is effectively weeding the field, and the owner prefers that the cress not grow so as to not affect the growing flax. But if the plants stand on the boundary of where the flax is growing, so that their remaining there would not have a negative impact on the growing flax, they are subject to the prohibition of robbery, as it is assumed that the owner grew the plants there intentionally.

[116] And if the cress plants were sufficiently grown to the point that they were hardened with seed growing inside, i.e., they were fully grown, then even if they were among the flax, they are subject to the prohibition of robbery. What is the reason? Concerning that flax to which they have already caused a loss, they have already caused the loss. Since the flax has already been damaged, by removing the cress now he does nothing to improve the crop and merely takes something from the owner.

[117] Ravin bar Rav Naḥman and Rav Yehuda owned adjacent fields, and their trees leaned over the boundaries. Rav Yehuda said to Ravin bar Rav Naḥman: Ravin my brother, these that are mine are yours, and those that are yours are mine. This is because it is customary with regard to those whose fields border on the field of their neighbors that with regard to a tree that tilts to here, i.e., to the property of one of them, its fruit belongs to the owner of the field here, to where it is tilting, and with regard to one that tilts to there, i.e., to the other side, its fruit belongs to the owner of the field there, as neighbors are not particular which portion of the land actually grew the fruit.

[118] As a dispute was stated about this issue between amora'im: With regard to a tree that stands on the border between fields, Rav says: That which tilts to here, i.e., to this field, its fruit belongs to the owner of the field here, and that which tilts to there belongs to the owner of the field there. And Shmuel says: The owners of the two fields divide all the fruit.

[119] The Gemara raises an objection from a baraita: With regard to a tree that stands on the border between fields, they divide its fruit. This is apparently a conclusive refutation of Rav. The Gemara responds: Shmuel interpreted the baraita so that it should be in accordance with the opinion of Rav as referring to a case where the tree fills the entire boundary, and consequently it belongs to both of them.

[120] The Gemara asks: If so, this is obvious; what is the purpose of the baraita stating its ruling? The Gemara answers: No, it is necessary in a situation where its boughs hang more to one side. The Gemara asks: But still, what is the purpose of stating it? The novelty of this halakha remains unclear. The Gemara explains: It is necessary, lest you say that the owner of the field above which the boughs hang can say to the owner of the other field: Let us divide the fruit in this manner, where each of us receives the fruit that grows over his land. The tanna therefore teaches us that the owner of the other field may say to him: What did you see to make you prefer to divide the fruit in this manner, based on bisecting the tree in one direction; divide the fruit instead in that manner, i.e., based on bisecting the tree in the other direction, so that we each receive an equal share.

[121] § Rav Yehuda said to Ravin bar Rav Naḥman: Ravin my brother, do not buy land that is near a town, as Rabbi Abbahu says that Rav Huna says that Rav says: It is prohibited for a person to stand by another's field when its ripe grain is standing, i.e., when its produce is ready for harvest, as he might harm the produce with the evil eye. Similarly, land near a town may be harmed by the people of the town watching it.

[122] The Gemara asks: Is that so? But when Rabbi Abba encountered Rav's students he said to them: What does Rav say with regard to the meaning of these verses of blessing: "Blessed shall you be in the city, and blessed shall you be in the field" (Deuteronomy 28:3), and: "Blessed shall you be when you enter, and blessed shall you be when you exit" (Deuteronomy 28:6)?

[123] And they said to him: This is what Rav said: "Blessed shall you be in the city" means that your house should be adjacent to a synagogue, and the phrase: "Blessed shall you be in the field" means

that your property should be near the city. “Blessed shall you be when you enter” means that you will not find your wife in a state where it is uncertain whether she has the halakhic status of a menstruating woman when you come in from a journey, which would render her forbidden to you. “Blessed shall you be when you go out” means that those who emerge from you, i.e., your descendants, should be like you.

124 And Rabbi Abba said to them: Rabbi Yoḥanan did not say this, but he interpreted the verse as follows: “Blessed shall you be in the city,” means that there should be a bathroom near your table, but he did not refer to a synagogue. The Gemara adds: And Rabbi Yoḥanan conforms to his line of reasoning in this regard, as he says: There is a reward for the steps one takes to reach the location of a mitzva, and one who lives adjacent to a synagogue will not have the opportunity to earn this reward.

125 The Gemara returns to Rabbi Yoḥanan’s exposition of the verses: “Blessed shall you be in the field” means that your property should be divided into thirds: One-third should be invested in grain, one-third in olives, and one-third in grapevines. “Blessed shall you be when you enter and blessed shall you be when you exit” means that your exit from the world should be like your entry into the world: Just as your entry into the world was without sin, so too your exit from the world should be without sin.

126 In any case, it is evident that Rav approves of one whose property is located near a city. How does this accord with his statement that there is concern for the evil eye when one’s field is viewed by people? The Gemara answers: This is not difficult. This statement is referring to a wall and an additional partition [ritka] that surround the plot and prevent it from being harmed by the evil eye. That statement is referring to a case where a wall and an additional partition do not surround it.

127 § The Gemara returns to expounding the themes of blessings and the evil eye. The Torah states: “And the Lord will take away from you all sickness” (Deuteronomy 7:15). In interpreting this verse, Rav says: This verse is speaking about the evil eye. The Gemara comments: Rav conforms to his line of reasoning, as Rav went to a graveyard, and did what he did, i.e., he used an incantation to find out how those buried there died, and he said: Ninety-nine of these died by the evil eye, and only one died by entirely natural means.

128 And Shmuel says: This term: “All sickness,” refers to the wind. The Gemara comments: Shmuel conforms to his line of reasoning, as Shmuel says: Every injury suffered by people is due to the wind that enters wounds and bodily cavities. The Gemara asks: But according to Shmuel, aren’t there those executed by the monarchy and others killed by traumatic injury and not the wind? The Gemara responds: With regard to these too, were it not for the wind, they would prepare a medicine for those injured people and they would be healed and live, but the wind prevents this from happening.

129 Rabbi Ḥanina says: This phrase: “All sickness,” refers to the cold, as Rabbi Ḥanina says: All occurrences that befall man are at the hands of Heaven, except for excess cold and heat, as it is stated: “Cold and heat are on the path of the perverse; he who guards his soul shall keep far from them” (Proverbs 22:5). This indicates that cold and heat are forms of harm caused by man, from which one can protect himself.

130 Rabbi Yosei bar Ḥanina says: This phrase: “All sickness,” refers to excrement, as the Master says: With regard to excrement of the nose, i.e., mucous, and excrement of the ear, i.e., earwax, if a large amount is emitted, having much of it is harmful, but having a bit of it is beneficial.

131 Rabbi Elazar says: This term: “All sickness,” refers to the gall bladder. The Gemara adds: This is also taught in a baraita: With regard to the term: “Sickness,” this refers to the gall bladder. And why is the gall bladder called sickness? It is because it makes a person’s entire body ill. Alternatively, it is called sickness because eighty-three diseases, the numerical value of maḥala, sickness, are dependent on the gall bladder. The Gemara comments: And with regard to all of them, consuming bread in the morning with salt and drinking a large jug of water negates their ill effects, as a simple morning meal is beneficial to the body.

132 § The Gemara cites a related baraita: The Sages taught that thirteen matters of praise were stated with regard to a meal of bread eaten in the morning: It protects the diner from the heat, and from the cold, and from the winds, and from the harmful spirits; and it makes the simple wise, and one who consumes it will be victorious in judgment, he will merit to learn Torah and to teach it, and his statements are heard, and his study will remain in his possession.

133 In addition, his flesh does not generate excess sweat, and he engages in intercourse with his wife at the proper time, and he does not lust for another woman, and this meal is so advantageous that it even kills any louse in his intestines. And some say it even removes jealousy and brings in love. Since he is completely healthy, he is not inclined to be angered by others.

134 In relation to the above baraita, Rabba said to Rava bar Mari: From where is this matter that people say derived: Sixty runners ran but could not catch the man who ate in the morning, and the Sages likewise said: Arise early and eat, in the summer due to the sun and in the winter due to the cold, so that one’s body should have the strength to withstand the climate.

135 Rava bar Mari said to him: It is derived from a verse, as it is written: “They shall not hunger nor thirst, neither shall the heat nor sun smite them” (Isaiah 49:10). Why will the heat and the sun not smite them? Since they shall not hunger nor thirst, as they rose early to eat.

136 Rava said to him: You said to me that it is derived from there, but I say to you that it is derived from here, a different verse: “And you shall serve the Lord your God, and He will bless your bread and your water” (Exodus 23:25), which he interprets as follows: “And you shall serve the Lord your God,” this refers to the recitation of Shema and the Amida prayer, both of which constitute daily service of God. “And He will bless your bread and your water,” this refers to bread with salt and a large jug of water consumed after morning prayers. From that point onward, the rest of the verse: “And I will take sickness away from your midst,” will be fulfilled.

137 § Rav Yehuda said to Rav Adda the surveyor: Do not treat measuring lightly even for small areas of land, as each little bit is suitable for growing the cultivated [rishka] saffron, a very expensive product. Rav Yehuda further said to Rav Adda the surveyor: With regard to the four cubits measured adjacent to an irrigation channel, you may treat them lightly, and it is not necessary to provide an exact measurement of them when calculating the areas of fields. And as for the four cubits adjacent to a river, do not measure them at all, but simply estimate the size and include them in the larger measurement.

138 The Gemara comments: In this regard, Rav Yehuda conforms to his line of reasoning, as Rav Yehuda says: The four cubits adjacent to a channel belong to the residents of the houses alongside the channel, while the four cubits adjacent to a river belong to everyone.

[139] Rabbi Ami would announce: Cut down the trees along the width of the full shoulders of the pullers of the boat on both sides of the river so that the trees should not interfere with the pulling of the boats. The Gemara relates: Rav Natan bar Hoshaya instructed people to cut down sixteen cubits on each side of the river, and the residents of Mashronya came upon him and beat him for issuing this directive. The Gemara explains: He holds that any pathway must be made as wide as like a public domain, which is sixteen cubits wide. But that is not so, as there, in the case of a public domain, we do require that much space; here, however, the space is necessary needs to be only enough to enable the stretching of the ropes to pull the boats. Therefore, the width of the full shoulders of the pullers is the sufficient measure of space needed in order not to interfere with the pulling of the boats.

[140] The Gemara relates another incident: Rabba bar Rav Huna had a certain forest on the bank of a river. They said to him: Let the Master cut down the trees on the riverbank in accordance with the above statement. Rabba bar Rav Huna said to them: Let those above and below me along the river cut down their trees first, and then I will cut down my trees. I will achieve nothing by cutting down my trees on my own. The Gemara asks: How can he do so, i.e., wait for others to act? But isn't it written: "Gather yourselves together, and gather [hitkosheshu vakoshu]" (Zephaniah 2:1), and Reish Lakish says concerning this: Adorn [keshot] yourself and afterward adorn others. Therefore, one must first perform the required action himself before offering advice to others.

[141] The Gemara responds: There it was the forest of the house of Parzak, the general, and it was obvious that they would pay no attention to a Jewish scholar. Rabba bar Rav Huna therefore said: If the workers of the Persian officer cut down, I will cut down as well, and if they do not cut down, why should I cut down for no purpose? Since if the pullers can stretch their ropes they can go along this side of the river,

[142] and if not, they will be unable to walk, but will have to cross over to the other side of the river. Therefore, no advantage exists to cutting down the trees that block part of the river.

[143] The Gemara cites a related incident: Rabba bar Rav Naḥman was going on a boat and saw a certain forest that was located right on the riverbank, as its trees had not been cut down to make room for the pullers. He said to those who were with him: To whom does this forest belong? They said to him: It belongs to Rabba bar Rav Huna. Rabba bar Rav Naḥman said: This is reminiscent of the verse: "And the hand of the princes and the rulers has been first in this faithlessness" (Ezra 9:2), because a renowned scholar is acting improperly. Rabba bar Rav Naḥman said to them: Cut down, cut down to clear a path.

[144] Rabba bar Rav Huna arrived and found that his forest had been cut down. Since he was within his rights not to cut down his trees, as explained above, he grew angry and pronounced a curse: He who cut down this forest should have his branches cut down. The Sages said: Although he was unaware of the identity of the perpetrator, the Sage's curse was nevertheless fulfilled, and consequently all the remaining years that Rabba bar Rav Huna was alive, the seed of Rabba bar Rav Naḥman did not last, as his children, his branches, died in his lifetime.

[145] Rav Yehuda says: All participate in the payment for the construction of the city wall, and this sum is collected even from orphans, but not from the Torah scholars. What is the reason for this? The Torah scholars do not require protection, as the merit of their Torah study protects them from harm.

By contrast, money is collected for the digging of a river or a well for drinking water, even from the Torah scholars.

146 The Gemara adds: And we said this halakha only if the town inhabitants do not go out in a crowd to perform the work themselves but pay workers to act on their behalf. But if they go out in a crowd, Torah scholars do not have to join them, as Torah scholars are not among those who go out in a crowd to perform work in public view.

147 Rav Yehuda says: With regard to the digging of a river, i.e., the periodic deepening of a riverbed to prevent it from blocking up, the lower ones, i.e., those who live by the bottom of the river, must assist the upper ones in digging it and fixing it, as those located at the bottom of the river stand to gain from any work performed down to their houses. But the upper ones do not need to assist the lower ones, as the reverse is not the case. And the opposite is true with regard to the digging of a ditch to remove rainwater. In that case, those who live higher up are interested in the operation and therefore must help the lower ones, but the latter need not aid the higher ones in doing so in the upper area.

148 The Gemara comments: This is also taught in a baraita: If there were five gardens that draw their water requirements from one spring and the spring became damaged, all must help fix it with the owner of the upper garden, near whose garden the damage occurred. As a result of this ruling, the owner of the lower garden fixes it with all of them in the above case, and fixes it for himself if the damage occurred in the lower area. And similarly, if there were five courtyards that would run off water into a single sewer and the sewer became damaged, all must help fix it with the owner of the lower courtyard, near whose courtyard the damage occurred. The result is that the owner of the upper courtyard fixes the sewer with all of them and fixes it for himself if the damage affected his courtyard alone. This is in accordance with Rav Yehuda’s ruling.

149 Shmuel says: One who takes possession of an open space left along a riverbank for the purpose of loading and unloading in order to plow and plant there during the time that it is temporarily unused is impudent. As for removing him, we do not remove him, as this piece of land is considered ownerless. And nowadays, when the Persians write to one who acquires land alongside a river: Acquire for yourself the field up to the portion of the river itself where the water reaches a horse’s neck, we even go as far as to remove him from the plot of land, as it belongs to the owner of the field.

150 Rav Yehuda says that Rav says: One who takes possession of land that is located between the land of brothers or between the land of partners and causes them trouble is impudent. As for removing him, we do not remove him, as they have no real claim against him. And Rav Naḥman said: We even go as far as to remove him, as one should not do anything that harms another. And if the complaint against him is due to the halakha of one whose field borders the field of his neighbor, as they owned fields bordering on this one, we do not remove him.

151 The Sages of Neharde’a say: Even if his claim was due to the halakha of one whose field borders the field of his neighbor, we still remove him, as it is stated: “And you shall do that which is right and good in the eyes of the Lord” (Deuteronomy 6:18). One should not perform an action that is not right and good, even if he is legally entitled to do so.

152 With the above halakhot in mind, the Gemara asks: If the stranger came to consult with one of the owners of the fields, and said to him: Shall I go and acquire the field, and the latter said to him, go

and acquire it, as I will raise no objection, is it necessary to perform an act of acquisition with him to solidify the agreement? Or perhaps his mere promise is sufficient and it is not necessary? Ravina said: It is not necessary to perform an act of acquisition with him, while the Sages of Neharde'a say: It is necessary to perform an act of acquisition with him. The Gemara concludes: And the halakha is that it is necessary to perform an act of acquisition with him.

153 The Gemara adds: Now that you have said that it is necessary to perform an act of acquisition with the neighbor for the right to purchase the field, if he did not perform an act of acquisition with him and purchased the field, and the field increased or decreased in value, the price fluctuation occurs in the domain of the owner of the bordering field. The buyer's purchase is considered a purchase on behalf of the neighbor, who then reimburses the buyer.

154 Accordingly, if this buyer bought it for one hundred dinars and the field was worth two hundred dinars, in order to determine how much money the neighbor must give him, we determine why the owner sold the field to the buyer at this price: If he sells to everyone at that cheap price, the neighbor gives the buyer one hundred dinars and takes it, as the neighbor could have bought it for this sum himself. But if the owner does not sell to everyone at this price and this buyer was given a discount, the neighbor gives the buyer two hundred dinars, the market value of the field, and takes it.

155 In the converse case, if he bought it for two hundred dinars and the field was worth one hundred dinars, the Sages understood that the neighbor can say to the buyer: I sent you to act for my benefit, but not to act to my detriment. Since the field will not remain in your possession, you are effectively my agent, and I am not prepared to pay more than its market value due to your mistake. Mar the Elder, son of Rav Ḥisda, said to Rav Ashi: This is what the Sages of Neharde'a say in the name of Rav Naḥman: There is no exploitation with regard to real estate, as land has no fixed value, and therefore it cannot be said that the buyer overpaid, and he is given whatever sum he spent.

156 The Gemara discusses a related case: If one sold to another a beit se'a of land in the middle of his property so that the buyer is surrounded on all sides by the seller's fields, we see what type of land it is: Whether the land is superior-quality land or whether it is inferior-quality land, his sale is a valid sale, as it is a distinctive piece of land. In that case, the seller's neighbors cannot object, as their fields do not actually border on this plot.

157 But if this field is not of any distinct quality, he is certainly trying to employ an artifice. His plan is to then purchase another plot of land from this owner, one that does border on the field of a neighbor. By first buying the plot in the middle, he is trying to establish himself as a neighbor so that the other neighbors will not have the first right of purchase relative to him. Therefore, the neighbors may prevent him from buying the second plot of land.

158 The Gemara continues to discuss the halakha of one whose field borders that of his neighbor. With regard to a gift, it is not subject to the halakha of one whose field borders the field of his neighbor, as one can give a gift to whomever he chooses. Ameimar said: If he wrote a property guarantee to the recipient of the gift that if the field is seized for payment of a debt of the giver the giver of the gift will compensate the recipient for his loss, it is subject to the halakha of one whose field borders of the field of his neighbor. In that case the supposed gift has the appearance of a sale, so the neighbor can force the recipient to sell the plot to him.

159 If a seller sold all his property to a single person, this sale is not subject to the halakha of one whose field borders the field of his neighbor, as the seller is not required to leave out one particular

field if the buyer is acquiring all his property. Similarly, if the seller sold it back to the previous owners, this sale is not subject to the halakha of one whose field borders the field of his neighbor. If a buyer bought a field from a gentile or a seller sold a field to a gentile, this purchase or sale is not subject to the halakha of one whose field borders the field of his neighbor.

160 The Gemara clarifies this ruling: If a buyer bought the field from a gentile it does not apply, as he can say to the neighbor: It is better for you that I bought the field, as I have chased away a lion for you from the border; since the neighbor certainly prefers having a Jewish neighbor to having a gentile neighbor. If a seller sold a field to a gentile, the gentile is certainly not bound by the command of: "And you shall do that which is right and good in the eyes of the Lord" (Deuteronomy 6:18). The gentile is therefore under no obligation to refrain from purchasing this land. Nevertheless, we certainly excommunicate the one who sold it to the gentile until he accepts upon himself responsibility for all damage resulting from accidents that might befall the neighbor on the gentile's account.

161 The Gemara continues: If he sold a field previously given as a mortgage to the one to whom it was mortgaged, this sale is not subject to the halakha of one whose field borders the field of his neighbor, as Rav Ashi said: The elders of the town of Mata Meḥasya said to me: What is the meaning of the word mortgage [mashkanta]? It means that it resides [shekhuna] with the one to whom it was mortgaged. The Gemara asks: What difference does it make what the word means? The Gemara answers: It is relevant with regard to the halakha of one whose field borders the field of his neighbor in that the person to whom the field is mortgaged has more rights than bordering neighbors, as he lays claim to a measure of ownership over the land.

162 If one sought to sell a distant field and to redeem, i.e., purchase for himself, a close one, or if he sold a bad one to redeem a good one, this sale is not subject to the halakha of one whose field borders the field of his neighbor. Rather, he may sell his field whenever he has the opportunity.

163 Likewise, if he sells his field to pay for necessities, such as for taxes, for his wife and daughters' sustenance, or for the burial of one of his family members, this sale is not subject to the halakha of one whose field borders the field of his neighbor. This is because the Sages of Neharde'a said: For taxes, for sustenance, and for burial we sell a field without a proclamation, as such matters are pressing and urgent and should not be delayed out of consideration for the rights of a bordering neighbor. Similarly, if he sold the field to a woman, who does not usually chase after vendors, or to orphans, or to his partners, this sale is not subject to the halakha of one whose field borders the field of his neighbor.

164 If various individuals have equal rights to the field, such as both are bordering neighbors, but some of them are neighbors whose fields are adjacent to his on the side of the city, i.e., their fields are between the city and the field being sold; and others are neighbors whose fields are adjacent to his on the side of the field, i.e., their fields are between the field being sold and the area further from the city, the neighbors whose fields are adjacent to his on the side of the city receive precedence.

165 If one is a regular neighbor and the other is a Torah scholar, the Torah scholar receives precedence. If one is a relative and the other is a Torah scholar, here too, the Torah scholar receives precedence. A dilemma was raised before the Sages: With regard to a neighbor and a relative, what is the halakha? Which of them takes precedence? The Gemara suggests: Come and hear an answer from the following verse: "Better a neighbor who is near than a brother who is far" (Proverbs 27:10).

166 If two people sought to acquire a field, and these coins that the first produces for payment are good dinars, and those coins that the second uses are weighed dinars, which are preferable to the good dinars, this sale is not subject to the halakha of one whose field borders the field of his neighbor, as the owner can say he prefers the superior quality coins. If these coins were wrapped up and those were loose, this sale is not subject to the halakha of one whose field borders on the field his neighbor, as he may sell his field to the one whose money is ready to be counted.

167 If the neighbor said: I will go and expend effort and bring money, we do not wait for him, despite his status as a bordering neighbor, if someone else is available who is prepared to pay immediately. If he said: I will go bring money, we see what his financial status is: If he is a person who is assessed as one who can go and bring money without delay, we wait for him, but if not, we do not wait for him.

168 If the land belonged to one person and the houses on the land belonged to another one, the owner of the land prevents the owner of the houses from selling his houses to someone else, as he has the first right of purchase. By contrast, the owner of the houses does not prevent the owner of the land from selling his land, as one can change his place of residence with relative ease, so he is not considered tied to the land. Similarly, if the land belonged to one and its palm trees to another one, the owner of the land can prevent the owner of the palm trees from selling the trees to another, but the owner of the palm trees cannot prevent the owner of the land from selling his land to another.

169 If two people wanted to purchase the land, but one desired the land for building houses and the other wished to purchase the land for planting, the settling of the land through construction of houses is preferable, and this sale is not subject to the halakha of one whose field borders the field of his neighbor. Therefore, he may sell to the one who wants to build a house there, even if he is not a bordering neighbor and the other potential buyer is.

170 If a jagged edge of rock or a row of palm trees served as a barrier between two bordering fields, we see whether any open space exists. If the owner of the adjacent field can insert even a single furrow there that comes into contact with the other field, this sale is subject to the halakha of one whose field borders the field of his neighbor. But if sufficient space for a furrow does not exist, this sale is not subject to the halakha of one whose field borders the field of his neighbor.

171 In a case of those four bordering neighbors who surround a field that is for sale from all four sides, if one of them preceded the others and purchased it, his purchase is a valid purchase and the others cannot object. And if they all came simultaneously to purchase it, then they divide the plot of land, with two bisecting diagonal lines so that each receives a portion near his field.

172 MISHNA: One who receives a field from another to cultivate for a few years, i.e., fewer than seven, may not plant flax in it, as flax greatly weakens the soil, and if a sycamore tree was growing in the field, he does not have rights to the beams fashioned from the branches of the sycamore tree. Therefore, he may not cut down its branches for his own use, as it takes many years for new ones to grow. If he received the field from him for seven years, in the first year he may plant flax in it, and he does have rights to the beams fashioned from the branches of the sycamore tree.

173 GEMARA: Abaye says: Although he does not have rights to the beams fashioned from the branches of the sycamore tree, he does have rights to the value of the enhancement of the sycamore tree, i.e., the value of its growth that occurred while he was cultivating the field. And Rava says: He does not even have rights to the value of the enhancement of the sycamore tree.

174 The Gemara raises an objection to Rava's opinion from a baraita: With regard to one who receives a field from another to cultivate and his time to leave arrives, the court appraises its value for him. What, is it not that the court appraises for him the value of the enhancement of the sycamore or other trees? The Gemara responds: No, the court appraises for him the value of the vegetables and beets left in the field.

175 The Gemara challenges: If it is referring to vegetables and beets, let him uproot and take them. The Gemara explains: It is referring to a case where the market day has not yet arrived, so that if he uproots them now he will not be able to sell them. He therefore leaves them for the owner of the land and receives money instead.

176 The Gemara suggests: Come and hear another proof from a baraita: In the case of one who receives a field from another to cultivate and the Sabbatical Year arrived, the court appraises it for him. The Gemara first expresses puzzlement over the baraita itself: Does the Sabbatical Year release land from the one who contracted to cultivate it? The arrangement is in effect it during this time, so why is there a need for an appraisal? The Gemara responds: Rather, say that the baraita reads as follows: In the case of one who receives a field from another to cultivate and the Jubilee Year arrived, the court appraises it for him.

177 The Gemara asks: But still, this is difficult; does the Jubilee Year release the term of a contractor? The Merciful One states: "Permanently" (Leviticus 25:23), which indicates that only land that was permanently sold returns to its owner, whereas land that was rented does not revert to the owner at the Jubilee Year. Rather, say that the baraita reads as follows: In the case of one who purchases a field from another and the Jubilee Year arrives, the court appraises it for him.

178 And if you would say that so too here it means that the court appraises it for him with regard to vegetables and beets, this cannot be, as vegetables and beets in the Jubilee Year are ownerless. This is because the Jubilee is like the Sabbatical Year in that any produce that grows is ownerless and may be taken by anyone. Rather, is the baraita not referring to the enhancement of the value of the sycamore that occurred during the time he had owned the field? It must be referring to this, and therefore presents a difficulty to Rava.

179 Abaye interpreted the baraita so that it is in accordance with the opinion of his disputant Rava: There it is different, as the verse states: "Then the house that was sold shall go out…in the Jubilee" (Leviticus 25:33), which teaches that the house or field that was sold returns to its owner, but the value of its enhancement does not return, but remains with the buyer. The Gemara asks: If so, let us derive from it a general halakha that the value of enhancement need not be returned. The Gemara answers: The two cases are dissimilar, as there, in the baraita, it is a full-fledged sale, and the Jubilee released it, as it is a release of the King, a Divine decree. Since the buyer had been in full ownership of the field, he keeps the value of the enhancement that occurred while it was his. By contrast, one who receives a field to cultivate is not an owner.

180 The Gemara relates: Rav Pappa received land as a contractor for growing hay. During the time he was cultivating it, palm trees sprouted in the ground. When he left the land he said to the owners of the field: Give me the value of the enhancement to the field from the palm trees. Rav Sheisha, son of Rav Idi, said to Rav Pappa: If that is so, i.e., if your claim is justified, then in a situation where there was a palm tree and it grew thick, so too would the Master, i.e., Rav Pappa, want to be paid for the value of the tree's enhancement? Rav Pappa said to him: There, in that theoretical case, the cultivator

did not descend to the field with that possibility in mind, as the cultivator considered only the consumption of the date palm's fruit, not its growth. Here, in my case, I did indeed descend to the field with this in mind, as I anticipated receiving compensation for any growth of the field.

181 The Gemara asks: In accordance with whose opinion did he make this statement? Is it not in accordance with the opinion of Abaye, who says that he does have rights to the value of the enhancement of the sycamore? The Gemara refutes this claim: You may even say that he holds in accordance with the opinion of Rava, as there the cultivator suffers no loss when the sycamore grows in the field, so he is not entitled to the value of the enhancement as compensation. By contrast, here there is a loss, as the palm trees that sprouted occupied space designated for hay.

182 Rav Sheisha said to Rav Pappa: But here too, the owner of the field can say: What loss have I caused you? I have caused you to lose a handful of hay. Take a handful of hay and go. Rav Pappa said to him: I claim that I grew garden saffron there. He claimed that he lost land that he could have used for the cultivation of expensive produce, not only hay. Rav Sheisha said to him: Even so, you admit that you wanted the land for other plantings, not to plant palm trees, and you have thereby revealed your intention that you acted so as to take the produce and leave. Take your garden saffron and leave, as you have rights only to the value of wood alone. Since you did not mean to grow these trees, you are entitled only to the price you could have received for the palm trees had you had uprooted them and sold them as wood during the time you cultivated the field.

183 The Gemara relates another incident: Rav Beivai bar Abaye received land to cultivate and he surrounded it with a fence made of earth. In the meantime, trees sprouted in it. When he left the field he said to the owners: Give me my value of the enhancement of the trees that sprouted. Rav Pappi said: Is it because you come from unfortunate people that you say unfortunate and unsound words? Abaye's family came from the family of Eli, whose descendants were sentenced to die at a young age. Rav Pappi explains: Even Rav Pappa said only that he is entitled to the value of the enhancement of the palm trees when he has suffered a loss, as they take up part of the field. Here, by contrast, what loss do you have? As the trees sprouted in a place that would have been left unplanted, you have not lost anything and you are not entitled to compensation.

184 § The Gemara relates: Rav Yosef had a certain planter whose job it was to plant trees, similar to a sharecropper. He died and left behind five sons-in-law. Rav Yosef said: Until now I had to deal with only one person; now there are five. Until now they did not rely on each other to plant the trees and did not cause me a loss, as the responsibility was their father-in-law's, but now that they are five they will rely on each other to plant the trees and cause me a loss. In light of these considerations, he decided to discontinue the agreement with them. Rav Yosef said to them: If you take the value of your enhancement that you brought to the field and remove yourselves, all is well, but if not, I will remove you without giving you the value of the enhancement.

185 Rav Yosef explains his statement: As Rav Yehuda says, and some say it was Rav Huna, and some say it was Rav Naḥman: With regard to this planter who died, his heirs may be removed without receiving the value of the enhancement. The Gemara comments: But this is not correct, as the halakha is not in accordance with this opinion.

186 The Gemara relates another incident. There was a certain planter who said to the owner: If I cause a loss to the vineyard by ruining its plants I will leave the field. Ultimately, he indeed caused a loss to the plants, but some enhancement from the time he began did still exist. Rav Yehuda said: He

leaves without receiving payment for the enhancement, while Rav Kahana said: He leaves and takes the payment for the enhancement resulting from his work. And Rav Kahana concedes that if he said: If I cause a loss I will leave without receiving payment for the enhancement, he indeed leaves without receiving payment for the enhancement. Conversely, Rava said: A promise of this kind, which he does not expect to have to fulfill, is a transaction with inconclusive intent [asmakhta], and the halakha is that an asmakhta does not effect acquisition and is therefore not legally binding.

[187] The Gemara asks: And according to Rava, in what way is it different from that which we learned in a mishna (104a) that the recipient of the field stipulates: If I let the field lie fallow and do not cultivate it I will pay with the best-quality produce, in which case he is obligated to fulfill his promise? The Gemara answers: There, he pays for the loss he caused, while here, we deduct from him the loss that he caused, and we give him the other portion of the money. He does not forfeit all that was due to him just because some of his plantings were unsuccessful.

[188] The Gemara relates that Runya was the planter of Ravina. He caused a loss, and Ravina removed him from his field. Runya came before Rava and said to him: Let the Master see what Ravina has done to me. Rava said to him: Ravina did well, as you caused him a loss. Runya said to him: But Ravina did not warn me beforehand. How can he force me to leave without prior warning? Rava said to him: In this case it is not necessary to provide a warning. The Gemara comments: Rava conforms to his line of reasoning, as Rava said: With regard to a teacher of children, a planter, a ritual slaughterer, and a bloodletter,

[189] and a town scribe who drafts documents on behalf on the local residents, all of these are considered forewarned. Therefore, any loss incurred due to them is deducted from their wages, and they are fined without the need for prior warning. The principle of this matter is: With regard to any loss that is not recoverable they are considered forewarned.

[190] § The Gemara relates: There was a certain planter who said to the owner of the field: Give me the value of my enhancement because I wish to ascend to Eretz Yisrael. The owner came for a ruling before Rav Pappa bar Shmuel, who said to him: Give the planter the value of his enhancement. Rava said to Rav Pappa bar Shmuel: Did he alone enhance the field, while the land did not enhance it? He cannot be credited with all the improvement. Rav Pappa bar Shmuel said to Rava: I am telling you that he is entitled to half the value of the enhancement. Rava said to him: Until now the owner of the land would take half and the planter would take half, while the planter would work the field. Now the owner also needs to give a portion to the sharecropper, so that the sharecropper will continue working the field. Rav Pappa bar Shmuel said to him: I am telling you to give him one-quarter of the value of the enhancement, half of the sum to which he is entitled.

[191] Rav Ashi thought to say that when he referred to one-quarter he meant one-quarter that is one-sixth, i.e., one-quarter of the sum due to the owner, as the sum due to the owner is two-thirds of the entire yield. This payment would therefore amount to one-sixth of the total. As Rav Minyumi, son of Rav Naḥumi, said: In a location where the planter takes half the fruit and the sharecropper takes one-third, with regard to a planter who wants to leave, we give him his share of the value of the enhancement and remove him in such a manner so that the homeowner should suffer no loss.

[192] Granted, if you say that he meant one-quarter that is one-sixth, this is well and the calculations are in order, but if you say he referred to an actual quarter, the homeowner suffers the loss of half of one-sixth. This is because if the owner had paid the planter initially he would have given him only

one-half, whereas now he must give the planter one-quarter and the sharecropper one-third. He thereby pays an extra twelfth.

193 Rav Aḥa, son of Rav Yosef, said to Rav Ashi: Let the planter say to the owner: You give your portion to the sharecropper, and I will do what I wish with my portion. I performed my half of the work properly, so why should I suffer a loss because you want to pay the sharecropper? Rav Ashi said to him: When you reach the tractate of: The slaughter of sacrificial animals, i.e., tractate Zevaḥim, come and ask this difficulty to me. In other words, your question is a good one, worthy of a difficult tractate full of complex reasoning such as Zevaḥim.

194 With regard to the matter itself, Rav Minyumi, son of Rav Naḥumi, said: In a location where the planter takes half the fruit and the sharecropper one-third, with regard to a planter who wants to leave, we give him his share of the value of the enhancement and remove him in such a manner so that the homeowner should suffer no loss. Rav Minyumi, son of Rav Naḥumi, further said: With regard to an old vine in a vineyard, the planter receives half. Although he did not plant the vine, since he was placed in charge of the entire vineyard, he receives a portion of that which was there before. If a river flooded the vineyard and the owner and the planter come to divide the trees that fell down, the planter receives one-quarter.

195 § The Gemara relates: There was a certain man who mortgaged an orchard to another, i.e., the creditor, for ten years in order that the latter should use the profits gained from the orchard as repayment of the debt. But the orchard aged after five years and no longer produced quality fruit. Consequently, the only way to proceed was to cut down its trees and sell them as wood. Abaye said: This wood is considered as produce of the orchard, and therefore the creditor is entitled to cut them down and sell them. Rava said: The wood is classified as principal and is therefore viewed as part of the orchard itself. Consequently, the creditor has no rights to the wood itself, but other land is purchased with the profits from the sale of the wood and the creditor consumes the produce of that land until the debt is repaid.

196 The Gemara raises an objection against this from a baraita that discusses the halakhot of a mortgage: If the tree dried up or was chopped down, it is forbidden for both the creditor and the debtor to take it for themselves. How should they proceed? It is sold for wood, and land should be purchased with the proceeds, and he, i.e., the creditor, consumes the produce from that land. The Gemara clarifies: What, is it not referring to a dry tree that is similar to one that was chopped down, in that just as the tree was chopped down at its proper time, so too, the tree dried at its proper time? And yet the tanna teaches that land should be purchased with the money and the creditor consumes the produce. Apparently, the wood is considered part of the principal, not the profits. This supports Rava’s opinion and presents a difficulty to Abaye.

197 The Gemara rejects this argument: No, the chopped-down tree mentioned in the baraita is similar to the dry one: Just as that tree dried up before its time, so too, this one was chopped down before its time. Since this did not occur naturally, the wood is classified as produce; had the orchard dried up at the expected time, its trees would be considered as part of the land.

198 The Gemara suggests: Come and hear a proof to Rava’s opinion from a mishna (Ketubot 79b): If a woman after her marriage had old vines and olive trees that were bequeathed to her by means of inheritance,

[199] such trees are sold as wood and land is acquired with them, and her husband consumes the produce, while the land itself belongs to the wife. The Gemara answers that the text should be emended to say: And they grew old, meaning that the trees were not old when she inherited them but they aged with the passage of time.

[200] And if you wish, say: Did we not already establish that mishna as referring to a case where the vines or olive trees were bequeathed to her in a different field that did not belong to her? Since in that case she inherited only the trees but not the land itself, they are considered the principal. Consequently, the husband taking all of it would consume the principal entirely. Therefore, they must be sold as wood, with the proceeds used for the purchase of land.

[201] § The Gemara relates: There was a certain mortgage document in which it was written that the land was granted to the creditor for an unspecified number of years. The creditor said it was for three years, whereas the debtor said it was for two years. While the issue was being adjudicated, the creditor arose and consumed the produce of the field in the third year. Which of them is deemed credible and accepted? Rav Yehuda said: The halakha is that land remains in its owner's possession. Therefore, the debtor has the presumptive right to the land, while the creditor, who owns the document, must provide proof for his claim. Rav Kahana said: The produce remains in the possession of the one who consumed it, and therefore the creditor's claim is accepted.

[202] The Gemara states: And the halakha is in accordance with the opinion of Rav Kahana, who said that the produce remains in the possession of the one who consumed it. The Gemara asks: But don't we maintain that the halakha is in accordance with the opinion of Rav Naḥman, who said with regard to uncertainty concerning a rental during the extra month of a leap year that land remains in its owner's possession, and he has the rights to that month? These two rulings appear to contradict each other.

[203] The Gemara answers: There it is a matter that will not be revealed because it is impossible to clarify the uncertainty concerning whether the extra month is included. By contrast, here it is a matter that will be revealed, as the witnesses who signed the document may eventually reveal what it stated, and we do not trouble the court to convene twice. Therefore, the produce should remain in the possession of the one who consumed it until the matter is resolved.

[204] The Gemara analyzes another case involving mortgaged land. The creditor says the mortgage was for five years while the debtor who owned the land says it was for three. The debtor said to the creditor: Give me your document so that we can see what is written there. The creditor said to him: I lost the document. Rav Yehuda said: The creditor is deemed credible and accepted in this case since he could have made a more advantageous claim [miggo]. As the mortgage document is missing and even according to the claim of the debtor he could be in control of the land for the three years required for presumptive ownership, if he wants to lie he could say: The land was purchased by me. Since he did not submit this superior claim, his claim should be accepted.

[205] Rav Pappa said to Rav Ashi: Rav Zevid and Rav Avira do not hold of this opinion of Rav Yehuda. What is the reason for this? Since this document stands ready for collecting the debt, the creditor would certainly have been careful with regard to it. Since he wants to ensure his money is returned it is unlikely he actually lost it. Rather, he is merely hiding his document, as he thinks: I will consume the produce of the field for two extra years.

[206] The Gemara analyzes Rav Yehuda’s opinion. Ravina said to Rav Ashi: If that is so, that Rav Yehuda is correct, then with regard to this mortgage according to the custom practiced in Sura, a city in Babylonia, in which they write this: Upon the completion of these years of the mortgage this land shall leave the creditor’s possession and return to its owner without the debtor paying any money (see 67b), in a case where the creditor hid the mortgage document and said that the land was purchased by me, so too is it possible that he is deemed credible? Would the Sages institute a matter that might cause a loss? Rav Ashi said to him: There, in the mortgage of Sura, the Sages instituted for the landowner, i.e., the debtor, that the landowner, i.e., the debtor, pays the land taxes and digs the trenches for the irrigation of the field. In this manner, his ownership is preserved and established.

[207] Ravina asks further: With regard to land that has no need for trenches and for which he does not pay taxes, what could he have done? Rav Ashi said to him: He should have protested before the three years needed for presumptive status had passed by announcing that the land was his. Ravina again inquires: If he did not protest, what is the halakha? Rav Ashi replied: In that case, he caused his own loss by failing to take the necessary precautions.

[208] § The Gemara discusses another case. If a sharecropper says: I descended to the field for half the produce, as this was the agreement that we made, and the homeowner says: I sent him down for only one-third of the produce, who is deemed credible and his claim consequently accepted? Rav Yehuda says: The homeowner is deemed credible and his claim is consequently accepted, while Rav Naḥman says: All matters are in accordance with the regional custom. As the terms of their agreement are unknown, this sharecropper should have the same status as other sharecroppers in that location.

[209] They understood from the above discussion that these two Sages do not disagree, but were referring to different cases: This one, Rav Naḥman, stated his ruling with regard to a location where the sharecropper takes half, in which case the sharecropper is believed, while that one, Rav Yehuda, stated his ruling with regard to a location where the sharecropper takes one-third, in which case the homeowner is believed.

[210] Rav Mari, son of the daughter of Shmuel, said to them: This is what Abaye said: They even disagree with regard to a location where the sharecropper usually takes half. In that case, Rav Yehuda said that here too the homeowner is deemed credible and his claim is consequently accepted, as if he wants to lie he could say: The other is not a sharecropper at all but merely my hired worker, who received a stipulated wage, or my gleaner, who performs occasional work for me but has no prearranged share of the crop at all.

[211] The Gemara addresses another issue: If a field was on lien for a loan and the debtor died, and the orphans who inherited the field say: We enhanced the land after we inherited it, and therefore the creditor does not have a right to the value of that enhancement, and the creditor says: Your father enhanced it, and I am entitled to the land as it is, upon whom does the burden to bring proof fall?

[212] Rabbi Ḥanina thought to say that the land remains in the orphans’ possession, as they are currently in control of it, and therefore the responsibility falls upon the creditor to bring proof. A certain elder said to them: This is what Rabbi Yoḥanan says: The responsibility falls upon the orphans to bring proof. What is the reason for this? Since this land stands ready for collection, it is considered as though it has already been collected and is in the creditor’s possession. Consequently, the responsibility falls upon the orphans to bring proof.

213 Abaye said: We learn a similar halakha in the mishna (Bava Batra 24b) as well, with regard to a tree planted adjacent to a city. Such a tree must be chopped down in any event, regardless of what preceded what. If the city preceded the tree, the owner is not entitled to compensation, but if the tree was there first, he receives payment for the tree. If it is uncertain whether this one was first or that one was first, the owner of the tree cuts it down and the people of the city do not give money to the owner.

214 Apparently, since this tree is standing to be chopped down, as it is chopped down regardless of whether it or the town was there first, we say to the owner of the tree: You must bring proof to support your claim that the tree was there before the town and only then you may take its value, although the tree is currently in his possession and has not yet been cut down. So too, with regard to this document recording the lien on the land, since it is ready for collection, it is considered as though it has been collected and the responsibility falls upon the orphans to bring proof.

215 In the case where the orphans brought proof that they indeed enhanced the land, Rabbi Ḥanina thought to say: When we remove them, we remove them by giving them part of the land equivalent to the value of their enhancement.

216 The Gemara comments: But that is not so, as we remove them by paying them with money, as derived from a statement of Rav Naḥman. As 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: The first is a firstborn son who makes payment to an ordinary, i.e., non-firstborn, 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.

217 And the second case is that of payment taken by a creditor or the payment of a marriage contract by someone who is obligated to reimburse orphans, i.e., a creditor or widow who collects land from the orphans of the deceased debtor or husband, respectively. He or she must pay the orphans for any enhancements they made after their father’s death. This payment is also given in money rather than land. And the third case is that of a creditor who is obligated to purchasers, 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.

218 Ravina said to Rav Ashi: Is this to say that Shmuel maintains that a creditor must pay the value of the enhancement to the buyers? And what type of enhancement is there that is given to a buyer according to Shmuel? But doesn’t Shmuel say: A creditor collects even the enhancement, not only the land itself? And if you would say that this is not difficult, as here it is referring to enhancement that is so great that it reaches the shoulders, meaning it is large enough to be carried away on porters’ shoulders, whereas there it is referring to enhancement that does not reach the shoulders, that is still difficult. But aren’t there incidents every day where Shmuel would collect everything on behalf of a creditor, even enhancement that reaches the shoulders?

219 The Gemara responds: It is not difficult; this is referring to a case where the debtor owed him the amount of the value of the land and the enhancement combined, and therefore the creditor does not leave the buyers with anything, whereas that involves a case where he did not owe him the amount of

the value of the land and the enhancement. Since he has taken more than the sum to which he is entitled, he pays the buyers for the improvement.

220 The Gemara asks: And if he did not owe him the amount of the value of the land and the enhancement, it was stated that the creditor gives the buyer money and removes him. This works out well according to the one who says that even if the buyer has money he cannot remove the creditor by paying him his debt in cash, as the creditor has the right to claim land. According to this opinion, it works well. But according to the one who says that if the buyer has money he may remove the creditor by paying him cash and keep the land for himself, let him say to him as follows: If I had money prepared I would remove you from the entire land; now that I do not have money equal to the value of the entire land, since you must repay me for the enhancement, at least give me a plot of earth in my land corresponding to the amount of the value of my enhancement.

221 The Gemara responds: Here we are dealing with a case where the debtor set aside this land as designated repayment [apoteiki] for the creditor, as he said to him: You shall be able to collect from only this land, but no other. Consequently, the creditor wants to take the entire land, as his lien applies only to this field, and if it turns out that he has other claims he will be unable to collect them from elsewhere.

222 MISHNA: In the case of one who receives a field from another to cultivate for one Sabbatical cycle of seven years culminating with the Sabbatical Year for seven hundred dinars, the Sabbatical Year is included in the tally, despite the fact that he is unable to work the land during that year. If he received it from him to cultivate for seven years for seven hundred dinars, the Sabbatical Year is not included in the number, and he may keep the field for an additional year to take the place of the Sabbatical Year, during which he could not work the land.

223 The tanna addresses a different issue, the halakha of the payment of workers. A day laborer collects his wages from his employer all night following his work shift. A night laborer collects his wages all the following day, while an hourly laborer collects his wages all night and all day. With regard to a weekly laborer, a monthly laborer, a yearly laborer, or a laborer for a Sabbatical cycle of seven years, if he left upon the completion of his work in the day, he collects his wages all day; if he left at night, he collects his wages all night and all day.

224 GEMARA: The Sages taught: From where is it derived concerning a day laborer that he collects his wages all night? The verse states: “The wages of a hired laborer shall not remain with you all night until the morning” (Leviticus 19:13). This indicates that he must pay him by the morning, and he has therefore not transgressed the prohibition of delaying the payment of wages until that time. And from where is it derived concerning a night laborer that he collects his wages all day? As it is stated: “On the same day you shall give him his wages” (Deuteronomy 24:15).

225 The Gemara asks: But why not say the opposite, i.e., that a night laborer may be paid all night, while a day laborer receives his wages all day? The Gemara responds: The obligation to pay a person’s wage is incurred only at the end of the period for which he was hired.

226 The Sages taught: From the indication of that which is stated in the verse: “The wages of a hired laborer shall not remain with you all night [lo talin],” do I not know that this means: “Until the morning,” as this is the meaning of: “Remain with you all night [talin]”? Why must the verse state: “Until the morning”? It teaches that he transgresses the prohibition of withholding payment only

until the first morning alone, but does not transgress this prohibition another time for any further delay.

227 The Gemara asks: From that point forward, what is the halakha? Rav said: Although one no longer transgresses the prohibition of delaying payment of wages, one violates the prohibition of: Do not delay, by delaying his wages. Rav Yosef said: What is the verse from which it is derived? “Do not say to your neighbor: Go and come again, and tomorrow I will give, when you have it with you” (Proverbs 3:28).

228 The Sages taught: Concerning one who says to another: Go out and hire workers for me, both of them do not violate the prohibition of delaying payment of wages if they fail to pay immediately. This one, the employer, is exempt because he did not hire them himself, and strictly speaking they are not his hired workers.

229 And that one, the middleman, is exempt because his work is not performed for him. The Gemara asks: What are the circumstances of this case? If the middleman said to them: Your wages are incumbent upon me, his wages are indeed upon him, as the one who hired the workers bears full responsibility. As it is taught in a baraita: With regard to one who hires a laborer to perform work in his own field, and the employer inadvertently showed the laborer a field belonging to another in which he should work, the employer must give the laborer his full wages; and in addition, the employer goes back and takes from the owner of the field in which he worked the value of the benefit that owner received from the laborer. The employer is entitled to claim from the owner of the field the profit that owner gained from the work, but not the entire wages of the laborer. This indicates that one who says: Your wage is incumbent upon me, is responsible for the arrangement.

230 The Gemara explains: No, it is necessary to state this halakha where the middleman said to them: The obligation to pay your wages is incumbent upon the employer, in which case they share responsibility for the payment and neither violates the prohibition.

231 The Gemara relates: Yehuda bar Mareimar would say to his attendant: Go hire workers for me and say to them: Your wages are upon the employer. Yehuda bar Mareimar instructed the attendant to do this in order to avoid violating the prohibition of delaying payment of wages. Mareimar and Mar Zutra would hire workers for each other for the same reason.

232 Rabba bar Rav Huna said: Those marketplace workers of Sura do not violate the prohibition by Torah law of delaying payment of wages, in the event that they do not pay their employees immediately. This is because everyone knows that they rely on the market day to earn their money, and the employees are aware that they will not be paid on the same day that they worked. But he certainly violates the prohibition by rabbinic law of: Do not delay, if he withholds payment any later than the market day.

233 § The mishna teaches that an hourly laborer collects his wages all night and all day. Rav says: An hourly laborer who worked by day collects his wages all that day, while an hourly laborer who worked by night collects his wages all that night. And Shmuel says: An hourly laborer who worked by day indeed collects his wages all that day, but an hourly laborer by night collects his wages all that night and all the following day.

234 We learned in the mishna: An hourly laborer collects his wages all night and all day. This is apparently a conclusive refutation of Rav. The Gemara answers: Rav could have said to you that he

teaches the mishna disjunctively in the following manner: An hourly laborer by day collects his wages all day, while an hourly laborer by night collects his wages all night.

235 We learned in the mishna: If he was a weekly laborer, a monthly laborer, a yearly laborer, or a laborer for a Sabbatical cycle of seven years, if he left upon the completion of his work in the day, he collects his wages all day; if he left at night, he collects his wages all night and all day. This indicates that one who finishes his work at night can be paid throughout the following day as well.

236 The Gemara replies: Rav could have said to you that it is a dispute between tanna'im, as it is taught in a baraita: An hourly laborer by day collects his wages all day, while an hourly laborer by night collects his wages all night; this is the statement of Rabbi Yehuda. Rabbi Shimon says: An hourly laborer by day collects his wages all day, while an hourly laborer by night collects his wages all night and all day.

237 The baraita continues. From here the Sages stated: Anyone who withholds the wages of a hired laborer violates these five negative prohibitions and one positive mitzva. He violates the prohibition of: "Do not oppress your neighbor" (Leviticus 19:13), and the prohibition of: "Do not steal" (Leviticus 19:13), and the prohibition of: "You should not oppress a hired laborer who is poor" (Deuteronomy 24:14), and the prohibition of delaying payment of wages (Leviticus 19:13), and he has not fulfilled the positive mitzva of: "On the same day you shall give him his wages" (Deuteronomy 24:15), and he has violated the prohibition of: "The sun shall not set upon him" (Deuteronomy 24:15).

238 The Gemara asks: But these five prohibitions do not all take effect at the same time, since those that are applicable by day are not in effect by night, while those that are applicable by night are not relevant by day. How can he be in violation of them all? Rav Ḥisda said: It means merely that the general concept of withholding the wages of a hired laborer includes all these prohibitions and one positive mitzva.

239 § The Gemara asks: What is defined as oppression and what is defined as stealing, and what is the difference between them? Rav Ḥisda said: If he told him: Go and return, go and return (see Proverbs 3:28), avoiding paying him while saying that he will pay him at some point, this is oppression. If he says to him: You have money owed to you in my possession but I will not give it to you, this is stealing.

240 Rav Sheshet objects to this from a baraita: What is the type of oppression for which the Torah obligated him to bring an offering? It is similar to the case of one who had been entrusted with money as a deposit, where he then denies that he accepted it, thereby keeping the money. This contradicts Rav Ḥisda's claim that oppression is referring to one who admits that he owes him. Rather, Rav Sheshet said that the difference is as follows: If he said to him: I gave it to you, this is defined as oppression. If he tells him: You have money owed to you in my possession but I am not giving it to you, this is defined as stealing.

241 Abaye objects to this: What is the type of stealing for which the Torah obligated him to bring an offering? We require it to be similar to the case of one who had been entrusted with money as a deposit, where he then denies that he accepted it, thereby keeping the money. That is unlike the example of stealing given by Rav Ḥisda and Rav Sheshet, where the party withholding the money concedes that he owes it. Rather, Abaye said: If he said to him: I never hired you, this is oppression; if he claimed: I gave it to you, this is stealing.

242 The Gemara asks: And according to Rav Sheshet, what is different about oppression that he raised a difficulty against Rav Ḥisda concerning it, and what is different about stealing that he did not raise a difficulty, although Abaye's question was similar to his. The Gemara explains: Rav Sheshet could have said to you: Stealing means that he first stole from him by stating that he will not give him the money, and later denied owing it.

243 The Gemara challenges: If so, then even with regard to oppression as well, the case can be that he first conceded that he owes the wages and then later denied it. Why does Rav Sheshet say that the case must be where the employer said to the laborer: I gave it to you? The Gemara responds: How can these cases be compared? Granted, there it is written: "And if he deals falsely with his neighbor in a matter of deposit, or of pledge, or of robbery" (Leviticus 5:21), which by inference indicates that he admitted to him at the outset. But with regard to oppression is it written: Or by oppression? It is written: "Or he oppressed," which does not refer back to his previous denial but is referring to the actual sin, indicating that he had already oppressed him.

244 Rava said: There is no need for such an artificial distinction, as oppression is the same as stealing, and no practical difference exists between the two categories. And why, then, did the verse divide them into two categories? It did this so that he will violate two prohibitions, stealing and oppression.

245 MISHNA: Whether referring to a person's wages that he receives or the renting of an animal or the renting of utensils, are all subject to the prohibition of: "On the same day you shall give him his wages" (Deuteronomy 24:15), and are subject to the prohibition of: "The wages of a hired laborer shall not remain with you all night until the morning" (Leviticus 19:13). When does he transgress these prohibitions? He transgresses them when the one owed the money claimed the payment from him. If he did not claim his payment from him the other does not transgress the prohibitions. If the one who owes the money transferred his payment by leaving instructions with a storekeeper or with a money changer to pay him, he does not transgress the prohibitions.

246 The mishna discusses other related halakhot: If a hired laborer requests payment at the proper time and the employer claims he already paid him, the laborer takes an oath that he did not receive his wages and then takes the wages from the employer. If the time had passed, he does not take an oath and take the wages. If there are witnesses who testify that he claimed the money from him at the proper time, he takes an oath and takes the money.

247 One who hires a gentile who resides in Eretz Yisrael and observes the seven Noahide mitzvot [ger toshav] is subject to the prohibition of: "On the same day you shall give him his wages," but is not subject to the negative mitzva of: "The wages of a hired laborer shall not remain with you all night until the morning."

248 GEMARA: The Gemara asks: Whose opinion is expressed in the mishna? It is not that of the first tanna of the baraita, who interprets the phrase: "From your brothers" (Deuteronomy 24:14), and it is not Rabbi Yosei, son of Rabbi Yehuda. The Gemara clarifies: What is this baraita that is referred to here? The Gemara explains: As it is taught in a baraita:

249 The verse states: "You shall not oppress a hired laborer who is poor and needy, whether he be from your brothers or from your stranger that is in your land within your gates" (Deuteronomy 24:14), which is interpreted as follows: The term "from your brothers" serves to exclude others, i.e., gentiles, who are not your brothers. As for the term "your stranger," this is referring to a righteous

convert. As for the term “within your gates,” this is referring to a ger toshav who lives in Eretz Yisrael and eats unslaughtered animal carcasses because he has not accepted Judaism upon himself.

250 I have derived only that the prohibitions of delaying wages apply to the hire of people. From where do I know to include payment for the rental of animals and utensils in the prohibition of delaying wages? The verse states: “In your land,” which includes all that is in your land. And in all of the above cases of delaying payment they transgress all of these prohibitions which apply to delaying payment.

251 From here the Sages stated: Whether referring to the hire of a person or the rental of an animal or the rental of utensils, all are subject to the prohibition of: “On the same day you shall give him his wages” (Deuteronomy 24:15), and they are likewise subject to the prohibition of delaying the payment of wages of a hired laborer (Leviticus 19:13). Rabbi Yosei, son of Rabbi Yehuda, says: One who hires a ger toshav is subject to the prohibition of: “On the same day you shall give him his wages,” but is not subject to the prohibition of delaying payment of wages, and the payment of rent of an animal or vessels is included only in the prohibition of: “Do not oppress” alone.

252 The Gemara returns to its initial question: In accordance with whose opinion is the mishna? If it is in accordance with the opinion of the first tanna of the baraita, who interprets the verse: “From your brothers,” the halakha of a ger toshav is difficult, as he equates a ger toshav with a Jew, unlike the mishna. If it is in accordance with the opinion of Rabbi Yosei, son of Rabbi Yehuda, the halakha of the rental payment of animals and vessels is difficult, as Rabbi Yosei maintains they are not included in any of the prohibitions except for: Do not oppress.

253 Rava said: This tanna of the mishna is a tanna from the school of Rabbi Yishmael, as the school of Rabbi Yishmael taught: Whether in the case of the hire of a person, the rental of an animal, or the rental of vessels, all of these payments are subject to the mitzva of: “On the same day you shall give him his wages,” and the prohibition of delaying payment of wages. A ger toshav is subject to the mitzva of: “On the same day you shall give him his wages,” but he is not subject to the prohibition of delaying payment of wages.

254 Until this point, the Gemara has discussed the source of the ruling of the first tanna. It now analyzes the reasons behind the different opinions. What is the reason of the first tanna of the baraita, who interprets the verse: “From your brothers”? He derives it by verbal analogy comparing the words: “You shall not oppress a hired laborer,” and the verse: “The wages of a hired laborer shall not remain with you all night until the morning.” Just as the former verse includes a Jew, a ger toshav, the rental of an animal, and the rental of utensils, so too, the latter verse includes all of the above. And Rabbi Yosei, son of Rabbi Yehuda, does not derive this verbal analogy of: “Hired laborer” and “hired laborer.”

255 The Gemara challenges: Although Rabbi Yosei, son of Rabbi Yehuda, does not derive the verbal analogy of the words: “Hired laborer” and “hired laborer,” one should still also be liable in the case of animals or vessels due to the injunction of: “On the same day you shall give him his wages.” From where does he derive that such items are not included in this prohibition? Rabbi Ḥananya teaches in a baraita that the verse states: “On his day you shall give him his wages, and the sun shall not set upon him, for he is poor” (Deuteronomy 24:15). This verse clearly is referring to one who can enter into a state of poverty and wealth, which excludes animals and vessels, which cannot enter into a state of poverty and wealth.

256 The Gemara asks: And with regard to the first tanna, who does not address this verse of: “For he is poor,” what does he do with it? The Gemara answers: That verse is necessary to give precedence to a poor person over a wealthy person if the employer does not have enough money to pay all his workers. And how does Rabbi Yosei, son of Rabbi Yehuda, derive that halakha? In his opinion that halakha is derived from: “You shall not oppress a hired laborer who is poor and needy” (Deuteronomy 24:14).

257 The Gemara asks: But if so, why does the first tanna require another verse? The Gemara explains: He maintains that one verse serves to give a poor person precedence over a wealthy person, while the other one serves to give a poor person precedence over a destitute person, i.e., a complete pauper who owns nothing.

258 The Gemara adds: And both verses are necessary, as had the Torah taught us only that a poor person comes before one who is destitute one could have said that this is because a destitute person is not ashamed to demand his money; he is so needy he is not embarrassed to ask for money. But with regard to a wealthy person, who is ashamed to demand his wages, one might say that a poor person does not receive precedence over him. And conversely, had the Torah taught us only that this halakha applies to a wealthy person one could have said that it is because he does not need his wages right away, but with regard to a destitute person, who does need it immediately, say that it does not apply. It was therefore necessary for both verses to be stated.

259 The Gemara asks: And with regard to the ruling of the tanna of our mishna, whichever way you look at it, it requires clarification. If he derives the verbal analogy of the words: “Hired laborer” and “hired laborer,” then even a ger toshav should be included. If he does not derive the verbal analogy of the words: “Hired laborer” and “hired laborer,” from where does he derive that this halakha applies to animals and vessels?

260 The Gemara answers: Actually, he does not derive the analogy of: “Hired laborer” and “hired laborer,” and there it is different, as the verse states: “The wages of [pe’ulat] a hired laborer shall not remain with you all night until the morning” (Leviticus 19:13). This verse is referring to any case where its work [pe’ulato] is with you, which includes animals and vessels. The Gemara asks: If so, then even a ger toshav should be included, as he too performs work for you. The Gemara responds: The initial section of the verse states: “Your neighbor,” which refers to your neighbor who is Jewish, and not a ger toshav, who is not called a neighbor.

261 The Gemara asks: If so, then even animals and utensils should not be included, as they too are not called: Your neighbor. The Gemara replies: It is written: “With you,” which includes all items that work with you. The Gemara asks: What did you see to decide to include animals and utensils, and to exclude a ger toshav? The Gemara answers: It stands to reason that he should include animals and utensils, as they are at least included in the category of your neighbor’s money, whereas a ger toshav is not included in your neighbor’s money.

262 The Gemara asks: And the first tanna of the baraita, who interprets: “From your brothers,” what does he do with this verse: “Your neighbor”? The Gemara explains: That verse is necessary for him for that which is taught in a baraita: “Your neighbor,” and not a gentile. The Gemara challenges: The exclusion of a gentile is derived from: “Your brothers,” and no additional verses are necessary for this purpose.

263 The Gemara answers: One verse serves to permit one who oppresses him, and the other one serves to permit stealing from him, and both are necessary. Because had the Torah taught us this halakha only with regard to stealing from him, one could have said that this is because the gentile did not toil for him, but one who oppresses him, where he has toiled for him, you might say that he is not permitted to oppress him. And conversely, had the Torah taught us only that the practice of he who oppresses him is permitted, it might have been said that this is because the money has not yet reached his hand, but with regard to stealing from him, when he takes money that has already reached his hand, say that this halakha does not apply. Therefore, both cases are necessary.

264 The Gemara asks: And what does Rabbi Yosei, son of Rabbi Yehuda, do with this verse: "The wages of a hired laborer shall not remain with you all night until the morning"? The Gemara answers: It is necessary for him for that which Rav Asi teaches, as Rav Asi says: Even if one hired the laborer to harvest only one cluster of grapes for him, one violates the prohibition of delaying payment of wages.

265 The Gemara asks: And from where does the other Sage, i.e., the first tanna, derive this halakha? The Gemara answers: He derives it from the phrase: "For he sets his soul upon it" (Deuteronomy 24:15). This indicates that one is liable for delaying the payment of wages due for any work; as a laborer obligates himself to perform the work, it is something for which he gives his soul.

266 The Gemara asks: And what does the other Sage, the second tanna, derive from this verse? The Gemara responds: That verse is necessary for that which is taught in a baraita: The expression "for he sets his soul upon it" explains why one must be so precise when paying a laborer his wages: For what reason did this laborer ascend on a tall ramp or suspend himself from a tree and risk death to himself? Was it not for his wages? How, then, can his employer delay his payment?

267 Alternatively, the words "for he sets his soul upon it" teach that concerning one who withholds the wages of a hired laborer, it is as though he takes his soul from him. Rav Huna and Rav Ḥisda disagreed over the meaning of this statement. One says it is referring to the soul of the robber, meaning that one who steals from a hired laborer by delaying payment of his wages causes Heaven to remove his own soul, and one says that he takes the soul of the robbery victim, meaning that one who steals from a hired worker causes the death of the worker.

268 The Gemara cites proof for these two opinions. The one who says it is referring to the soul of the robber bases his opinion on a verse, as it is written: "Do not rob from the weak because he is weak, nor crush the poor in the gate" (Proverbs 22:22), and it is written immediately afterward: "For the Lord will plead their cause, and spoil the soul of those who spoil them" (Proverbs 22:23). This indicates that God will take the soul of one who steals from a poor person. And the one who says it is referring to the soul of the robbery victim bases his opinion on a verse, as it is written: "So are the ways of everyone who is greedy for gain; it takes away the life of its owners" (Proverbs 1:19). A robber is considered as if he removed the very soul of his victim.

269 The Gemara asks: And according to the other Sage too, isn't it written: "It takes away the life of its owners"? How does he interpret this verse? The Gemara answers: This is referring to its current owner, i.e., the robber, who took the money and now owns it. The Gemara asks: And according to the other Sage too, isn't it written: "And spoil the soul of those who spoil them"? How does he interpret this verse? The Gemara answers: This verse employs the style known as: What is the reason, as

follows: What is the reason that God will spoil those who spoil them? Because they took someone’s soul, for which He will exact retribution.

270 § The mishna teaches: When does he transgress these prohibitions? He transgresses them when the one owed the money claimed the payment from him. If he did not claim his payment from him, the other does not transgress the prohibitions. The Sages taught: With regard to the verse: “The wages of a hired laborer shall not remain with you all night until the morning” (Leviticus 19:13), one might have thought that he should be liable even if the laborer did not claim his wages from him. The verse states “with you,” meaning the prohibition is not transgressed unless it is with your knowledge and consent that you have not paid him. But if he did not even request his wages yet, the prohibition has not been violated.

271 Furthermore, one might have thought that the employer is liable even if he does not have the money to pay him. Therefore, the verse states “with you,” indicating that there is money with you. One might have thought that even if the employer transferred his payment to a storekeeper or to a money changer, he still violates the prohibition of delaying payment of wages. Therefore, the verse states “with you,” indicating that it applies only if the payment is your obligation, but not if he transferred it to a storekeeper or to a money changer, as then the payment of the laborer’s wages is no longer his responsibility.

272 § The mishna teaches: If the one who owes the money transferred his payment by leaving instructions with a storekeeper or with a money changer to pay him, he does not transgress the prohibitions. A dilemma was raised before the Sages: If the storekeeper or money changer neglected to pay the wages, may the laborer return to the employer and claim his money from him, or may he not return, as the storekeeper or money changer is now his exclusive address for complaints? Rav Sheshet says he may not return, and Rabba says he may return.

273 Rabba said: From where do I state my opinion? From the fact that the mishna teaches: He does not transgress the prohibition, from which it may be inferred: He does not transgress the prohibition, but the laborer may still return to him to collect his wages. And Rav Sheshet said: What is the meaning of the ruling that he does not transgress the prohibition? It means that he is not included in the category of transgressing, as his transfer of the payment exempts him from all responsibility.

274 § The Sages inquired of Rav Sheshet: If the laborer worked as a contractor, who is paid for a completed job rather than by the hour, does the employer violate the prohibition of delaying payment of wages or does he not violate the prohibition of delaying payment of wages?

275 The resolution to this inquiry depends on how a craftsman’s wages are classified. Does a craftsman, who is a type of contractor, acquire ownership rights through enhancement of the vessel? This would mean that 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, who are then considered to have purchased the enhanced item from him. And accordingly, his payment is akin to a loan in that it will not be subject to the prohibition of delaying the payment of wages. Or perhaps a craftsman does not acquire ownership rights through enhancement of the vessel,and the obligation of the owner to pay him is similar to the obligation to pay wages to any laborer, in which case the money is classified as a wage, and is subject to the prohibition of delaying wages.

276 Rav Sheshet said to them: He does violate the prohibition. They asked Rav Sheshet: But isn't it taught in a baraita that a contractor does not violate the prohibition? Rav Sheshet replied: There it is referring to a case where he transferred the wages to a storekeeper or to a money changer.

277 The Gemara suggests: Let us say that the following baraita supports the opinion of Rav Sheshet: 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 the prohibition of delaying the payment of wages. 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 the prohibition of delaying the payment of wages.

278 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 of 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.

279 Rav Mari, son of Rav Kahana, said: There is no proof from here, as 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. 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.

280 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. Accordingly, 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, and the prohibition of delaying payment of wages does apply to this case.

281 § The mishna teaches: If a hired laborer requests payment at the proper time and the employer claims he already paid him, the laborer takes an oath that he did not receive his wages and then receives the wages from the employer. The Gemara asks: Why did the Sages institute for a hired laborer, who is the plaintiff, to take an oath and receive his wages, in opposition to the principle that in the case of a monetary dispute between two parties, the defendant takes an oath that he is not liable and thereby exempts himself from payment?

282 Rav Yehuda says that Shmuel says: They taught great halakhot here. The Gemara is puzzled by this choice of words: Are these halakhot? They are ordinances designed for the proper running of business transactions, not halakhot that apply to everyone at all times. The Gemara emends the above statement: Rather, Rav Yehuda says that Shmuel says: They taught great ordinances here. The Gemara is still unsatisfied with the terminology: Does the word great indicate by inference that there are minor ordinances? Which ordinances are considered of minor importance?

283 Rather, Rav Naḥman says that Shmuel says: They taught fixed ordinances here that are necessary for practical life. The reason is that taking the oath is actually the duty of the employer, but the Sages transferred the oath of the employer and imposed it upon the hired laborer due to the livelihood of the hired laborer. The laborer requires his wages to survive, and therefore if the employer is allowed to exempt himself by taking an oath, the laborer will be left with nothing. The Gemara asks: And simply due to the livelihood of the hired laborer should we cause the employer to lose out? If the

employer is entitled to take an oath to exempt himself, why should he suffer due to the laborer's needs?

[284] The Gemara answers: It is preferable for the employer himself that the hired laborer should take an oath and receive his wages so that laborers will hire themselves out to him with the knowledge that their wages are secure. The Gemara asks: Why not argue the reverse, that it is preferable for the hired laborer himself that the employer should take an oath and be exempt so that he should be hired? If the terms of labor are too imposing, people will not hire laborers. The Gemara responds: The employer must perforce find a laborer to hire. The Gemara retorts: A hired laborer, too, must perforce allow himself to be hired out.

[285] The Gemara now retracts the previous explanation: Rather, the employer is preoccupied with many laborers, and it is more likely that he forgot and mistakenly believed that he already paid this laborer's wages. The Gemara asks: If so, i.e., if it is reasonable that the employer forgot, we should give the laborer his wages without him taking an oath, as there are grounds to presume that the employer erred. The Gemara responds: The laborer takes an oath in order to alleviate the concerns of the employer, as, if he is not required to take an oath, the employer will feel that he has been cheated.

[286] The Gemara asks: But why not have the employer instead give him his wages in the presence of witnesses each time, which would remove any uncertainty? The Gemara answers: The matter would be an inconvenience to them both if they needed to find witnesses before each payment. The Gemara asks: But why not have the employer give him the wages at the outset, before he starts working, when he is less preoccupied? The Gemara answers: Both of them want the payment to be in the form of credit, i.e., that the wages not be paid in advance. The employer prefers this arrangement in case he has no ready cash at his disposal, while the laborer also prefers to be paid at the end of the day so that he does not lose his money in the meantime.

[287] The Gemara asks: If so, then even if the dispute between them concerns a fixed amount of payment as well, the laborer should take an oath. Why did we learn in a baraita: If the craftsman says: You fixed two coins for me as my payment, and the other, i.e., the employer, says: I fixed only one coin for you, then the burden of proof rests upon the claimant. Why is it not assumed that the employer was preoccupied and forgot, as in the previous case? The Gemara answers: The fixing of wages is certainly an event that people remember, and there is no concern that the employer forgot how much he stipulated.

[288] The Gemara asks: If so, i.e., if the concern exists that the employer might have forgotten, then even if his time had passed for claiming his wages, the laborer should be entitled to take an oath and claim his wages. Why did we learn in the mishna: If the time had passed he does not take an oath and receive the wages? The Gemara answers: The reason in that case is that a presumption exists that an employer does not generally violate the prohibition of delaying payment of wages.

[289] The Gemara asks: But didn't you say that the employer is preoccupied with his laborers? The Gemara answers: This statement applies only before the time of his obligation to pay arrives, as it is possible that his preoccupation with other matters caused him to forget whether he had already paid him,

[290] but when the time of his obligation to pay arrives, he applies himself and remembers all the details, so as not to violate the prohibition of delaying payment of the laborer's wages.

[291] The Gemara asks: Why would one rely upon the presumption that the employer would not transgress? But is the hired laborer suspected of violating the prohibition of stealing? The Gemara replies: There, concerning the credibility of an employer, there are two presumptions, whereas here, concerning the credibility of a laborer, there is only one presumption. The Gemara explains: Concerning the credibility of an employer there are the following two presumptions: One is that the employer does not violate the prohibition of delaying payment of wages, and the other one is that a hired laborer does not delay the request for his wages. But here, concerning the credibility of the laborer, there is only one presumption, i.e., that the laborer does not violate the prohibition of stealing.

[292] The mishna teaches: If there are witnesses who testify that he claimed the money from him, he takes an oath and receives the money. The Gemara asks: But what need is there for witnesses that he lodged a claim, when he is claiming it from him in front of us? Rabbi Asi said: The tanna is referring to witnesses that testified that he claimed it from him at its proper time. The Gemara challenges: Even if the laborer claimed the money at the proper time, perhaps the employer paid him afterward. Abaye said: The witnesses testify that he claimed it from him the entire time, i.e., from the time he completed his labor until the end of that day.

[293] The Gemara continues: And is it always assumed that the employer did not pay the laborer? Why does the fact that he claimed his money at the proper time mean that his claim against his employer is always accepted? Rav Ḥama bar Ukva said: The tanna means that he is given another day corresponding to that day of his claim during which the laborer can claim that he has not been paid.

[294] MISHNA: With regard to one who lends money to another and the debtor fails to repay it at the end of the term of the loan, the creditor may take collateral from him to ensure payment only by means of an agent of the court, not of his own accord. And he may not enter the debtor’s house to take his collateral, as it is stated: “When you lend your neighbor any manner of loan, you shall not go into his house to take his collateral. You shall stand outside, and the man to whom you lend shall bring forth the collateral to you outside” (Deuteronomy 24:10–11). If the debtor had two utensils of the same kind, the creditor takes one and leaves the other one in the debtor’s possession.

[295] And in addition, the creditor must return a pillow at night, as the debtor requires it for sleeping, and a plow, which is needed for his daytime work, by day. If the debtor died, he is not required to return it to the debtor’s heirs. Rabban Shimon ben Gamliel says: Even to the debtor himself he needs to return the collateral each day only until thirty days have passed, and from thirty days onward, the creditor can sell them in court, with the proceeds going toward payment of the debt.

[296] GEMARA: Shmuel says: An agent of the court who was granted permission to appropriate items from a debtor up to the sum of the loan may seize these items from him in the marketplace, but is not permitted to enter the debtor’s house and take collateral. The Gemara asks: But didn’t we learn in the mishna that one who lends money to another may take collateral from him only by means of an agent of the court, which proves by inference that when it is taken by means of an agent of the court the agent of the court may enter the debtor’s house and take collateral?

[297] The Gemara responds: Shmuel could have said to you: Say that the mishna meant as follows: He may seize it forcibly from him only by means of an agent of the court. The Gemara adds: So, too, it is reasonable that this is correct, as the latter clause of the mishna teaches: And he may not enter the debtor’s house to take his collateral. Who is the tanna referring to here? If we say it is referring to the

creditor, this clause is not needed, as this halakha can be concluded from the first clause of the mishna, which states that a creditor has no right to take collateral himself. Rather, is it not referring to the court agent? Accordingly, this teaches that even an agent of the court may not enter the debtor's house to take the collateral.

[298] The Gemara refutes the above claim: If the argument to understand the mishna in that manner is due to that reason, there is no conclusive argument, as it is possible that this is what the mishna is saying: One who lends money to another may take collateral from him by entering the debtor's house only by means of an agent of the court, which proves by inference that it is permitted to take collateral by entering the debtor's house by means of an agent of the court. One can then infer: But as for the creditor himself, he may not even seize collateral outside the debtor's house. This is a rabbinic decree so that he should not enter the debtor's house to take his collateral.

[299] Rav Yosef raises an objection to Shmuel's statement from a baraita: The Torah states: "He may not take the lower or upper millstone as collateral" (Deuteronomy 24:6). But it may be inferred that other items may be taken as collateral. Similarly, it states: "You may not take a widow's garment as collateral" (Deuteronomy 24:17), but clothing that belongs to others you may take as collateral. The Gemara analyzes these statements: Who is permitted to do so? If we say that the creditor may take these items, that cannot be, as it is written: "You shall not go into his house to take his collateral" (Deuteronomy 24:10). Rather, is it not referring to the agent of the court, which indicates that the agent of the court may enter the debtor's house and take collateral, although the Torah places limits on which item he can take?

[300] Rav Pappa, son of Rav Naḥman, interpreted the baraita before Rav Yosef; and some say it was Rav Pappa, son of Rav Yosef, who interpreted the baraita before Rav Yosef: Actually, it is referring to a creditor, and the Torah's additional prohibition against appropriating certain items is given so that he will violate two prohibitions for this action. For example, if he took the lower or upper millstone he violates both the command: "You shall not go into his house," as well as the more specific prohibition.

[301] The Gemara suggests: Come and hear a different baraita that contradicts Shmuel: From the implication of that which is stated: "You shall stand outside," do I not know that: "And the man to whom you lend shall bring forth outside" (Deuteronomy 24:11)? Rather, why must the verse state the inclusive phrase "And the man to whom you lend shall bring forth outside"? This serves to include the agent of the court. The Gemara comments: What, is it not that the agent of the court has the same status as the debtor himself, indicating that just as the debtor may enter his own house at any time, the court agent may act likewise?

[302] The Gemara responds: No, the agent of the court is considered like the creditor, who must wait outside for the debtor to deliver his collateral.

[303] The Gemara attempts a further proof. Come and hear that which the Sages taught: The verse states: "If you take as collateral your neighbor's garment, you shall restore it to him until the sun goes down" (Exodus 22:25). The verse is speaking of an agent of the court. Do you say that the verse is speaking of an agent of the court, or perhaps it is referring only to a creditor? When it says: "You shall not go into his house to take his collateral" (Deuteronomy 24:10), the case of a creditor is thereby stated. How then do I realize the meaning of the verse: "If you take as collateral your

neighbor’s garment”? The verse is speaking of an agent of the court. This indicates that an agent of the court has permission to take collateral.

304 The Gemara responds: This issue is a dispute between tanna’im, as it is taught in a baraita: An agent of the court who comes to take collateral from a debtor may not enter his house to take the collateral from him. Rather, the agent stands outside and the other, i.e., the debtor, brings out the collateral to him, as it is stated: “You shall stand outside, and the man to whom you lend shall bring forth the collateral” (Deuteronomy 24:11). According to this tanna, the agent of the court has the same status as the creditor.

305 And it is taught in another baraita: A creditor who comes to take collateral from the debtor may not enter his house to take his collateral. Rather, he stands outside, and the other, i.e., the debtor, enters and brings out the collateral to him, as it is stated: “You shall stand outside, and the man to whom you lend shall bring forth the collateral” (Deuteronomy 24:11). But as for an agent of the court who comes to take collateral from the debtor, this agent may enter his house and take his collateral.

306 The baraita continues: The agent of the court may not take as collateral from the debtor items that people use in the preparation of food, as the debtor needs such items, and the Torah explicitly forbade their removal. And the agent gives, i.e., leaves behind, a bed, and a second bed, and blankets, for a wealthy person; and a bed, and a second bed, and a mat, for a poor person. These items are left for the debtor himself, but not for his wife, and not for his sons or for his daughters, as the Torah did not obligate the creditor to care for the debtor’s family.

307 The tanna adds: In the manner that arrangements are made for a debtor to be left with certain necessary utensils, so arrangements are made for one obligated to give money to the Temple treasury resulting from a vow in the category of valuations. If one vowed to give a certain valuation to the Sanctuary as specified in the Torah (see Leviticus 27) but does not have sufficient money to pay that sum immediately, a similar arrangement is made for him. The Gemara is puzzled by this last clause: Isn’t it the opposite? The primary discussion of arrangements is stated in the Torah with regard to valuations, from which the halakha of other debts is derived. Rather, say that in the manner that arrangements are made for valuations as explained by the Torah, so arrangements are made for a debtor.

308 § The Master said above: He gives a bed, and a second bed, and blankets, for a wealthy person; and a bed, and a second bed, and a mat, for a poor person. The Gemara asks: For whom is this extra bed? If we say it is for his wife, for his sons, or for his daughters, didn’t you expressly say that these items are left for him, but not for his wife, for his sons, or for his daughters? Rather, both this bed and that bed are for him.

309 The Gemara asks: Why does the debtor need two beds when one should suffice for all his needs? The Gemara answers: One is for him to eat on it and one is for him to sleep on it, and this is in accordance with the opinion of Shmuel. As Shmuel, who was a doctor by profession, said: With regard to all items that cause illness, I know their cure, apart from these three: One who eats a bitter date [ahina] on an empty stomach, one who girds a wet linen belt around his loins, and one who eats bread and does not walk four cubits afterward. It is for this reason that one requires two beds, so that he should not eat and sleep on the same bed without having to walk a little distance between them after his meal.

[310] § A tanna taught a baraita before Rav Naḥman: In the manner in which arrangements are made for valuations, so arrangements are made for a debtor. Rav Naḥman said to him: Now that it states in the mishna that we sell his collateral, do we arrange for him to keep part of it? The Gemara asks: And do we sell it? But didn't we learn in the mishna that he returns a pillow at night and a plow by day, which demonstrates that such items are not sold?

[311] The Gemara answers: The tanna taught the baraita before him in accordance with the opinion of Rabban Shimon ben Gamliel, and this is what Rav Naḥman was saying to him: Now, since according to Rabban Shimon ben Gamliel we sell the collateral, do we make arrangements for him to keep it? As we learned in the mishna: Rabban Shimon ben Gamliel says: Even to the debtor himself he needs to return the collateral each day only until thirty days have passed, and from that point onward, the creditor can sell them in court, with the proceeds going toward payment of the debt.

[312] The Gemara asks: And from where is it known that when Rabban Shimon ben Gamliel said that he sells the collateral, he was saying that there may be a complete sale? Perhaps this is what he is saying: Until thirty days, the creditor returns it to the debtor as is; from that point onward, the creditor returns to him that which is fit for him, and we sell what is not fit for him.

[313] The Gemara rejects this suggestion: If it enters your mind that Rabban Shimon ben Gamliel maintains this reasoning, there is nothing that is unfit for him. As Abaye said: Rabban Shimon ben Gamliel and Rabbi Shimon and Rabbi Yishmael and Rabbi Akiva all hold that all Israel are the children of kings. In other words, a Jew is never deemed unfit to use a certain item, even if it is a luxury item.

[314] The Gemara cites the cases in which the tanna'im apply the above principle. Rabban Shimon ben Gamliel applies this principle, as we learned in a mishna (Shabbat 126b): One may not move either raw arum or raw mustard on Shabbat, as these are unfit for consumption when they are raw, and are therefore set-aside [muktze]. In the case of arum, Rabban Shimon ben Gamliel permits moving it because it is considered food for ravens, which wealthy Jews would breed for purposes of ornamentation and amusement. As Rabban Shimon ben Gamliel permits all people to carry arum, not only the rich, it is evident that he maintains that all Jews are considered wealthy in this regard.

[315] Rabbi Shimon applies this principle as we learned in a mishna (Shabbat 111a): Princes may smear rose oil on their wounds on Shabbat, even though most people use this oil for medicinal purposes, and healing oneself using oil is prohibited on Shabbat. The reason is that it is the usual manner of princes to smear rose oil on themselves for pleasure during the week. Rabbi Shimon says: All of the Jewish people are princes, and it is permitted for them to smear rose oil on themselves on Shabbat.

[316] Rabbi Yishmael and Rabbi Akiva also hold this opinion, as it is taught in a baraita: If creditors were claiming one thousand dinars from someone, and he was wearing a cloak [itztela] worth ten thousand dinars, the court strips it from him and sells it for his debt, and dresses him in a cloak appropriate for him, as one who is in debt does not have the right to withhold payment while possessing such an expensive garment. And it was taught in the name of Rabbi Yishmael, and it was similarly taught in the name of Rabbi Akiva: All of the Jewish people are fit for that cloak. One's clothing is not sold to pay a debt, and since all Jews are worthy of wearing the finest garments, this halakha applies to an expensive cloak as well.

[317] The Gemara returns to the issue at hand: And with regard to what entered our minds initially, that according to the opinion of Rabban Shimon ben Gamliel, the creditor returns to him that which is fit for him and we sell what is not fit for him, there is a difficulty, as the examples given in the mishna are bedding and a plow. Granted, this is understandable with regard to a pillow or cushion, as it can mean that the court sells these items only if the difference in cost between the ones he has and less expensive ones that are also fit for him suffices to repay the debt. But for what is a plow fit? In other words, how can there be a difference in price in this case? Rava bar Rabba said: This is referring to a silver plow, which is an ornament and not used for work.

[318] Rav Ḥagga objects to this entire opinion concerning the arrangement made for a debtor: Let the creditor say to the debtor: Your needs are not cast upon me. In other words, why should I, who lent you money, make allowances for your livelihood? Abaye said to him:

[319] Indeed, the debtor's needs are cast upon him, because it is stated in connection with this same issue of returning the collateral: "And it shall be righteousness to you" (Deuteronomy 24:13), which indicates that there is an obligation for the creditor to act toward the debtor with righteousness.

[320] § A dilemma was raised before the Sages: What is the halakha with regard to making arrangements for the debtor so that he will retain some of his possessions so that he may continue living as before, albeit at a slightly lower standard? The issue on which this is based is whether or not a verbal analogy is derived from the usage of the term "poor" written in the context of a debtor (Leviticus 25:35) and the term "poor" written in the context of valuations (Leviticus 27:8), as the Gemara will discuss further at the end of the amud.

[321] The Gemara suggests: Come and hear a proof, as Ravin sent a message in his letter from Eretz Yisrael: I asked all my teachers concerning this matter, but they did not tell me anything. But there was this question concerning a similar matter that I heard them discuss: With regard to one who says: It is incumbent upon me to bring one hundred dinars for the Temple maintenance, what is the halakha as to whether they make arrangements for him? Although an arrangement is explicitly taught only with regard to the specific type of donation of valuations, is it applicable here as well?

[322] Rabbi Ya'akov in the name of bar Padda, and Rabbi Yirmeya in the name of Ilfa, each say: It is an a fortiori inference from the halakhot of a debtor: And if for a debtor, to whom one returns his collateral, they do not make arrangements for the payment of his debt, then in the case of consecration, where they do not return his collateral, is it not logical that they should not make arrangements for the payment of his debt? And Rabbi Yoḥanan says: It is written: "When a man shall clearly utter a vow according to your valuation" (Leviticus 27:2). In this verse, all vows of consecrated property are juxtaposed to valuations, teaching that just as they make arrangements for the payment of a debt with regard to valuations, so too they make arrangements for the payment of a debt with regard to any vow of consecration.

[323] The Gemara asks: And what do the other Sages, i.e., Rabbi Ya'akov and Rabbi Yirmeya, derive from this juxtaposition between vows and valuations? The Gemara replies: They maintain that this juxtaposition comes to teach the halakha that a vow of consecration is judged by its significance. If one stated a vow of valuation concerning a vital part of his body, e.g., that he will donate the value of his heart, he is obligated to pay not only the value of that organ, but the valuation of his entire self. Consequently, the phrase "a vow according to your valuation" indicates that just as valuations are judged by their significance, so too consecrated property is judged by its significance.

[324] The Gemara asks: But they should make arrangements for a debtor based on an a fortiori inference from the halakhot of valuations, as follows: And if in the case of valuations the halakha is that they do not return his collateral and yet they do make arrangements for the payment of his debt, then with regard to a debtor, where the halakha is that one does return his collateral, is it not logical that they should make arrangements for the payment of his debt? The Gemara responds: The verse states: “But if he is too poor for your valuation…and the priest shall value him, according to the means of the one that vowed shall the priest value him” (Leviticus 27:8). The Torah emphasizes that this halakha is applicable only to “he” who makes a valuation, but not to a debtor.

[325] The Gemara asks: And according to the other opinion, which maintains that they do make arrangements for a debtor, how is the word “he” interpreted? The Gemara answers: This word teaches that the halakha does not apply unless he remains in his state of poverty from the beginning to the end. If he was rich at the outset, or grew wealthy at some later stage, arrangements are not made for him.

[326] The Gemara asks an additional question: And once it is established that arrangements are not made for a debtor, they should return the collateral in the case of consecration based on an a fortiori inference from the halakhot of a debtor: And if in the case of a debtor, where they do not make arrangements for him, the creditor nevertheless returns his collateral, with regard to consecration, where they do make arrangements for the payment of his debt, is it not logical that they should return his collateral to him? The Gemara answers: The verse states with regard to a regular loan: “You shall restore to him the collateral…and he will sleep in his garment and he will bless you” (Deuteronomy 24:13), excluding consecration, where there is no need for a blessing, and therefore it is not included in the halakha of returning the collateral.

[327] The Gemara is puzzled by this claim: And is consecrated property not in need of a blessing? But isn’t it written: “And you shall eat and be satisfied, and bless the Lord your God” (Deuteronomy 8:10), indicating that consecrated property also requires a blessing? Rather, the reason is that the verse states with regard to the restoration of collateral: “And it shall be righteousness [tzedaka] for you” (Deuteronomy 24:13), which is referring to caring for one who requires charity [tzedaka], excluding consecrated property, which does not require charity.

[328] § The Gemara relates: Rabba bar Avuh found Elijah standing in a graveyard of gentiles. Rabba bar Avuh said to him: What is the halakha with regard to making arrangements for the debtor? Elijah said to him: A verbal analogy is derived from the usage of the term “poor” written in the context of a debtor and the term “poor” written in the context of valuations. With regard to valuations, it is written: “But if he is too poor [makh] for your valuation” (Leviticus 27:8), and with regard to a creditor, it is written: “But if your brother be poor [yamukh]” (Leviticus 25:35).

[329] Rabba bar Avuh now asks Elijah another question: From where is it derived with regard to a naked person that he may not separate teruma? He replied: As it is written: “And He see no unseemly thing in you” (Deuteronomy 23:15). This verse indicates that one may not recite any words of sanctity, including the blessing upon separating teruma, in front of one who is naked.

[330] The amora proceeded to ask Elijah a different question and said to him: Is not the Master a priest? What is the reason that the Master is standing in a cemetery? Elijah said to him: Has the Master not studied the mishnaic order of Teharot? As it is taught in a baraita: Rabbi Shimon ben Yoḥai says that the graves of gentiles do not render one impure, as it is stated: “And you, My sheep,

the sheep of My pasture, are man” (Ezekiel 34:31), which teaches that you, i.e., the Jewish people, are called “man,” but gentiles are not called “man.” Since the Torah states with regard to ritual impurity imparted in a tent: “If a man dies in a tent” (Numbers 19:14), evidently impurity imparted by a tent does not apply to gentiles.

331 Rabba bar Avuh said to him: How could I be familiar with that baraita? If I cannot be proficient in the more commonly studied four orders of the Mishna, can I be knowledgeable in all six? Elijah said to him: Why are you not learned in them all? Rabba bar Avuh said to him: The matter of a livelihood is pressing for me, and I am therefore unable to study properly. Elijah led him and brought him into the Garden of Eden and said to him: Remove your cloak, gather up and take some of these leaves lying around. Rabba Bar Avuh gathered them up and took them.

332 When he was exiting, he heard a voice that declared: Who else consumes his World-to-Come like Rabba bar Avuh, who takes his merit of the next world for his use in the present one? He spread out his cloak and threw away the leaves. Even so, when he brought his cloak back, he discovered that the cloak had absorbed such a good scent from those leaves that he sold it for twelve thousand dinars. Since he knew that this was taken from his portion in the World-to-Come, he did not want to benefit from it himself, and he therefore divided the sum among his sons-in-law.

333 § The Sages taught with regard to the verse: “If he be a poor man, you shall not sleep with his collateral” (Deuteronomy 24:12), but if he is wealthy, one may lie down. The Gemara asks: What is the tanna saying? Rav Sheshet said that this is what he is saying: And if he be a poor man, you shall not sleep while his collateral is with you; rather, you must restore it to him before the sun sets. But if he is a wealthy man, you may lie down while his collateral is with you.

334 The Sages taught: One who lends money to another is not permitted to take collateral from him, and is not obligated to return it to him, and transgresses all of these labels [shemot] of prohibitions. The meaning of this baraita is unclear, and the Gemara asks: What is the tanna saying? Rav Sheshet said: This is what he is saying: One who lends money to another is not permitted to take collateral from him, and if he did take collateral from him, he is obligated to return it to him. As for the clause: And he transgresses all of these labels of prohibitions, this is referring to the latter clause, i.e., the case implicit in the baraita, where the creditor took collateral from the debtor and did not return it, and the baraita explains that such a person violates all of the Torah prohibitions that apply to this situation.

335 Rava said: This is what the tanna is saying: One who lends money to another is not permitted to take collateral from him, and if he did take collateral from him, he is obligated to return it to him. In what case is this statement said? It is referring to where he took collateral from him when it was not at the time of the loan, but rather as a means of ensuring payment. But if he took collateral from him at the time of the loan, in which case the collateral serves as a guarantee of the loan, he is not obligated to return it to him. According to this interpretation, the statement: And he transgresses of all these labels of prohibitions, is referring to the first clause of the baraita, concerning the prohibition against taking collateral.

336 Rav Sheizevi taught the following baraita before Rava: With regard to the verse: “And if you take as collateral your neighbor’s garment, you shall restore it to him until the sun goes down” (Exodus 22:25), this is referring to a garment worn at night and teaches that the garment is returned during the day; and with regard to the verse: “You shall restore to him the collateral when the sun goes down”

(Deuteronomy 24:13), this is referring to a garment worn during the day. Rava said to him: This statement is puzzling, as with regard to a garment worn in the day, why do I need it at night, and as for a garment worn at night, why do I need it in the day? What purpose is served by giving back the garments at such times?

337 Rav Sheizevi said to him: Do you think this baraita is so corrupt that I should erase it, i.e., no longer teach it? Rava said to him: No, do not erase it, because this is what it is saying: With regard to the verse "You shall restore it to him until when the sun goes down," this is referring to a garment worn during the day, which may be taken as collateral by night but must be returned to the debtor for the day. With regard to the verse "You shall restore to him the collateral when the sun goes down," this is referring to a garment worn at night, which may be taken as collateral by day.

338 § Rabbi Yoḥanan said: If he took collateral from him, returned it, and then the debtor died, the creditor may take the collateral from the debtor's children and is under no obligation to leave it with them. The Gemara raises an objection to this from a baraita: Rabbi Meir said: But since one takes collateral, why does he return it? The Gemara expresses surprise at this question: Why does he return it? The Merciful One states to return it. Rather, the question is as follows: Since he must return it,

339 why does one go back and take the collateral again, as the creditor must anyway restore it to the debtor the following day? The Gemara replies: Any loan that is secured by collateral is not canceled by the Sabbatical Year, in contrast to other debts, which are canceled. Therefore, this ensures that the Sabbatical Year should not cancel it. And an additional reason is so that the collateral should not become movable property in the possession of his children, as one generally cannot claim such items from orphans to pay for their father's debt.

340 The Gemara infers: The reason these exceptions apply is that he goes back and takes it as collateral; but if he did not go back and take it as collateral, these exceptions do not apply. This baraita therefore contradicts the opinion of Rabbi Yoḥanan, who held that the initial seizing of collateral is sufficient to grant the creditor full rights to it.

341 Rav Adda bar Mattana said: And did you not resolve this baraita once already by adjusting its wording slightly? Answer it by changing its formulation again in this manner: And since one must return the collateral, why does one take collateral at the outset? It is done so that the Sabbatical Year should not cancel the debt, and so that it should not become movable property in the possession of his children. This version is in accordance with the opinion of Rabbi Yoḥanan, as it teaches that one who has taken collateral even on a single occasion may confiscate it from the debtor's heirs.

342 § The Sages taught: The verse states: "When you lend your neighbor any manner of loan, you shall not go into his house to take his collateral" (Deuteronomy 24:10). This verse indicates that you may not enter his house, but you may enter the house of a guarantor to take collateral from him. And similarly it states: "Take his garment that is a surety for a stranger" (Proverbs 20:16).

343 And it further states with regard to the same issue: "My son, if you are a guarantor for your neighbor, if you have struck your hands for a stranger, you are ensnared by the words of your mouth; you are caught by the words of your mouth. Do this, now, my son, and deliver yourself, when you have come into the hand of your friend; go humble yourself and strengthen your friend" (Proverbs 6:1–3).

344 This passage in Proverbs is interpreted as follows: The phrase “You are snared by the words of your mouth” is referring to a guarantor who obligated himself to pay or one who upset his friend with his comments. In such a case, one should do the following: If he has money in your hand, “go humble yourself [hitrapes],” which is expounded as: Release for him the palm of your hand [hatter lo pissat yad] to give him his money. And if it is not money that you owe him, but rather you have “become ensnared by the words of your mouth” and owe him an apology for a personal slight, gather together many neighbors through which to seek his forgiveness.

345 The verse “When you lend your neighbor any manner of loan, you shall not go into his house to take his collateral” can be interpreted in a different direction, i.e., in another manner: You may not enter his house to take collateral for the loan, but if he owes wages, you may enter and take collateral for a porter’s wages, for a donkey driver’s wages, for an innkeeper’s payment, or for the wages for one who made drawings [diyokanaot] for him. One might have thought that this applies even if the one owed the money establishes it as a loan for the one who owes the money after he was already liable for such payment. Therefore, the verse states: “Any manner of loan” (Deuteronomy 24:10), which demonstrates that once the debt has been converted into a loan, it is like any other loan, and therefore one may not take collateral against the debtor’s will.

346 MISHNA: With regard to a widow, whether she is poor or whether she is wealthy, one may not take collateral from her, as it is stated: “And you may not take the garment of a widow as collateral” (Deuteronomy 24:17).

347 GEMARA: The Sages taught: With regard to a widow, whether she is poor or whether she is wealthy, one may not take collateral from her. This is the statement of Rabbi Yehuda.

348 Rabbi Shimon says: With regard to a wealthy widow, one may take collateral from her. But with regard to a poor widow, one may not take collateral from her, because you are obligated to return it to her, in accordance with the halakha that the collateral of a poor person must be returned to him whenever he needs it. And since you will be entering every day to return the collateral to her, you will thereby give her a bad name among her neighbors, as they will suspect her of developing an inappropriate relationship with you. By contrast, in the case of a wealthy widow, since there is no obligation to return her collateral, it is permitted to take collateral from her.

349 The Gemara asks: Is this to say that Rabbi Yehuda does not interpret the rationale behind the mitzva in the verse and draw halakhic conclusions based on that interpretation, and Rabbi Shimon does interpret the rationale behind the mitzva in the verse? But haven’t we heard them holding the reverse opinions elsewhere?

350 As it is taught in a mishna (Sanhedrin 21a) concerning the mitzvot of a king: “And he should not multiply wives for himself, that his heart not turn away” (Deuteronomy 17:17). Rabbi Yehuda says: He may accumulate many wives for himself, provided that they are not like those who turn his heart from reverence for God. Rabbi Shimon says: Even one who turns his heart away, he should not marry her. If so, why is it stated: “He shall not multiply wives for himself”? This teaches that even with regard to wives like Abigail, who was righteous and prevented David from sin (see I Samuel chapter 25), he is forbidden to have many. In this case, Rabbi Shimon does not interpret the rationale of the verse, while Rabbi Yehuda does interpret its rationale.

351 The Gemara answers: Actually, Rabbi Yehuda does not generally interpret the rationale of the verse, and it is different here, with regard to a king, as the verse itself specifies the reason: “And he

should not multiply wives for himself, that his heart not turn away.” What is the reason that he may not multiply wives for himself? It is because he must ensure that his heart will not turn away.

352 And Rabbi Shimon maintains: Since we generally interpret the rationale in the verse, there is no need for the verse itself to supply the rationale for the prohibition. Let the Merciful One state: “He may not multiply,” and we do not need the Torah to add “that his heart not turn away,” and I would already know the answer to the question: What is the reason that he may not accumulate many wives? It is because of the concern that his heart not turn away. If so, why do I need the phrase “His heart not turn away” that the Merciful One writes? It must certainly be necessary in order to increase the scope of the prohibition: Even if there is one woman who turns his heart away, he may not marry her. Therefore, the verse includes two halakhot: A general stricture against a king’s marrying too many women, and a further halakha that a king may not marry even one woman who will lead him astray.

353 MISHNA: One who takes a millstone as collateral violates a prohibition, and he is liable for taking two vessels, i.e., both millstones in the pair, as it is stated: “He shall not take the lower or upper millstone as collateral” (Deuteronomy 24:6). The tanna adds: Not only did the Sages say that it is prohibited to take the lower or upper millstone as collateral, but they also said that one may not take anything that people use in the preparation of food [okhel nefesh], as it is stated: “For he takes a man’s life [nefesh] as collateral” (Deuteronomy 24:6).

354 GEMARA: Rav Huna says: One who took a lower millstone as collateral is flogged with two sets of lashes: One set is due to violating the prohibition of taking the lower millstone as collateral, and the second is due to: “For he takes a man’s life as collateral,” since he took an item used in the preparation of food. If he took the lower and upper millstone, he is flogged with three sets of lashes: Two sets are due to violating the prohibitions of taking a lower millstone and an upper millstone as collateral, and the third is due to violating the prohibition: “For he takes a man’s life as collateral.”

355 And Rav Yehuda says: If he took a lower millstone as collateral he is flogged with one set of lashes, if he took an upper millstone he is flogged with one set of lashes, and if he took both the lower and upper millstones together as collateral he is flogged with two sets of lashes. With regard to the verse: “For he takes a man’s life as collateral,”

356 it comes to teach about the prohibition against taking as collateral other items used in the preparation of food.

357 § The Gemara suggests: Shall we say that Abaye and Rava, in another dispute, disagree with regard to the issue that is the subject of this dispute between Rav Huna and Rav Yehuda concerning the collateral? The Torah commands with regard to the preparation of the Paschal offering: “Do not eat of it raw, nor cooked in water, but roasted with fire, its head with its legs and with the innards thereof” (Exodus 12:9). Abaye and Rava engage in a dispute concerning the case of one who ate the meat when it was not properly roasted.

358 As Rava says: If he ate an olive-bulk of it raw, he is flogged with two sets of lashes. One set of lashes is due to the prohibition: “Do not eat of it raw,” and the other is due to the prohibition: “But roasted with fire.” If he ate an olive-bulk of a Paschal offering that had been cooked, he also is flogged with two sets of lashes: One set of lashes is due to the prohibition against it being cooked in water, and the second is due to the injunction: “But roasted with fire.” If he ate an olive-bulk of both raw meat and cooked meat, he is flogged with three sets of lashes: One set of lashes is due to the

prohibition against it being raw, and the second is due to the prohibition against it being cooked, and the third is due to the prohibition: “Do not eat of it…but roasted with fire.”

[359] Conversely, Abaye says: The prohibition “Do not eat of it…but roasted with fire” is not referring exclusively to this issue, but includes many cases, and one is not flogged for violating a general prohibition. In this case, Abaye and Rava apparently disagree over the same matter as do Rav Huna and Rav Yehuda. Shall we say that Abaye states his opinion in accordance with the opinion of Rav Yehuda, and Rava states his opinion in accordance with the opinion of Rav Huna?

[360] The Gemara responds: Rava could have said to you: I state my opinion even in accordance with the opinion of Rav Yehuda, as there is a difference between the two cases: Rav Yehuda states his opinion only there, with regard to collateral, because the phrase: “For he takes a man’s life as collateral” (Deuteronomy 24:6), does not itself indicate that the verse is referring to the lower and upper millstones. Rather, it is a general statement, and therefore it comes to teach about the prohibition against taking as collateral other items used in the preparation of food, not to add a prohibition to take as collateral the lower and upper millstones.

[361] But here, the phrase “but roasted with fire” comes for what purpose? It excludes only raw or cooked meat, which were already mentioned. Therefore, learn from it that it comes to include another prohibition in addition to those specific directives referring to raw and cooked meat.

[362] And Abaye could have said to you: I state my opinion even in accordance with the opinion of Rav Huna. This is because Rav Huna states his opinion only there, with regard to collateral, because the prohibition “For he takes a man’s life as collateral”

[363] is superfluous and therefore includes other utensils as well. Since it is superfluous, apply it as another prohibition upon the lower and upper millstones.

[364] But here, with regard to the Paschal offering, the phrase “but roasted with fire” is not superfluous, as he requires it for that which is taught in a baraita: At the time when one is included in the mitzva to arise and eat the roasted Paschal offering, he is also included in the prohibition not to eat of it raw, but at a time when one is not included in the mitzva to arise and eat the roasted Paschal offering, he is not included in the prohibition not to eat of it raw either. Consequently, one who eats the Paschal offering at that time is not liable to receive lashes.

[365] § The Gemara returns to the dispute concerning the lower and upper millstones. It is taught in a baraita in accordance with the opinion of Rav Yehuda: If one took as collateral barbers’ scissors [zog] or a pair of cows, he is liable to receive two sets of lashes. If he took this one blade of the pair of scissors by itself or that one cow by itself, he is liable to receive only one set of lashes. According to this tanna, he is not liable for the general prohibition.

[366] And it is taught in another baraita: If one took as collateral barbers’ scissors or a pair of cows, one might have thought that he is liable to receive only one set of lashes. Therefore, the verse states: “He may not take as collateral the lower or upper millstone,” which indicates that just as the lower and upper millstones are unique in that they are two distinct vessels and they perform one task together, and nevertheless one is liable separately for this and separately for that, so too, with regard to all items that are composed of two individual vessels, such as barbers’ scissors or a pair of cows, and they perform one task, he is liable separately for this and separately for that.

[367] § The Gemara relates: There was a certain man who took as collateral a slaughtering knife from another. He came before Abaye to ask him what to do. Abaye said to him: Go and return it, as it is a vessel used in the preparation of food, and it is therefore forbidden to take as collateral, and go stand in judgment, i.e., litigate with the debtor in court, concerning how much money he owes you. Rava said: He does not have to stand in judgment for this. Since the knife is in his possession, he can claim the amount of the debt up to its value.

[368] The Gemara asks: And does Abaye not accept that reasoning, that one who seized an item belonging to a debtor may claim the sum owed to him up to the value of the item? In what way is it different from the incident involving those goats that ate peeled barley [ḥushla] in Neharde'a, and the owner of the peeled barley came and seized the goats and claimed that their owner was indebted to him for a large amount, and Shmuel's father, who acted as a judge in this case, said that he can claim a sum up to their value?

[369] The Gemara answers that there is a difference between the two cases: There, a goat is an item that is not usually lent out or rented. Consequently, the one who possesses them has a presumptive right of ownership upon which he can base his claim. Conversely, here, the slaughtering knife is an item that is usually lent out or rented. Therefore, he is not deemed credible without proof that it is his merely by virtue of its being in his possession. The Gemara supports this distinction: As Rav Huna bar Avin sent the following ruling: In a case of items that are usually lent out or rented, and one in possession of them says: They were acquired by me, he is not deemed credible by this claim alone. He must provide further proof, as he might have borrowed or rented them.

[370] The Gemara asks: And does Rava not accept this reasoning? But didn't Rava himself remove scissors used for wool and a scroll of aggada from the possession of orphans as items that are usually lent out or rented? The Gemara answers: Rava could have said to you: With regard to this slaughtering knife too, since it is likely to be damaged, people are particular and do not lend it out. Therefore, it is not considered an item that is typically lent out, and the one in possession of it can claim the money owed to him up to the value of the knife.

Chapter 10

[1] MISHNA: In the case of the house and the upper story belonging to two people, i.e., the lower story was owned by one individual, while the upper story belonged to someone else, that collapsed, the two of them divide the timber and the stones and the earth of the collapsed structure. And the court considers which stones were likely to break, those of the lower or upper story, and gives those broken stones to the one who presumably owned them. If one of them recognized some of his stones he may take them for himself, and they count toward his amount of stones, and the other party takes other stones accordingly. They do not divide the remaining stones equally.

[2] GEMARA: From the fact that the mishna teaches that the court considers which stones were likely to break, it can be understood by inference that the case is one in which it is possible to establish with regard to the stones, by looking at the debris, how the accident occurred: Whether it fell with pressure [ḥavasa], i.e., the lower story collapsed, and the upper story followed, or whether it fell with a blow, i.e., the upper story collapsed, and caused the lower story to follow suit. In the first instance,

it is the stones of the lower story that were likely to break, in the latter instance, the stones of the upper story.

[3] The Gemara asks: If that is so, that it is possible to ascertain how the collapse occurred, then why, in the first clause of the mishna, do they divide the stones without taking the circumstances into consideration? Let us see: If the house fell with a blow, it means that the stones of the upper story broke, and the owner of the lower story takes the unbroken stones. And if it fell with pressure, it means that the stones of the lower story broke, and the owner of the upper story takes the unbroken stones.

[4] The Gemara rejects this analysis: No, it is necessary to state the ruling of the mishna in a case when the house collapsed at night, and no one saw how it fell. The Gemara challenges: But in such a case, let them see the stones in the morning to ascertain how the house collapsed. The Gemara answers: The first clause of the mishna is referring to a case where they had cleared away the stones, and consequently there is no way to determine what occurred. The Gemara challenges: But even in such a case, let them see who cleared them away, and let them ask them what happened. The Gemara explains: The ruling of the first clause of the mishna is stated with regard to a case where the general public cleared them away and left, so that they cannot be asked.

[5] The Gemara challenges: But even in such a case, let them see in whose domain the stones are situated. And once this is determined, the halakha will be that the burden of proof rests upon the claimant, i.e., the owner of the stones situated in the other's domain. The Gemara answers: No, it is necessary to state the ruling of the mishna in a case where the stones are situated in a courtyard that belongs to both of them, or alternatively, if the stones fell into the public domain. And if you wish, say that partners in cases like this are not particular with each other about dividing the courtyard in such a way that the one cannot leave his belongings on the other's side of the courtyard, and therefore the presence of the stones in the area of the courtyard belonging to one of them does not substantiate a claim for the stones.

[6] § The mishna teaches: If one of them recognized his stones he may take them. The Gemara asks: And the other, what does he claim? If he says: Yes, they belong to the other, this halakha is obvious, so why would the mishna need to state this? And if he does not say yes, why does the one that recognizes the stones take them? What proof does he have that they are his? Rather, it must be that the other says to him: I don't know whose stones they are, and consequently, the one who stated a definitive claim is deemed credible.

[7] The Gemara suggests: Shall we say that it is a conclusive refutation of the opinion of Rav Naḥman? As it was stated that the amora'im disagreed about the following case: With regard to one who approaches another and says: I have one hundred dinars in your possession, and the other says: I don't know, Rav Huna and Rav Yehuda say: The respondent is liable to pay, because he did not deny the claim. Rav Naḥman and Rabbi Yoḥanan say: He is exempt from payment. It appears from the mishna that the response: I don't know, is tantamount to an admission.

[8] The Gemara refutes this contention: Just as Rav Naḥman says in that context: He is liable to pay only in a case where there is a matter of an oath between them, here too, it is a case where there is a matter of an oath between them. In that case, Rav Naḥman rules that he is liable to pay only if he is already liable to take an oath concerning his denial of part of the claim. Since he does not know if he owes this sum, and he is therefore unable to take the oath he is liable to take, he must pay. In this

case as well, the mishna is discussing a case where the one who says he does not know is liable to take an oath.

[9] The Gemara asks: What are the circumstances of a matter of an oath? The Gemara explains: This in accordance with the statement of Rava, as Rava says: One who approaches another and says: I have one hundred dinars in your possession, and the other says: You have in my possession only fifty dinars that I am sure about, and as for the rest, I don't know. As one who admitted to part of a claim, he is liable, by Torah law, to take an oath that he does not owe the other fifty dinars. Since he cannot take an oath to that effect, as he is unsure if he owes it, he must pay.

[10] § The mishna teaches: If one of them recognized some of his stones he may take them for himself, and they count toward his amount of stones, and the other party takes other stones accordingly. Rava thought to say that this means they count toward his amount of his broken stones. In other words, the first party takes the unbroken stones he recognized, in place of a similar amount of broken stones, and the other party takes an amount of broken stones correspond-ing to the amount of unbroken stones claimed by the first person. Apparently, since he said: I don't know, his legal status is worse.

[11] Abaye said to him: On the contrary, this one, the one who recognizes some of his stones, is worse off. He is worse off because since he knows and recognizes these stones, he evidently does not know anything about any more stones, and therefore he has no rights to any more unbroken stones, and all the others are the property of the other party.

[12] Rather, Abaye said that it means they count toward his amount of his unbroken stones. In other words, the first party takes the unbroken stones he recognized, in place of a similar amount of unbroken stones, and the other party takes an amount of unbroken stones corresponding to the amount of unbroken stones claimed by the first person. The Gemara asks: If so, what did the first party gain from recognizing his own stones? The Gemara answers: He gains with regard to bricks from the structure made in a wide brick mold. If his bricks were constructed from a wider mold, he is entitled to these slightly larger ones. Alternatively, if the clay from which his bricks were formed was processed better, he gains by obtaining superior bricks.

[13] MISHNA: If there was a house and an upper story owned by one person, and the upper story was rented out to another, if the floor of the upper story was broken, i.e., it fell in or collapsed, and the owner of the house does not want to repair it, the resident of the upper story can go down and live in the house below until the owner repairs the upper story for him.

[14] Rabbi Yosei says: With regard to a house of two stories owned by two people, i.e., the lower level was owned by one and the upper level by the other, in which the ceiling collapsed; the owner of the lower story provides the ceiling of beams or stones, and the owner of the upper story provides the plaster.

[15] GEMARA: The Gemara asks: In the case of the floor of an upper story that was broken, to what extent did it break? What is the extent of damage that permits the upper resident to say that he is no longer able to live there? Rav says: Most of it was damaged, and Shmuel says: A break of four handbreadths occurred.

[16] The Gemara analyzes their opinions. Rav says: Most of it was damaged, but if the break is only of four handbreadths, this halakha does not apply, since the owner of the upper story can use the lower story to place the item that would normally be placed in the area of the hole, and a person can reside

partially on a level below and partially on a level above. In other words, the upper story remains inhabitable even if he must use the lower story to house some of his belongings. And Shmuel says a break of four handbreadths is sufficient for the halakha to apply, since a person cannot reside partially on a level below and partially on a level above.

[17] The Gemara asks: What are the circumstances of the case in the mishna? If the owner said at the time of the rental that he is renting this upper story to the tenant, the tenant has rights only to this upper story, and he has lost the ability to live there. Rather, the owner said to him that he wants to rent an upper story to him, without specifying which one. If so, the renter is certainly entitled to functional living quarters, and the owner must rent him an upper story in a different house belonging to this owner where he can live.

[18] The Gemara answers: Rava says: No, it is necessary to state the ruling of the mishna in a case where the owner said to him: This upper story that I am renting to you, when it is up, i.e., functional, live up there in it, and when it descends, i.e., it is no longer functional, descend with it and live in the lower story. The Gemara asks: If so, what is the purpose of the mishna stating this ruling, as there was an explicit condition to this effect?

[19] The Gemara answers: Rather, Rav Ashi said: This is a case where the owner said to him: I am renting to you this particular upper story, which is on top of this particular house. As by emphasizing that the upper story is above that particular house, the owner thereby rendered the house as liened with regard to the upper story, although he did not explicitly state that the renter will have the right to live in the house were the upper story to become non-functional.

[20] The Gemara adds: And this is in accordance with that which Ravin bar Rav Adda said that Rabbi Yitzḥak said: There was an incident involving one who said to another: I am selling to you the vine that is on top of this peach tree [parsek], and then the peach tree was uprooted. And the incident came before Rabbi Ḥiyya, and he said: You are obligated to erect for him a peach tree to support the vine, as long as the vine exists.

[21] § Rabbi Abba bar Memel raised a dilemma:

[22] With regard to a resident of the upper story who is entitled to move into the lower story, when he resides there, does he reside alone as he did at the outset when he occupied the upper story, and the owner of the house has no choice but to move out? Or perhaps they both reside there together, as the owner can say to him: I did not rent the upper story to you with the intention of being removed from my domicile.

[23] If you say that they both reside there, when the upper-story resident uses the house, does he use it by way of its entrances, like the owner, or must he use it by way of the roofs? Must he climb the stairs and enter the upper story, and then descend to the house from there? Can the owner say: The tenant must act as he did at the outset; just as at the outset he entered by way of the roofs, now too, he must enter by way of the roofs? Or perhaps the renter can say to him: I accepted upon myself an ascent and agreed to climb the stairs to the upper story, but I did not accept upon myself an ascent and a descent, which would be necessary if I entered by way of the roofs.

[24] If you say that the tenant can say to the owner: I did not accept upon myself an ascent and a descent, in a case where there were two upper stories, this one on top of that one, what is the halakha? The Gemara clarifies the circumstances of this case: If the floor of the higher upper story

was broken, clearly he may descend and reside in the lower one, but if the floor of the lower upper story was broken, what is the halakha? Is he required to ascend the full way and reside in the higher upper story, or does he go down to reside on the ground floor?

[25] Do we say that the owner of the house can say to the tenant: You accepted upon yourself the term: An upper story, and I have provided one for you? Or perhaps one says that the tenant accepted upon himself one ascent, but he did not accept upon himself two ascents. No answer was found for these questions, and the Gemara concludes: These dilemmas shall stand unresolved.

[26] § The mishna teaches: Rabbi Yosei says: The lower resident provides the ceiling and the upper resident provides the plaster. The Gemara asks: What is the word ceiling referring to in this context? Rabbi Yosei bar Ḥanina says: Mats and beams. And the Sage Setini says that Rabbi Shimon ben Lakish says: Wide wooden planks. The Gemara comments: And these two opinions do not disagree over the basic halakha; rather, this Sage rules in accordance with the custom of his locale and this Sage in accordance with the custom of his locale, and they each were describing the necessary materials for a ceiling, according to the local building conventions.

[27] § The Gemara relates: An incident occurred with these two people who were residing in the same house, one in the upper story, and the other one in the lower story. The plaster of the floor of the upper story broke, so that when the resident of the upper apartment would wash with water, it would run down and cause damage to the lower story. The question was: Who must repair the ceiling? Rabbi Ḥiyya bar Abba says: The upper resident repairs it, and Rabbi Elai says in the name of Rabbi Ḥiyya, son of Rabbi Yosei: The lower resident repairs it. The Gemara comments: And the following verse can serve as a mnemonic device to remember who issued which ruling: “And Joseph was brought down to Egypt” (Genesis 39:1). Rabbi Ḥiyya, son of Rabbi Yosei, indicated by Joseph, is the Sage who maintains that the owner of the lower story, indicated by: Brought down, must repair the ceiling.

[28] The Gemara suggests: Shall we say that Rabbi Ḥiyya bar Abba and Rabbi Elai disagree with regard to the matter subject to dispute between Rabbi Yosei and the Rabbis in the mishna? The explanation of the dispute would then be as follows: According to the one who says that the upper resident repairs it, he holds that the responsibility is on the one potentially responsible for the damage to distance himself from the one whose property is potentially damaged. This accounts for the opinion of Rabbi Yosei in the mishna, who holds that the resident of the upper story must provide the plaster, because his water is clearly causing damage below. And the one who says that the lower resident repairs it, he holds like the Rabbis, who say that the responsibility is on the one whose property is potentially damaged to distance himself from the one potentially responsible for the damage.

[29] The Gemara asks: And how can you understand it that way? Do Rabbi Yosei and the Rabbis disagree in the mishna with regard to distancing oneself from damages? But haven’t we heard them say the opposite? As we learned in a mishna (Bava Batra 25b): One must distance a tree twenty-five cubits from a pit, because its roots damage the pit, and in the case of a carob or sycamore tree, whose roots spread far, one must distance it by fifty cubits. This is the halakha whether the pit or tree is located above or to the side of the other. If the pit preceded the tree, the owner of the pit may cut down the tree and pay its monetary value. If the tree preceded the pit, then he may not cut it down. If

it is uncertain whether this tree preceded that pit, and it is uncertain whether that pit preceded this tree, he may not cut down the tree.

[30] Rabbi Yosei says: Even if the pit preceded the tree, he may not cut it down. Why is that? As this one digs in his own property, and that one plants in his own property. Consequently, the owner of the pit cannot complain about the damage, and if he wants to avoid it, he can dig his pit elsewhere. Apparently, this mishna indicates that Rabbi Yosei holds that the responsibility is on the one whose property is potentially damaged to distance himself from the one potentially responsible for the damage, and the Rabbis hold that the responsibility is on the one potentially responsible for the damage to distance himself from the one whose property is potentially damaged.

[31] Rather, if it can be said that these amora'im disagree with regard to the issue that is the subject of the dispute between these tanna'im, then they disagree in the dispute between Rabbi Yosei and the Rabbis there, concerning the question of who is obligated to distance himself from the damage, but it has nothing to do with the dispute in the mishna here.

[32] The Gemara asks: And with regard to what principle do Rabbi Yosei and the Rabbis of the mishna here disagree? The Gemara answers: They disagree with regard to the strength of a ceiling. The Rabbis hold that the function of the plaster is to strengthen the ceiling, and strengthening the ceiling is the obligation of the lower resident, as he is required to strengthen it. And Rabbi Yosei holds that the function of the plaster is to level out any holes, so that the surface of the ceiling will be flat, and leveling out holes it is the obligation of the upper resident, as he is required to level them out.

[33] The Gemara challenges the above conclusion: Is that so? But didn't Rav Ashi say: When I was in the school of Rav Kahana we would say that Rabbi Yosei concedes in a case of his arrows. Although Rabbi Yosei holds that the responsibility is on the one whose property is potentially damaged to distance himself from the one potentially responsible for the damage, that is only if the one causing the damage is not performing a direct action that is causing the damage, as in the case of the tree and the pit. But if he is performing an action that causes damage from a distance, as in this case, where the water he pours damages the resident of the lower story, he is like someone shooting arrows, who is certainly obligated to ensure that he does not cause any damage.

[34] The Gemara answers: This is a case in which the water flow stops in one place, as the hole in the floor is not directly in the place where the water was poured, and subsequently it falls into the lower story once it flows to the opening in the floor. Consequently, even in this case, the upper resident does not directly cause the damage.

[35] MISHNA: In the case of the house and the upper story belonging to two different people, and that house and upper story collapsed, and the owner of the upper story told the owner of the house to build the lower story in order to enable him to rebuild the upper story, and he does not want to build it, the owner of the upper story may build the house and reside in it, until the other gives him his expenses for the construction of the house, and he then rebuilds his upper story.

[36] Rabbi Yehuda says: This one too, i.e., the owner of the upper story, who is meanwhile residing inside the property of the other, must pay him rent. Since he derived benefit by living in the house of the other, as he had no other place in which he could live, he must pay rent. This solution is therefore flawed. Rather, the owner of the upper story builds the house and the upper story, and he roofs the upper story, i.e., he completes the entire construction of the upper story, and he may then sit in the house, i.e., the lower story, until the other gives him his expenses for the building of the house, at

which point he returns to his upper story. Since in any event he could have lived in the upper story, he is not considered to have derived any benefit by living in the lower story, and is not obligated to pay rent.

37 GEMARA: Rabbi Yoḥanan says: In three places Rabbi Yehuda taught us the principle that it is forbidden for a person to derive benefit from the property of another without his full awareness and consent, even if the other does not suffer a loss. One of the places where we are taught this principle is that which we learn in the mishna, that Rabbi Yehuda does not allow one to reside in another's property without paying him rent.

38 What is another place where we are taught this principle from Rabbi Yehuda's statements? As we learned in a mishna (Bava Kamma 100b): If one gives 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 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. But the dyer may not keep the dyed wool for himself, as it is forbidden for one to benefit from another's property.

39 And what is the other, third place where we are taught this principle from Rabbi Yehuda's statements? As we learned in a mishna (Bava Batra 168a): In a case of a debtor who repaid part of his debt, and he deposited the promissory note with a third party serving as a trustee, to ensure that the creditor not collect the full amount, and the debtor said to the trustee: If I do not give you the balance from now until such and such a time, give the creditor his promissory note, thereby enabling him to collect the full amount stated in the note; if the stipulated time arrived and the debtor has not given the balance to the trustee, Rabbi Yosei says: The trustee shall give the promissory note to the creditor, in accordance with the debtor's stipulation. Rabbi Yehuda says: The trustee shall not give it, as the stipulation is void. Here too, the reason is that the creditor is forbidden to benefit from the property of another.

40 The Gemara refutes these proofs as to the general applicability of Rabbi Yehuda's rulings. Why is it necessary to explain in this manner? Perhaps Rabbi Yehuda is saying this only here, with regard to the case of the mishna concerning a house and an upper story, only because there is the blackening of the walls. By using the house, the owner of the upper story causes its walls to blacken, thereby lowering its value, and yet he will ultimately claim the value of a new house that he built. Therefore, he is prohibited from using the house without paying.

41 Alternatively, if one attempts to prove a general principle from the case where one instructed a dyer to dye the wool for him red and he dyed it black, it can be explained that the reason for the ruling of Rabbi Yehuda is due to the fact that the dyer is changing and deviating from the owner's instructions, and didn't we learn in a mishna (76a) that whoever changes the terms accepted by both parties is at a disadvantage?

42 And as for the case of one who repaid part of his debt, there too, the reason the trustee may not transfer the promissory note is not as explained above. Rather, it is due to the fact that the transfer of the promissory note and subsequent collection of the entire sum if he does not repay on time is considered a transaction with inconclusive intent [asmakhta], a condition that an individual accepts upon himself as an exaggerated measure that he does not expect to have to fulfill, and we heard

Rabbi Yehuda who says that an asmakhta does not effect acquisition. There is therefore no proof that Rabbi Yehuda holds that it is forbidden for one to benefit from the money of another.

[43] § Rav Aḥa bar Adda says in the name of Ulla: In the case of a resident of the lower story who wishes to rebuild the collapsed house, who comes to change the structure and now seeks to rebuild it with untrimmed stones that are larger than the original ones, the court listens to him and accepts his wishes, since an adjustment of this kind only serves to benefit the owner of the upper story. But if the house was previously built with large untrimmed stones and he now wants to rebuild it with hewn stones, which are smaller, the court does not listen to him, as this reduces the strength of the building.

[44] Similarly, if the house was formerly built with bricks, and he wants to rebuild it with girders, the court listens to him, as this type of wall is very stable. But if the house was previously built with girders, and he now wants to rebuild it with bricks, the court does not listen to him. If he wants to roof it with strong cedar wood, the court listens to him, but if he wants to roof it with sycamore wood, instead of cedar, the court does not listen to him.

[45] If he wants to reduce the number of windows, the court listens to him, as this will strengthen the walls, but if he wants to increase the number of windows, the court does not listen to him. If he wants to heighten the building, the court does not listen to him, as it might be less stable than before, but if he wants to reduce its height, the court listens to him.

[46] The halakha is the same in the reverse: In the case of a resident of the upper story who comes to change the structure, and wishes to rebuild the upper story with hewn stones instead of large untrimmed stones, the court listens to him, as this reduces the weight on the lower floor. But if he wants to change from smaller hewn stones and rebuild with larger untrimmed stones, the court does not listen to him, as this would make the upper story heavier.

[47] Likewise, if he wants to rebuild it with girders instead of bricks, the court does not listen to him, but if it was previously built with girders, and he now wants to rebuild it with bricks, the court listens to him. If he wants to roof it with heavy cedar wood, the court does not listen to him, but if he wants to roof it with sycamore wood instead of cedar, the court listens to him. If he wants to increase the number of windows, which would lessen the weight of the construction, the court listens to him, but if he wants to reduce the number of windows, the court does not listen to him. If he wants to heighten the building, the court does not listen to him, as this increases the weight of the building, but if he wants to reduce its height, the court listens to him.

[48] § The Gemara poses a question: If they are so poor that neither this one nor that one has enough money to rebuild it, and they are prepared to sell the land, what is the halakha? The Gemara answers: It is taught in a baraita: If neither this one nor that one has the money to rebuild the house, the owner of the upper story does not have any rights to the land, and all rights of the land belong to the owner of the lower story.

[49] It is taught in a different baraita: Rabbi Natan says: The resident of the lower story takes two shares of the land, and the resident of the upper story takes one-third. And others say: The resident of the lower story takes three shares, and the resident of the upper story takes one-quarter. Rabba says: Take the statement of Rabbi Natan in your hand, because he is a judge, and he descends to the depths of the law. He maintains: How much does the presence of the upper story depreciate the value of the house? One-third. Therefore he has one-third, i.e., he is entitled to one-third of the total sum that they receive for the land.

[50] MISHNA: And likewise, in the case of an olive press that is built inside a cave in a rock, and one garden, belonging to another person, was planted on top of it, and the roof of the olive press broke, which caused the garden to collapse inward, in such a case, the owner of the garden may descend and sow below until the other one constructs for his olive press sturdy arches to support the roof, so that the owner of the garden can once again sow above him.

[51] The mishna continues: In the case of a wall or a tree that fell into the public domain and caused damage, the owner is exempt from having to pay, as it was an accident. If the court saw that the wall was shaky, or that the tree was tilting, and they gave him time to cut down the tree or to dismantle the wall, and then they fell down, if this occurred during the allotted time, he is exempt, but if they collapsed after the time given to him had elapsed, he is liable to pay, since he was warned against this very occurrence.

[52] In the case of one whose wall was adjacent to another's garden, and the wall fell, and the owner of the garden said to him: Clear away your stones, and the owner of the stones said to him:

[53] They are yours, as I hereby declare them ownerless, and you can take them for yourself; the court does not listen to him, since he cannot force the other to acquire the stones. If after the owner of the garden voluntarily accepted ownership of the stones upon himself, the owner of the wall said to him: Here you are, take your expenditures for the removal of the stones, and I will take the stones that are mine; the court does not listen to him, as they had already been acquired by the owner of the garden.

[54] The mishna continues: In the case of one who hires a laborer to do work with him with hay or with straw, and after he finished the task, the laborer said to the employer: Give me my wages, and the employer said to him: Take what you have worked with as your wages, i.e., take some of the hay or straw as payment, the court does not listen to him. Although debts can be paid with any item of value, even hay or straw, the wages of a laborer must be paid in accordance with the initial agreement between the laborer and the employer. But if after the laborer accepted upon himself to keep the hay or straw as payment, the employer changed his mind and said to him: Here you are, take your wages and I will take what is mine; the court does not listen to him, since the laborer had already acquired the hay.

[55] GEMARA: With regard to the case of the roof of the olive press that was broken, the Gemara cites a dispute with regard to the amount that collapsed: Rav says: Most of it must have collapsed, and Shmuel says: Even a hole of four handbreadths is sufficient for the ruling of the mishna to apply. Rav says: Most of it must have collapsed, but if it is only a hole of four handbreadths, there is no basis for a claim, since a person can sow partially on a level below, and partially on a level above. And Shmuel says: It is enough if it is a hole of four handbreadths, as a person cannot sow partially on a level below, and partially on a level above.

[56] The Gemara comments: And it is necessary for the dispute between Rav and Shmuel to be stated both here and with regard to the case of an upper story of a house that collapsed (116b). As had the Gemara taught us only that they disagree with regard to a residence, one would have said: It is only in this case that Shmuel is saying his ruling, because people do not tend to live a little here and a little there, but with regard to sowing, people do tend to sow a little here and a little there. Therefore, one might say that he concedes to Rav in the case of the olive press. And if this dispute was stated only with regard to this case of the olive press, one would have said that it is only with regard to this case

that Rav is saying his opinion, but with regard to that case involving the house, one might say that he concedes to Shmuel. Therefore, it is necessary to state that their dispute applies to both cases.

[57] § The mishna teaches: If the court saw that the wall was shaky, or that the tree was tilting, and they gave him time to cut down the tree or to dismantle the wall, and then they fell down, if this occurred during the allotted time, he is exempt, but if they collapsed after the time given to him had elapsed, he is liable to pay. The Gemara asks: And how much time will a court usually allot for this purpose? Rabbi Yoḥanan says: The standard period is thirty days.

[58] § The mishna teaches: In the case of one whose wall was located next to his friend's garden and it fell, if the owner of the wall told the owner of the garden to keep the stones, he cannot retract. The Gemara comments: But from the fact that the last clause of the mishna teaches that if the owner of the fallen wall says: Here you are, take your expenditures, the court does not listen to him, it can be understood by inference that we are dealing with a case where the owner of the garden cleared away the stones. It can therefore be deduced that the reason the owner of the fallen wall cannot retract his offer is that the owner of the garden cleared them away, but if he did not clear them away, the stones are not considered his, and they remain in the possession of the owner of the wall.

[59] The Gemara asks: Why do they remain in the possession of the owner of the wall? But shouldn't the owner of the garden's field effect acquisition of the stones on his behalf? As Rabbi Yosei, son of Rabbi Ḥanina, says: The courtyard of a person effects acquisition for him of those items that enter it, even without his knowledge.

[60] The Gemara answers: This statement applies only in a case where the giver intends to transfer them to him, in which case the field can effect acquisition of the stones for the receiver without an additional act of acquisition, but here, the owner of the fallen wall is seeking only to evade the owner of the garden. He wants the owner of the garden to take care of the stones, at which point he can collect them from him without much effort on his part, and he does not intend to give the stones to him.

[61] § The mishna teaches: In the case of one who hires a laborer to do work with him with hay, the employer cannot force him to accept his wages in the form of some of the hay. The Gemara comments: And it is necessary to mention this halakha with regard to both cases.

[62] As had it taught us only with regard to this first case of the stones that fell that when the owner of the fallen wall says to the owner of the garden: They are yours, the court does not listen to him, one would have said that this is the halakha because he does not have a wage owed by him, as they had no prior business dealings together, and the owner of the stones does not owe the owner of the garden anything. But here, in the case of a laborer working with hay, in which the laborer does have a wage owed by the employer, one might say that the court listens to him, as people say the following proverb: When collecting a debt from your debtor, allow yourself to be repaid even in bran [parei], i.e., take whatever you can as payment of a loan.

[63] And had it taught us only over here with regard to the hay, one would have said that it is only here that after the laborer has already accepted ownership upon himself, the court does not listen to the employer who desires to retract, because the laborer has a wage owed by him, and therefore there is reason to say that he receives the hay. But here, with regard to the stones, where the owner of the garden does not have a wage owed by the owner of the fallen wall, one might say that the court listens to him and he can retract. It is therefore necessary for the mishna to teach both cases.

64 § The mishna teaches that if an employer seeks to pay his laborer with straw, the court does not listen to him. The Gemara asks: But isn’t it taught in a baraita that the court does listen to him? The Gemara answers: Rav Naḥman said: This is not difficult. The ruling of the mishna here, that the court does not listen to him, is stated with regard to a case of work done with the employer’s own property. And the ruling of the baraita there, that the court does listen to him, is stated with regard to work done with the property of another, and there the employer’s request is accepted.

65 Rava said to Rav Naḥman: In a case where he is working with his own property, what is the reason that the court does not listen to him? As the laborer can say to the employer: The responsibility of paying my wage is on you. But if he was working with the property of his friend, the responsibility of paying his earnings is also on the employer, as it is taught in a baraita: With regard to one who hires a laborer to perform work in his own field, and the employer inadvertently showed the laborer the field belonging to another in which he should work, the employer must give the laborer his full wages, and in addition, the employer goes back and takes from the owner of the field in which he worked the value of the benefit that owner received from the laborer. The payment of the wages is incumbent upon the employer, not the owner of the field.

66 Rather, Rav Naḥman said a different explanation: It is not difficult. The ruling of the mishna here, that the court does not listen to him, is stated with regard to work done with the employer’s own property. And the ruling of the baraita there, that the court does listen to him, is stated with regard to work done with ownerless property, e.g., the employer hired him to gather ownerless hay, and later told him to keep some of the hay as his wages. In that case, he can force the laborer to accept the hay as payment.

67 Rava raised an objection to Rav Naḥman: It was taught in a baraita: The found item of a salaried laborer belongs to himself. When is this so? When the employer told him to perform a specific task, for example if he said: Weed with me today, or if he said: Hoe with me today. If the laborer finds lost property while performing that task, then the item belongs to him. But if the employer says to the laborer: Work with me today, without specifying what labor he wants him to perform, his found item belongs to the employer, as acquiring found items can be considered part of his terms of employment. In the case of Rav Naḥman, since the employer instructed the laborer to gather ownerless hay, the acquisition of the hay is certainly part of the terms of his employment, and belongs to the employer. Since it is the employer’s property, he is not able to force the laborer to accept the hay as payment.

68 Rather, Rav Naḥman said: Both the ruling of the mishna and the ruling of the baraita are stated with regard to a laborer hired to work with ownerless property, but it is not difficult. The ruling of the mishna here, that the court does not listen to him, is stated with regard to a case where the laborer’s task was to lift up the hay and gather it, and he is therefore considered the employer’s agent and acquires the hay for him. Since the hay then belongs to the employer, he cannot force the laborer to accept it as payment. And the ruling of the baraita there, that the court does listen to him, is stated with regard to a case where his work merely consisted of viewing, e.g., he hired him to make sure that no one takes the ownerless hay. In that case, even the employer does not acquire the straw, and it remains ownerless. Consequently, the employer can tell the laborer to take some hay as payment.

69 Rabba says: The issue of whether, in the case of ownerless property, viewing effects acquisition of it is a dispute between tanna’im. As we learned in a mishna (Shekalim 9b): The watchmen of the

sefiḥim, grain that grew without being purposely planted, of the Sabbatical Year ensured that people did not take this ownerless grain, so that it remained available to be used for the omer offering and the two loaves, i.e., the public offering on Shavuot of two loaves from the new wheat. These watchmen take their wages from the collection of the Temple treasury chamber, as they are employed by the Temple treasury. Rabbi Yosei says: One who so desires can volunteer his services and safeguard the grain, and he has the status of an unpaid bailee. The Rabbis said to him: Do you say so? But according to your view, the omer and the two loaves do not come from communal funds as required, since in reality they come from a private individual, i.e., the bailee.

[70] The Gemara suggests: What, is it not with regard to this that they disagree: The first tanna holds that in the case of ownerless property, viewing effects acquisition of it, and so the watchman, although he did not lift up the grain, acquires the grain by viewing it. And therefore, if he is given a wage from communal funds, then yes, he is safeguarding it on behalf of the community, and he acquires it for them. But if he is not paid, he has not acquired it for the community, but for himself. And, conversely, Rabbi Yosei holds that in the case of ownerless property, viewing does not effect acquisition of it, and when the community goes and brings the grain for the omer offering and the two loaves, it is only now, at this stage, that they acquire it.

[71] And what, according to this explanation, is the meaning of the phrase: Do you say so? This is what they were saying to him: If the opinion from your statement that one may volunteer as an unpaid bailee is applied to our statement that in the case of ownerless property, viewing effects acquisition, the result is that the omer offering and the two loaves do not come from communal funds as required.

[72] Rava said: No; the dispute can be explained differently. It can be explained that everyone agrees that in the case of ownerless property, viewing effects acquisition, and here they disagree with regard to the question of whether we are concerned that perhaps he will not give the grain over wholeheartedly to the community. As the Rabbis hold that we give the watchman a wage, and if we do not pay him, but allow him to act as a volunteer, we are concerned that perhaps he will not give the grain over wholeheartedly to the community, as deep down he might feel that the grain really belongs to him and that he is offering it from his own pocket, which means that the omer offering and two loaves are not properly offered by the community.

[73] Conversely, Rabbi Yosei holds that we are not concerned that perhaps he will not hand the grain over wholeheartedly to the community. And what is the meaning of the phrase: Do you say so? This is what they were saying to him: If the opinion from your statement that one may volunteer as an unpaid bailee is applied to our statement that we are concerned that perhaps he will not give the grain over wholeheartedly, the result is that the omer offering and the two loaves do not come from communal funds as required.

[74] There are those who say that there is a different version of this discussion: Rava said: It can be explained that everyone agrees that in the case of ownerless property, viewing does not effect acquisition of it, and here, concerning the omer offering, they disagree with regard to the question of whether we are concerned about violent people that may come and seize the grain for themselves. As the first tanna holds that the Sages instituted a directive to give him four dinars, or whatever payment is appropriate for his services as a watchman, so that violent people should hear of this and keep away from the grain, since when they hear that the Temple is paying the watchmen, they will

certainly not take the grain. And Rabbi Yosei holds that the Sages did not institute this directive, since there is no concern about violent people.

[75] And what is the meaning of the phrase: Do you say so? This is what they were saying to him: If we apply the opinion from your statement that one may volunteer as an unpaid bailee, to our statement that the Sages instituted a directive to give him four dinars, the result is that communal offerings do not come from communal funds as required. And likewise, when Ravin came from Eretz Yisrael to Babylonia, he said that Rabbi Yoḥanan says: The question of whether or not we are concerned about violent people is the difference between the opinions of the Rabbis and Rabbi Yosei, i.e., that is the crux of their dispute.

[76] MISHNA: In the case of one who takes manure out to the public domain, in order for it to be transported to fertilize a field, he who takes it out from his property takes it out, and immediately, he who takes it to fertilize the field takes it to fertilize the field. They must relocate the manure immediately without allowing it to sit around in the public domain. Similarly, one may not soak clay in the public domain before it is kneaded, and one may not mold bricks in the public domain since this takes a long time and inhibits use of the public domain by others. But one may knead clay in the public domain, as this process does not take long, but not bricks.

[77] With regard to one who builds a structure, keeping the building materials in the public domain, he who brings the stones brings them, and immediately, he who builds the structure builds with them, and may not leave them there. And if the stones cause damage before he had a chance to build them into the structure, he must pay for what he damaged. Rabban Shimon ben Gamliel says: One may even prepare his work thirty days beforehand; he may keep the building materials in the public domain for that duration.

[78] GEMARA: The Gemara suggests: Let us say that the mishna is not in accordance with the opinion of Rabbi Yehuda? As it is taught in a baraita (Tosefta 11:8): Rabbi Yehuda says: When it is the time for the manure to be taken out, a person may take his manure out into the public domain and may pile it up for all thirty days, so that it will be trodden on by the feet of people and by the feet of animals, to prepare it for use as fertilizer, since it was on this condition that Joshua bequeathed Eretz Yisrael to the Jewish people. In other words, it is universally accepted that some will relinquish certain rights for the sake of others, and although it may be a nuisance for certain people, this practice is allowed.

[79] The Gemara responds: You may even say that the mishna is in accordance with the opinion of Rabbi Yehuda, since Rabbi Yehuda concedes that although he acted within his rights, if the manure caused damage, the one who placed it there is liable to pay. The Gemara asks: But didn’t we learn in a mishna (Bava Kamma 62b): Rabbi Yehuda concedes with regard to a Hanukkah lamp placed in the public domain that ignited a fire and caused damage that he is exempt, because he acts with permission? What, is the reason he is exempt not that he acted with the permission of the court to use the public domain in this manner, which indicates that one who acts with court permission is exempt from liability for damage? The Gemara rejects this suggestion: No, it means that he has the permission of a mitzva. Since it is a mitzva to place the Hanukkah lamp outside, he is exempt from paying for the damage it caused. The mere right to place the item in the public domain does not exempt the owner from liability.

[80] The Gemara asks: But isn’t it taught in 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. Rather, it is clear that the mishna is not in accordance with the opinion of Rabbi Yehuda.

[81] Abaye said: Rabbi Yehuda and Rabban Shimon ben Gamliel and Rabbi Shimon all hold that wherever the Sages gave someone permission to perform an action, and in performing this action he causes damage, he is exempt from payment. The Gemara cites the sources for this assertion: It is clear that Rabbi Yehuda is of that opinion based on that which we just said. It is clear that Rabban Shimon ben Gamliel is of that opinion, as we learned in the mishna: Rabban Shimon ben Gamliel says: One may even prepare his work thirty days beforehand.

[82] It is clear that Rabbi Shimon is of that opinion, as we learned in a mishna (Bava Batra 20b): If one was setting up an oven in the upper story, there must be a plaster floor beneath it, which serves as the ceiling of the lower story, at least three handbreadths thick, so that the ceiling below does not burn. And in the case of a stove the plaster floor must be at least one handbreadth thick. And if he causes damage after having taken the necessary precautions, he pays compensation for that which he damaged. Rabbi Shimon says: The Sages said all of these measurements to teach only that if he causes damage he is exempt from paying, as he took all reasonable precautions.

[83] § The Sages taught: Once the stonecutter has delivered the stones to the chiseler, from that point on, the chiseler is liable for any damage caused by them. Once the chiseler has delivered the stones to the donkey driver to transport them, the donkey driver is liable. Once the donkey driver has delivered the stones to a porter to carry them to the building site, the porter is liable. Once the porter has delivered the stones to the builder, the builder is liable. Once the builder has delivered them to the master builder [adrikhal], who places and straightens the stones on the structure, the master builder is liable. And if he placed a stone upon the row [dimos] of stones and the stone fell off and caused damage, then they are all liable to pay.

[84] The Gemara asks: But isn’t it taught in a baraita, that only the last one, the master builder, is liable, and all of them are exempt? The Gemara answers: This is not difficult, as the ruling here, in this baraita, is stated with regard to a case of hiring, and therefore only the last one is liable, whereas the ruling there, in that baraita, is stated with regard to a case of contracting, in which they all agreed to perform the work together, and therefore they are all liable to pay.

[85] MISHNA: In the case of two gardens that were located one above the other, i.e., a garden on a plateau that borders another garden below, and vegetables grew in-between, out of the wall of soil resulting from the difference in height between the two gardens, Rabbi Meir says: These vegetables belong to the owner of the upper garden. Rabbi Yehuda says: They belong to the owner of the lower one. Rabbi Meir said in explanation of his ruling: If the owner of the upper garden would want to dig and take his dirt and does so, no vegetables would grow here, as that wall made of soil would not exist. The vegetables therefore belong to him. In response, Rabbi Yehuda said: If the owner of the lower garden would want to fill his garden with dirt and does so, thereby raising its level, no vegetables would grow here, as that wall made of soil would not exist. The vegetables therefore belong to him.

[86] Rabbi Meir said: Since the two of them can object to each other, as they each have the ability to prevent the vegetable growth, nothing can be decided based on such considerations. Instead, the court considers from where this vegetable lives and derives nourishment, whether from above or from below. Rabbi Shimon said: Any vegetables that the owner of the upper garden can stretch out his hand and take, those vegetables are his, and the rest belong to the owner of the lower garden.

[87] GEMARA: Rava says: With regard to the root of the vegetable growing out of the wall of soil, everyone agrees that it is the property of the owner of the upper garden, since the ground belongs to him. When they disagree, it is with regard to its leaves, which grow above the airspace of the lower garden. Rabbi Meir holds: Cast its leaves after its root, and consider that they too belong to the owner of the upper garden. And Rabbi Yehuda holds: We do not say: Cast its leaves after its root.

[88] The Gemara comments: And they follow their line of reasoning, as it is taught in a baraita with regard to a tree belonging to one individual that grew on land owned by another: That which sprouts from the trunk and from the roots, these belong to the owner of the land. This is the statement of Rabbi Meir. Rabbi Yehuda says: That which sprouts from the trunk belongs to the owner of the tree, and anything that grows from the roots belongs to the owner of the land. This statement demonstrates that according to Rabbi Yehuda, ownership of the sprouts is not determined exclusively based on the ownership of the roots.

[89] And we also learned a case like this in a baraita (Tosefta, Orla 1:4), with regard to the prohibition against eating the fruit of a tree during the first three years after its planting [orla]: In the case of a tree that sprouts from the trunk and from the roots of an old tree, its owner is obligated in orla, since it is considered like a new tree, and the orla years must be counted anew. This is the statement of Rabbi Meir. Rabbi Yehuda says: If it sprouts from the trunk, the owner is exempt, since it is considered like a branch of the old tree, but if it grows from the roots, the owner is obligated.

[90] The Gemara comments: And both cases are necessary to be stated although they are both based on the same principle. As had it taught us only the first halakha, that of ownership, one could say that it is only with regard to this case that Rabbi Yehuda said his ruling, due to the fact that it pertains to monetary matters, but with regard to orla, which is a matter of a prohibition, one could say that he concedes to Rabbi Meir. And if it was stated only with regard to this case of orla, one could say that it is only with regard to this case that Rabbi Meir said his stringent ruling, but with regard to that case, one could say that he concedes to Rabbi Yehuda. It is therefore necessary to state both disputes.

[91] § The mishna teaches: Rabbi Shimon said: Any vegetables that the owner of the upper garden can stretch out his hand and take, those vegetables are his, and the rest belong to the owner of the lower garden. In the school of Rabbi Yannai they say: And this is only so provided that he does not force himself, but simply stretches out his hand in the usual manner.

[92] Rav Anan, and some say it was Rabbi Yirmeya, raised a dilemma: If the owner of the upper garden can reach its leaves, but he cannot reach its roots, or if he can reach its roots but he cannot reach its leaves, what is the halakha? Is the plant considered to be within his reach or not? No answer was found for this question, and the Gemara concludes: The dilemma shall stand unresolved.

[93] Efrayim the scribe, a student of Reish Lakish, says in the name of Reish Lakish: The halakha is in accordance with the opinion of Rabbi Shimon. They stated this case before the Persian King Shapur, who expressed an interest in this legal issue, and he said to them: Let us offer praise [apiryon] to Rabbi Shimon. He too felt that this was the best resolution.