

The Soncino Babylonian Talmud

Book III

Folios 58b-90b



BABA MEZI'A

TRANSLATED INTO ENGLISH WITH NOTES

FOLIOS 1 - 24b

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FOLIOS 25a TO THE END

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The logic is the reverse.¹ 'Then shall I delete it?' he asked? 'No,' he replied, 'It means this: For sacrifices for which he [the owner] bears responsibility he [a bailee] is liable, for these are included in [If a soul sin ...] against the Lord, and lie;² but for those for which he [the owner] bears no responsibility he [a bailee] is not liable, because they are excluded by ... against his neighbor and lie.'³

R. JUDAH SAID: ALSO WHEN ONE SELLS A SCROLL OF THE TORAH, AN ANIMAL, OR A PEARL, THERE IS NO LAW OF OVERREACHING. It has been taught: R. Judah said, The sale of a scroll of the law too is not subject to overreaching, because its value is unassessable;⁴ an animal or a pearl is not subject to overreaching, because one desires to match them.⁵ Said they [the sages] to him, But one wishes to match up everything!⁶ And R. Judah?⁷ — These are particularly important to him [the purchaser]; others are not. And to what extent?⁸ — Said Amemar: Up to their value.⁹

It has been taught, R. Judah b. Bathyra said: The sale of a horse, sword, and buckler on [the field of] battle are not subject to overreaching, because one's very life is dependent upon them.¹⁰

MISHNAH. JUST AS THERE IS OVERREACHING IN BUYING AND SELLING, SO IS THERE WRONG DONE BY WORDS. [THUS:] ONE MUST NOT ASK ANOTHER, 'WHAT IS THE PRICE OF THIS ARTICLE?' IF HE HAS NO INTENTION OF BUYING. IF A MAN WAS A REPENTANT [SINNER], ONE MUST NOT SAY TO HIM, 'REMEMBER YOUR FORMER DEEDS.' IF HE WAS A SON OF PROSELYTES ONE MUST NOT TAUNT HIM, 'REMEMBER THE DEEDS OF YOUR ANCESTORS,' BECAUSE IT IS WRITTEN, THOU SHALT NEITHER WRONG A STRANGER, NOR OPPRESS HIM.¹¹

GEMARA. Our Rabbis taught: *Ye shall not therefore wrong one another;*¹² Scripture refers to verbal wrongs. You say, 'verbal wrongs'; but perhaps that is not so, monetary wrongs being meant? When it is said, *And if thou sell aught unto thy neighbor, or acquirest aught of thy neighbor [ye shall not wrong one another],*¹³ monetary wrongs are already dealt with. Then to what can I refer, ye shall not therefore wrong each other? To verbal wrongs. E.g., If a man is a penitent, one must not say to him, 'Remember your former deeds.' If he is the son of proselytes he must not be taunted with, 'Remember the deeds of your ancestors. If he is a proselyte and comes to study the Torah, one must not say to him, 'Shall the mouth that ate unclean and forbidden food,¹⁴ abominable and creeping things, come to study the Torah which was uttered by the mouth of Omnipotence!' If he is visited by suffering, afflicted with disease, or has buried his children, one must not speak to him as his companions spoke to Job, is not thy fear [of God] thy confidence, And thy hope the integrity of thy ways? Remember, I pray thee, who ever perished, being innocent?¹⁵ If ass-drivers sought grain from a person, he must not say to them, 'Go to so and so who sells grain,' whilst knowing that he has never sold any. R. Judah said: One may also not feign interest in¹⁶ a purchase when he has no money, since this is known to the heart only,¹⁷ and of everything known only to the heart it is written, and thou shalt fear thy God.¹⁸

R. Johanan said on the authority of R. Simeon b. Yohai: Verbal wrong is more heinous than monetary wrong, because of the first it is written, 'and thou shalt fear thy God,' but not of the second. R. Eleazar said: The one affects his [the victim's] person, the other [only] his money. R. Samuel b. Nahmani said: For the former restoration is possible, but not for the latter.

A Tanna recited before R. Nahman b. Isaac: He who publicly shames¹⁹ his neighbor is as though he shed blood. Whereupon he remarked to him, 'You say well, because I

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have seen it [sc. such shaming], the ruddiness departing and paleness supervening.²⁰

Abaye asked R. Dimi: What do people [most] carefully avoid in the West [sc. Palestine]? — He replied: putting others to shame.²¹ For R. Hanina said: All descend into Gehenna, excepting three. 'All' — can you really think so! But say thus: All who descend into Gehenna [subsequently] reascend, excepting three, who descend but do not reascend, viz., He who commits adultery with a married woman, publicly shames his neighbor, or fastens an evil epithet [nickname] upon his neighbor. 'Fastens an epithet' — but that is putting to shame! — [It means], Even when he is accustomed to the name.²²

Rabbah b. Bar Hanah said in R. Johanan's name:

1. Sacrifices for which one bears responsibility are the property of their owner, whilst those for which no responsibility is borne are rather to be regarded as that of God (v. p. 335, n. 7).
2. The real reason of liability is the fact that these are secular property. But to meet the objection that after all, having been sanctified, they are sacred property, the phrase '*against the Lord and lie*' is adduced, to show that even when there is an element of sacredness a guilt offering is still due.
3. But since the owner is not responsible for them, they are entirely God's, not 'his neighbor's.'
4. Lit., 'unlimited.'
5. When a man possesses one ox, he may be very anxious to procure another of equal strength, because it is inconvenient to plow with two animals of dissimilar capacities. Therefore he may knowingly overpay, hence the law of overreaching does not apply. So with a pearl, if it exactly matches others in his possession.
6. Whatever one buys may be needed to match something else, or is particularly suitable for the buyer's purpose, in which case the same argument holds good.
7. Why does he draw a distinction between these articles and others?
8. Can one overcharge without committing fraud? — it being assumed that R. Judah could not mean that there was no redress under any circumstances.
9. I.e., if double is charged there is no redress; above that, however, involves overreaching.

10. Hence the soldier needing them will knowingly overpay.
11. Ex. XXII, 20.
12. Lev. XXV, 17.
13. Ibid. 14.
14. Heb. nebeloth, terefoth, q.v. [Glos.](#)
15. Job IV, 6f.
16. Lit., 'look up to.'
17. [H] Lit., 'entrusted to the heart.'
18. Lev. XXV, 17. Man cannot know whether one's intentions are legitimate or not, since they are concealed, but God knows (Rashi). [This beautiful phrase [H] which, were certain critics of Pharisaism right, ought never to have been on Pharisaic lips (Abrahams, I. Studies on Pharisaism, Second Series, p. 116), may also denote matters left to ethical research and conviction, which cannot be mastered, weighed or determined by will, but by a delicate perception, fine tact and a sensitiveness of nature. V. Lazarus, The Ethics of Judaism, I, 122 and 292.]
19. Lit., 'makes pale.'
20. Thus the blood is drained from the victim's face, which is the equivalent of shedding his blood. [V. Wiesner, J. Mag. f. Jud. Gesch. u. Lit. 1875, p. 11.]
21. Lit., 'making faces white.'
22. So that he experiences no humiliation, nevertheless it is very reprehensible when the intention is evil. — It is noteworthy that apart from these three — which are obviously stated in a heightened form for the sake of emphasis (V. Tosaf.) the idea of endless Gehenna is rejected. Cf. M. Joseph, Judaism as Creed and Lie, pp. 145 seq. 'Nor do we believe in hell or in everlasting punishment ... If suffering there is to be, it is terminable. The idea of eternal punishment is repugnant to the genius of Judaism.'

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Better it is for man to cohabit with a doubtful married woman¹ rather than that he should publicly shame his neighbor. Whence do we know this? — From what Raba expounded, viz., What is meant by the verse, But in mine adversity they rejoiced and gathered themselves together...they did tear me, and ceased not?² David exclaimed before the Holy One, blessed be He, 'Sovereign of the Universe! Thou knowest full well that had they torn my flesh, my blood would not have poured forth to the earth.'³ Moreover, when they are engaged in studying "Leprosy" and

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"Tents"⁴ they jeer at me, saying, "David! what is the death penalty of him who seduces a married woman?" I reply to them, "He is executed by strangulation, yet has he a portion in the world to come. But he who publicly puts his neighbor to shame has no portion in the world to come."⁵

Mar Zutra b. Tobiah said in Rab's name — others state, R. Hana⁶ b. Bizna said in the name of R. Simeon the pious — others again state, R. Johanan said on the authority of R. Simeon b. Yohai: Better had a man throw himself into a fiery furnace than publicly put his neighbor to shame. Whence do we know it? — From Tamar.⁷ For it is written, when she was brought forth, she sent to her father-in-law [etc].⁸

R. Hanina, son of R. Idi, said: What is meant by the verse, Ye shall not wrong one another [amitho]? — Wrong not a people that is with you in learning and good deeds.⁹

Rab said: One should always be heedful of wronging his wife, for since her tears are frequent she is quickly hurt.¹⁰

R. Eleazar said:¹¹ Since the destruction of the Temple, the gates of prayer are locked, for it is written, *Also when I cry out, he shutteth out my prayer.*¹² Yet though the gates of prayer are locked, the gates of tears are not, for it is written, *Hear my prayer, O Lord, and give ear unto my cry; hold not thy peace at my tears.*¹³

Rab also said: He who follows his wife's counsel will descend¹⁴ into Gehenna, for it is written, But there was none like unto Ahab [which did sell himself to work wickedness in the sight of the Lord, whom Jezebel his wife stirred up].¹⁵ R. papa objected to Abaye: But people say, If your wife is short, bend down and hear her whisper! — There is no difficulty: the one refers to general matters; the other to household affairs.¹⁶ Another version: the one refers to religious matters, the other to secular questions.

R. Hisda said: All gates are locked, excepting the gates [through which pass the cries of]

wrong [ona'ah], for it is written, Behold the Lord stood by a wall of wrongs, and in his hand were the wrongs.¹⁷ R. Eleazar said: All [evil] is punished through an agent, excepting wrong, for it is written, And in his hand were the wrongs.¹⁸ R. Abbahu said: There are three [evils] before which the Curtain¹⁹ is not closed: overreaching, robbery and idolatry. Overreaching, for it is written, and in his hand was the overreaching. Robbery, because it is written, Robbery and spoil are heard in her; they are before me continually.²⁰ Idolatry, for it is written, A people that provoketh me to anger continually before my face; [that sacrificeth — sc. to idols — in gardens, and burneth incense upon altars of brick].²¹

Rab Judah said: One should always take heed that there be corn in his house; for strife is prevalent in a house only on account of corn [food], for it is written, He maketh peace in thy borders: he filleth thee with the finest of the wheat.²² Said R. papa, Hence the proverb: When the barley is quite gone from the pitcher, strife comes knocking at the door,²³ R. Hinena b. papa said: One should always take heed that there be corn in his house, because Israel were called poor only on account of [the lack of] corn, for it is said, And so it was when Israel had sown, etc., and it is further written, And they [sc. the Midianites and the Amalekites] encamped against them, [and destroyed the increase of the earth], whilst this is followed by, And Israel was greatly impoverished because of the Midianites.²⁴

R. Helbo said: One must always observe the honor due to his wife, because blessings rest on a man's home only on account of his wife, for it is written, And he treated Abram well for her sake.²⁵ And thus did Raba say to the townspeople of Mahuza,²⁶ Honor your wives, that ye may be enriched.²⁷

We learnt elsewhere: If he cut it into separate tiles, placing sand between each tile: R. Eliezer declared it clean, and the Sages declared it unclean;

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1. E.g., one who was freed with a divorce, as to the validity of which doubts arose.
2. Ps. XXXV, 15.
3. Because of the many insults I am made to bear, which as stated above, drain the flesh of its blood.
4. Two tractates in the sixth order of the Talmud, called 'Purity.' These are tractates of extreme difficulty and complexity, and have no bearing upon adultery or the death penalty. Thus David complained that even when engaged on totally different matters which required all their thought, they yet diverted their attention in order to humiliate him (Tosaf.). In Sanh. 107a, the reading is: 'when they are engaged in the study of the four modes of death imposed by the Court, etc.
5. Now Bath Sheba was a doubtful married woman, because every soldier of David's army gave his wife a conditional divorce before he left for the front, to take retrospective effect from the time of delivery in case he was lost in battle. So that when David took Bath Sheba it was doubtful whether she would prove a married woman at the time or not; and David maintained that his offence was not so grave as that of his companions.
6. *Var. lec.*: Huna.
7. Judah's daughter-in-law, with whom he unwittingly cohabited. Subsequently, on her breach of chastity being discovered, he ordered her to be burnt, and only rescinded the order when she privately sent proof to him of his own complicity; v. Gen. XXXVIII.
8. *Ibid.* 25. She left it to him to confess but did not openly accuse him, choosing death rather than publicly putting him to shame.
9. This is a play of words on [H] ('his fellowman') reading it as two words, [H], the 'people that is with him.'
10. Lit., 'her wronging is near;' — a woman is very sensitive, and therefore quick to feel and resent a hurt.
11. [MS.M. 'For R. Eleazar said,' the statement of R. Eleazar being thus added in elucidation of Rab's dictum.]
12. Lam. III, 8.
13. Ps. XXXIX, 13; the idea is that the destruction of the Temple may have made it more difficult to commune with God, yet earnest prayer from the depths of the heart is always accepted.
14. Lit., 'fall'.
15. I Kings, XXI, 25; thus Ahab's downfall is ascribed to his action in allowing himself to be led astray by Jezebel.
16. A man should certainly consult his wife on the latter, but not on the former, — not a disparagement of woman; her activities lying mainly in the home.
17. [H] Amos VII, 7(E.V. 'plumb-line') is here connected with [H], 'overreaching', 'wronging', i.e., God is always ready to plead the cause of one who has been wronged.
18. I.e., God in person punishes these.
19. The Curtain of Heaven. [Hiding. so to speak, human failings from the Divine gaze.]
20. Jer. VI, 7.
21. Isa. LXV, 3.
22. Ps. CXLVII, 14: the two halves of the verse are parallel to each other.
23. Lit., 'house'.
24. Jud. VI, 3, 4, 6.
25. Gen. XII, 16.
26. A large Jewish commercial town, situate on the Tigris. Raba had his academy there.
27. The foregoing passages are Instructive on the Talmudic attitude to women. Though recognizing the evil influence a bad woman can wield upon her husband, as evidenced by Ahab and Jezebel, these sayings breathe a spirit of tenderness and honor. As she is highly sensitive, the greatest care must be taken not to wound her feelings, and a husband must adapt himself to his wife; whilst it is emphatically asserted that prosperity in the home, as well as the blessings of home life, are to a great extent dependent upon her.

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and this was the oven of 'Aknai.¹ Why [the oven of] 'Aknai? — Said Rab Judah in Samuel's name: [It means] that they encompassed it with arguments² as a snake, and proved it unclean. It has been taught: On that day R. Eliezer brought forward every imaginable argument,³ but they did not accept them. Said he to them: 'If the *halachah* agrees with me, let this carob-tree prove it!' Thereupon the carob-tree was torn a hundred cubits out of its place — others affirm, four hundred cubits. 'No proof can be brought from a carob-tree,' they retorted. Again he said to them: 'If the *halachah* agrees with me, let the stream of water prove it!' Whereupon the stream of water flowed backwards — 'No proof can be brought from a stream of water,' they rejoined. Again he urged: 'If the *halachah* agrees with me, let the walls of the schoolhouse prove it,' whereupon the walls inclined to fall. But R. Joshua rebuked them,

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saying: 'When scholars are engaged in a halachic dispute, what have ye to interfere?' Hence they did not fall, in honor of R. Joshua, nor did they resume the upright, in honor of R. Eliezer; and they are still standing thus inclined. Again he said to them: 'If the *halachah* agrees with me, let it be proved from Heaven!' Whereupon a Heavenly Voice cried out: 'Why do ye dispute with R. Eliezer, seeing that in all matters the *halachah* agrees with him!' But R. Joshua arose and exclaimed: 'It is not in heaven.'⁴ What did he mean by this? — Said R. Jeremiah: That the Torah had already been given at Mount Sinai; we pay no attention to a Heavenly Voice, because Thou hast long since written in the Torah at Mount Sinai, After the majority must one incline.⁵

R. Nathan met Elijah⁶ and asked him: What did the Holy One, Blessed be He, do in that hour? — He laughed [with joy], he replied, saying, 'My sons have defeated Me, My sons have defeated Me.' It was said: On that day all objects which R. Eliezer had declared clean were brought and burnt in fire.⁷ Then they took a vote and excommunicated him.⁸ Said they, 'Who shall go and inform him?' 'I will go,' answered R. Akiba, 'lest an unsuitable person go and inform him, and thus destroy the whole world.'⁹ What did R. Akiba do? He donned black garments and wrapped himself in black,¹⁰ and sat at a distance of four cubits from him. 'Akiba,' said R. Eliezer to him, 'what has particularly happened to-day?'¹¹ 'Master,' he replied, 'it appears to me that thy companions hold aloof from thee.' Thereupon he too rent his garments, put off his shoes, removed [his seat] and sat on the earth, whilst tears streamed from his eyes.¹² The world was then smitten: a third of the olive crop, a third of the wheat, and a third of the barley crop. Some say, the dough in women's hands swelled up.

A Tanna taught: Great was the calamity that befell that day, for everything at which R. Eliezer cast his eyes was burned up. R. Gamaliel¹³ too was travelling in a ship, when a huge wave arose to drown him. 'It appears

to me,' he reflected, 'that this is on account of none other but R. Eliezer b. Hyrcanus.' Thereupon he arose and exclaimed, 'Sovereign of the Universe! Thou knowest full well that I have not acted for my honor, nor for the honor of my paternal house, but for Thine, so that strife may not multiply in Israel! 'At that the raging sea subsided.

Ima Shalom was R. Eliezer's wife, and sister to R. Gamaliel. From the time of this incident onwards she did not permit him to fall upon his face.¹⁴ Now a certain day happened to be New Moon, but she mistook a full month for a defective one.¹⁵ Others say, a poor man came and stood at the door, and she took out some bread to him.¹⁶ [On her return] she found him fallen on his face. 'Arise,' she cried out to him, 'thou hast slain my brother.' In the meanwhile an announcement was made from the house of Rabban Gamaliel that he had died. 'Whence dost thou know it?' he questioned her. 'I have this tradition from my father's house: All gates are locked, excepting the gates of wounded feelings.'¹⁷

Our Rabbis taught: He who wounds the feelings of a proselyte transgresses three negative injunctions, and he who oppresses him infringes two. Wherein does wronging differ? Because three negative injunctions are stated: Viz., *Thou shalt not wrong a stranger* [i.e., a proselyte],¹⁸ *And if a stranger sojourn with thee in your land, ye shall not wrong him,*¹⁹ *and ye shall not therefore wrong each his fellowman,*²⁰ a proselyte being included in 'fellowman.' But for 'oppression' also three are written, viz., *and thou shalt not oppress him,*²¹ *Also thou shalt not oppress a stranger,*²² and [If thou lend money to any of my people that is poor by thee,] *thou shalt not be to him as a usurer*²³ which includes a proselyte! — But [say] both [are forbidden] by three [injunctions].

It has been taught: R. Eliezer the Great said: Why did the Torah warn against [the wronging of] a proselyte in thirty-six, or as others say, in forty-six, places? Because he has a strong inclination to evil.²⁴ What is the

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meaning of the verse, *Thou shalt neither wrong a stranger, nor oppress him; for ye were strangers in the land of Egypt?* It has been taught: R. Nathan said: Do not taunt your neighbor with the blemish you yourself have.²⁵ And thus the proverb runs:²⁶ If there is a case of hanging in a man's family record, say not to him,²⁷ 'Hang this fish up for me.'

MISHNAH. PRODUCE MAY NOT BE MIXED WITH OTHER PRODUCE, EVEN NEW WITH NEW,

1. This refers to an oven, which, instead of being made in one piece, was made in a series of separate portions with a layer of sand between each. R. Eliezer maintains that since each portion in itself is not a utensil, the sand between prevents the whole structure from being regarded as a single utensil, and therefore it is not liable to uncleanness. The Sages however hold that the outer coating of mortar or cement unifies the whole, and it is therefore liable to uncleanness. (This is the explanation given by Maimonides on the Mishnah, Kel. V, 10. Rashi a.l. adopts a different reasoning). 'Aknai is a proper noun, probably the name of a master, but it also means 'snake'. ([G]) which meaning the Talmud proceeds to discuss.
2. Lit., 'words'.
3. Lit., 'all the arguments in the world'.
4. Deut. XXX, 12.
5. Ex. XXIII, 2, though the story is told in a legendary form, this is a remarkable assertion of the independence of human reasoning.
6. It was believed that Elijah, who had never died, often appeared to the Rabbis.
7. As unclean.
8. Lit., 'blessed him,' a euphemism for excommunication.
9. I.e., commit a great wrong by informing him tactlessly and brutally.
10. As a sign of mourning, which a person under the ban had to observe.
11. Lit., 'what is this day (different) from yesterday (or to-morrow)?'
12. Rending the garments, etc. were all mourning observances. (In ancient times mourners sat actually upon the earth, not, as nowadays, upon low stools.) — The character of R. Eliezer is hotly contested by Weiss and Halevi. The former, mainly on the basis of this story (though adducing some other proof too), severely castigates him as a man of extreme stubbornness and conceit, who would brook no disagreement, a bitter controversialist from

his youth until death, and ever seeking quarrels (Dor. II, 82). Halevy (Doroth 1, 5, pp. 374 et seqq.) energetically defends him, pointing out that this is the only instance recorded in the whole Talmud of R. Eliezer's maintaining his view against the majority. He further contends that the meekness with which he accepted his sentence, though he was sufficiently great to have disputed and fought it, is a powerful testimony to his humility and peace-loving nature.

13. The Nasi and the prime mover in the ban against R. Eliezer.
14. After the Eighteen Benedictions there follows a short interval for private prayer, during which each person offered up his own individual supplications to God. These were called supplications ([H]), and the suppliant prostrated himself upon his face; they were omitted on New Moons and Festivals. — Elbogen, *Der judische Gottesdienst*, pp. 73 et seq. Ima Shalom feared that her husband might pour out his grief and feeling of injury in these prayers, and that God, listening to them, would punish R. Gamaliel, her brother.
15. Jewish months consist of either 30 days (full) or 29 (defective). Thinking that the previous month had consisted of 29 days, and that the 30th would be New Moon, she believed that R. Eliezer could not engage in these private prayers in any case, and relaxed her watch over him. But actually it was a full month, so that the 30th was an ordinary day, when these prayers are permitted.
16. I.e., she did not mistake the day, but was momentarily forced to leave her husband in order to give bread to a beggar.
17. Lit., 'wrong', v. p. 354, n. 4. She felt sure that R. Eliezer had seized the opportunity of her absence or error to cry out to God about the ban.
18. Ex. XXII, 20.
19. Lev. XIX, 33.
20. Lev. XXV, 17.
21. Ex. XXII, 20.
22. Ex. XXIII, 9.
23. Ex. XXII, 24
24. So Rashi in Hor. 13a. Jast.: because his original character is bad — into which evil treatment might cause him to relapse.
25. Thus he translates the verse: Do not wrong a proselyte by taunting him with being a stranger to the Jewish people seeing that ye yourselves were strangers in Egypt.
26. Lit., 'people say.'
27. [So MS.M.; cur. edd. read, 'to his fellow'.]

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HOW MUCH MORE SO NEW WITH OLD!¹ YET IN TRUTH IT WAS SAID THAT STRONG WINE MAY BE MIXED WITH MILD, BECAUSE IT IMPROVES IT.² A MAN MUST NOT MIX THE LEES OF WINE WITH WINE, BUT HE [THE VENDOR] MAY GIVE HIM [THE VENDEE] ITS LEES.³ IF HIS WINE WAS DILUTED WITH WATER HE MUST NOT SELL IT IN HIS SHOP [IN SMALL QUANTITIES] UNLESS HE INFORMS HIM [THE CUSTOMER], NOR TO A MERCHANT, EVEN IF HE INFORMS HIM, BECAUSE [THE LATTER BUYS IT] ONLY IN ORDER TO CHEAT THEREWITH. WHERE IT IS THE PRACTICE TO ADULTERATE WINE WITH WATER, IT IS PERMISSIBLE.⁴ A MERCHANT MAY PURCHASE [GRAIN] FROM FIVE GRANARIES AND PUT IT INTO ONE STORE-ROOM,⁵ OR [WINE] FROM FIVE PRESSES AND PUT IT INTO THE SAME CASK, PROVIDING THAT IT IS NOT HIS INTENTION TO MIX THEM.⁶

GEMARA. Our Rabbis taught: it goes without saying, when new [produce] stands at four [se'ahs per sela'], whilst old is priced at three, that they may not be intermixed; but even when new is at three and old at four, they may still not be mixed, because [the higher price of the new corn is due to the fact that] one wishes to store them until old.⁷

YET IN TRUTH IT WAS SAID THAT STRONG WINE MAY BE MIXED WITH MILD, BECAUSE IT IMPROVES IT. R. Eleazar said: From this it may be concluded that wherever it is stated 'in truth it was said', that is the *halachah*.⁸ Said R. Nahman: This was taught only when they [the wines] are in the Presses.⁹ But nowadays [wines] are mixed [even] after they have left the presses.¹⁰ — Said R. Papa: It is known and forgiven. R. Aha son of R. Ika said: That is in accordance with R. Aha. For it has been taught: R. Aha permits [mixing] in a commodity that is [first] tasted.¹¹

A MAN MUST NOT MIX THE LEES OF WINE WITH WINE, BUT HE [THE VENDOR] MAY GIVE HIM [THE VENDEE] ITS LEES. But you have ruled in the first clause that they may not be mixed at all? And should you reply that what is meant by, BUT HE MAY GIVE HIM ITS LEES, is that he informs him thereof; since the subsequent clause states, HE MUST NOT SELL IT IN HIS SHOP UNLESS HE INFORMS HIM [THE CUSTOMER], NOR TO A MERCHANT, EVEN IF HE INFORMS HIM, it follows that this clause means even if he does not inform him! — Said Rab Judah: It means this: A MAN MUST NOT MIX THE LEES OF yesterday's WINE with that of to-day's, nor vice versa, BUT HE [THE VENDOR] MAY GIVE HIM [THE VENDEE] ITS OWN LEES. It has been taught likewise: R. Judah said: When a man pours out¹² wine for his neighbor [selling it to him], he must not mix [the lees] of yesterday's wine with that of to-day's, nor vice versa, but may mix yesterday's with yesterday's and to-day's with to-day's.¹³

IF HIS WINE WAS DILUTED WITH WATER HE MUST NOT SELL IT IN HIS SHOP [IN SMALL QUANTITIES] UNLESS HE INFORMS HIM, etc. Raba once brought wine from a shop. After diluting it he tasted it, and on finding that it was not good he returned it to the shop.¹⁴ Thereupon Abaye protested: But we learnt, NOR TO A MERCHANT, EVEN IF HE INFORMS Him!¹⁵ — He replied: My mixing is well known.¹⁶ And should you object, He may add [wine thereto], thus strengthening it, and then sell it [as pure wine] — if so, the matter is endless!¹⁷

WHERE IT IS THE PRACTICE TO ADULTERATE WINE WITH WATER, IT IS PERMISSIBLE, etc. A Tanna taught: In proportions of a half, a third or a quarter.¹⁸ Said Rab: And this [sc. the Mishnah] was stated in the time of the presses.¹⁹

MISHNAH. R. JUDAH SAID: A SHOPKEEPER MUST NOT DISTRIBUTE PARCHED CORN OR

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NUTS TO CHILDREN, BECAUSE HE THEREBY ACCUSTOMS THEM TO COME TO HIM;²⁰ THE SAGES PERMIT IT. NOR MAY HE REDUCE THE PRICE; BUT THE SAGES SAY, HE IS TO BE REMEMBERED FOR GOOD. ONE MUST NOT SIFT POUNDED BEANS:²¹ THIS IS THE VIEW OF ABBA SAUL. BUT THE SAGES PERMIT IT. YET THEY ADMIT THAT HE MUST NOT PICK OUT [THE REFUSE] FROM THE TOP OF THE BIN,²² BECAUSE ITS ONLY PURPOSE IS TO DECEIVE THE EYE. MEN, CATTLE, AND UTENSILS MAY NOT BE PAINTED.²³

GEMARA. What is the Rabbis' reason? — Because he [this shopkeeper] can say to him [another shopkeeper], 'I distribute nuts; you distribute plums.

NOR MAY HE REDUCE THE PRICE; BUT THE SAGES SAY, HE IS TO BE REMEMBERED FOR GOOD, etc. What is the Rabbis' reason? —

1. If one undertakes to supply the produce of a particular field, he may not intermix it with the produce of another, even of the same year. If he undertakes to supply last year's grain, he may certainly not intermix the current year's the former being more suitable for milling.
2. But not vice versa; having agreed to supply full-bodied wine, one must not mix it with light wine.
3. This is discussed in the Gemara.
4. Because there is no cheating then, the practice being known and taken into account.
5. For selling from the whole indiscriminately.
6. I.e., he must not represent that he bought all from the same source, which is known for providing superior merchandise.
7. The higher price of the new corn is not due to its superiority, but to the fact that there is no sale that year and merchants are buying ahead for the following, whereas if they store last year's grain, it may be too old when they need it. Hence when one stipulates that he wants old corn, it is evident that he requires it for immediate use, and therefore it may not be mixed with new, though this is dearer.
8. Since the reason given is that it improves it, leaving no room for doubt on the matter, and this is introduced by the phrase, 'in truth, etc.,' it follows that this phrase indicates the absolute certainty of the law. [Adopting this principle, the Tanna of our Mishnah will permit the mixing of old produce with new, contrary to the view of the Tanna in Tosef. B.M. III, v. Rosenthal, F., Hoffmann's Festschrift, p. 34ff.]
9. The mixing is then advantageous. But after each has acquired its own taste and bouquet, mixing of different wines has a deleterious effect.
10. Lit., 'not among the presses.'
11. Since the customer tastes the wine before buying it, there is no fraud.
12. The Heb. [H] denotes 'to pour out slowly,' so as to leave the sediment behind.
13. The lees of a different day's wine have an injurious effect, but not those of the same day's. Rashi, however observes that this is not meant literally, but that wine when sold may contain its own sediment, but not that of a different wine. 'To-day's' and 'yesterday's' are merely employed a convenient expressions of different wines.
14. For sale there.
15. And this shopkeeper too will sell it as unadulterated wine.
16. It was generally known that Raba diluted the wine with very much water. So that a prospective customer, in tasting it beforehand, would know what proportion of wine it contained, and pay accordingly.
17. It would be forbidden to sell even water to a wine-merchant, lest he mix it with wine and sell the whole as pure. But that is obviously absurd. Therefore the Mishnah forbids only a sale of those commodities which lend themselves to immediate deceit.
18. I.e., whatever proportions are permitted by custom, but not more.
19. The wine may be diluted whilst it is yet in the press, but not after.
20. When sent by mothers to make a purchase; this is unfair competition.
21. To remove the refuse. Owing to the better appearance of the beans he advances the price by more than the value of the refuse removed, and therefore this Tanna forbids it as fraud.
22. Leaving the refuse underneath.
23. To give them a younger or newer appearance, and thus make them realize a higher price. 'Men' refers to slaves.

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Because he eases the market.¹

ONE MUST NOT SIFT POUNDED BEANS: THIS IS THE VIEW OF ABBA SAUL. BUT THE SAGES PERMIT IT, etc. Who are the Sages? — R. Aha. For it has been taught: R.

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Aha permitted it in a commodity that may be seen.²

MEN, CATTLE, AND UTENSILS MAY NOT BE PAINTED. Our Rabbis taught: An animal may not be given an appearance of stiffness, entrails may not be inflated,³ nor may meat be soaked in water.⁴ What is meant by 'one may not give an appearance of stiffness'? — Here [in Babylon] it is explained as referring to branbroth.⁵ Ze'iri said in R. Kahana's name: Brushing up [an animal's hair].⁶ Samuel permitted fringes to be put on a cloak.⁷ Rab Judah permitted a gloss to be put on fine cloths.⁸ Rabbah permitted hemp-cloths to be beaten.⁹ Raba permitted arrows to be painted. R. Pappa b. Samuel allowed baskets to be painted. But did we not learn, MEN, CATTLE, AND UTENSILS MAY NOT BE PAINTED? — There is no difficulty; one refers to new, the other to old.¹⁰

What is the purpose of painting men? — As in the case of a certain aged slave who went and had his head and beard dyed,¹¹ and came before Raba, saying to him, 'Buy me.' 'Let the poor be the children of thy house,'¹² he replied. So he went to R. Papa b. Samuel, who bought him. One day he said to him, 'Give me some water to drink.' Thereupon he went, washed his head and beard white again, and said to him, 'See, I am older than your father.'¹³ At that he applied to himself the verse, '*The righteous is delivered out of trouble, and another cometh in his stead.*'¹⁴

CHAPTER V

MISHNAH. WHAT IS *NESHEK* AND WHAT IS *TARBITH*?¹⁵ WHAT IS *NESHEK*? ONE WHO LENDS A *SELA'* [FOUR *DENARII*] FOR FIVE *DENARII*, OR TWO *SE'AH*S¹⁶ OF WHEAT FOR THREE; THAT IS FORBIDDEN,¹⁷ BECAUSE HE [THEREBY] 'BITES' [THE DEBTOR]. AND WHAT IS *TARBITH*? THE TAKING OF INTEREST ON PRODUCE, E. G., IF A MAN PURCHASED WHEAT AT A GOLD *DENAR* [TWENTY-FIVE SILVER *DENARII*] PER *KOR*,¹⁸ WHICH WAS THE CURRENT PRICE,¹⁹ AND [SUBSEQUENTLY] WHEAT APPRECIATED

TO THIRTY *DENARII* PER *KOR*. THEN [THE PURCHASER] SAID TO HIM, 'GIVE ME MY WHEAT, AS I WISH TO SELL IT AND BUY WINE WITH THE PROCEEDS;' TO WHICH [THE VENDOR] REPLIED, 'LET THE WHEAT BE CHARGED TO ME AS A DEBT OF THIRTY *DENARII* [PER *KOR*]. AND YOU HAVE A CLAIM OF WINE UPON ME FOR ITS VALUE;²⁰ BUT HE ACTUALLY HAS NO WINE [AT THE TIME].

GEMARA. Now, since he [the Tanna] disregards²¹ the Biblical [meaning of] interest²² and defines its Rabbinical [connotation]²³ it follows that Biblically speaking *neshek* and *tarbith* are Synonymous: whereas [in fact] there are Scriptural expressions, *neshek* of money, and *ribbith* of food!²⁴ — Do you think then that there can be *neshek* [loss to the debtor] without *tarbith* [profits to the creditor], or *tarbith* without *neshek*? How might there be *neshek* without *tarbith*? If he lent him a hundred [perutahs] for one hundred and twenty [perutahs], at first [when the loan is made] a *danka*²⁵ being valued at a hundred [perutahs], and subsequently [when the loan was repaid] at a hundred and twenty,²⁶ there is *neshek*, for he 'bites' him [the debtor] by taking from him something which he [the creditor] did not give; yet there is no *tarbith* [to the creditor], for there is no profit, since he lent him a *danka* and received back a *danka*! But, after all, if the original rate is the determining factor,²⁷ there is both *neshek* and *tarbith*; if the subsequent rate, there is neither *neshek* nor *tarbith*? Furthermore, how is *tarbith* [profit to the creditor] conceivable without *neshek* [loss to the debtor]? If he lent him a hundred [perutahs] for a hundred, the hundred being worth a *danka* at first, and now a fifth:²⁸ if you regard the first rate, there is neither *neshek* nor *tarbith*; if the final rate, there is both *neshek* and *tarbith*! — But, said Raba, you can find neither *neshek* without *tarbith* nor *tarbith* without *neshek*, and the only purpose of Scripture in stating them separately²⁹ is [to teach] that one transgresses two prohibitions [by taking interest].³⁰

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Our Rabbis taught: [Thou shalt not give him thy money upon *neshek* [usury], nor lend him thy victuals for *marbith* [interest];³¹ [from this] I only know that the prohibition of *neshek* applies to money, and that of *ribbith* to provisions:³² whence do we know that [the prohibition] *neshek* applies to provisions [too]? From the verse, [Thou shalt not lend upon usury to thy brother *neshek* of money], *neshek* of victuals.³³ Whence do we know that the prohibition of *ribbith* applies to money? From the verse, *neshek* of money:

1. Competition is healthy, and prevents a 'hold up.'
2. The purchaser sees what he buys, and therefore there is no fraud.
3. In a shop, where they are displayed for sale, to make them look larger.
4. To make it look fat.
5. Which bloats the animal fed on it.
6. For the same purpose.
7. To make it look more valuable.
8. By rubbing it with a certain substance.
9. To make it appear thinner and of finer texture.
10. Old utensils may not be painted, as the purpose is to deceive and make them look new. But new ones may be painted to improve their appearance.
11. Black, making him look a young man.
12. This is a Mishnah in Aboth I, 5. Raba, by emphasizing the 'thy', gave it the meaning — 'I had rather give my hospitality to the poor of my own people.'
13. And it is not meet that you should impose menial tasks upon me. — It is noteworthy that the slave knew that he could rely upon the decency of the Jew to respect his age, though a slave, and one, moreover, who had practiced deceit. This is in marked contrast to the treatment meted out to slaves amongst other people, both in ancient and in comparatively recent times.
14. Prov. XI, 8; the verse actually reads, 'and the wicked, etc.' 'Another' was probably substituted by R. Papa intentionally: 'Raba — the righteous — was delivered from trouble, but I had the misfortune to buy you.'
15. *Neshek*, from [H] 'to bite', denotes usury, 'bitten out', as it were, from the debtor, something received for nothing given. *Tarbith*, *marbith*, and *ribbith* from [H], 'to increase', denotes increase, profits. The question of the Mishnah is posited on Lev. XXV, 36: *Take thou no neshek from him, nor tarbith.*

16. *Se'ah* = six *kabs*, or 13,184.44 cu. cm. J.E. XII, 488.
17. [Rightly omitted in most texts.]
18. *Kor* is a measure of capacity, equal to thirty *se'ahs*. B.B. 86b, 105a.
19. One may purchase 'futures' in wheat at the current price, paying for it at the time of purchase and receiving it later, even if the price advances, without infringing the prohibition of usury.
20. Pricing the wine too at current rates.
21. In his explanation of *marbith*.
22. Which is usury on a loan transaction.
23. [The illustration of *marbith* by way of purchase in the Mishnah being a Rabbinical extension of the law.]
24. *Thou shalt not give him any money upon neshek, nor lend him thy victuals for marbith.* Lev. XXV, 37.
25. *Pers. dankh; [G], a small Persian coin, the sixth of a denar, in general, one-sixth.*
26. *So Rashi. Tosaf., however, points out that the current value of a sixth of a denar was 32 perutahs, and it is inconceivable that the perutah should depreciate to such an extent. Tosaf, therefore renders: a hundred ma'ahs (ma'ah = a sixth of the denar = a danka) for a sixth of a maneh (maneh = 100 common shekels or zuz); or 100 issars (issar = 8 perutahs) for a sixth of a gold denar.*
27. *Lit., 'if you go according to the beginning'.*
28. *Of a denar, or, as stated above in n. 3.*
29. *V. Lev. XXV, 37, quoted in n. 1.*
30. *Each involving the penalty of lashes.*
31. *Lev. XXV, 37.*
32. *I.e., that in lending money on interest, the prohibition of neshek, and in lending provisions on interest, the prohibitions of ribbith, are violated.*
33. *Deut. XXIII, 20.*

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now, since this is redundant in respect of money *neshek*, as it is already written, *Thou shalt not lend upon usury to thy brother*,¹ utilize the subject [to teach that the prohibition of] *ribbith* [applies to] money.² [From this] I know it only of the borrower:³ whence do we know it of the lender? *Neshek* is stated in reference to the borrower; also in reference to the lender:⁴ just as with respect of the *neshek* written in reference to the borrower, no distinction is drawn between money and provisions, *neshek* and *ribbith*,⁵ so also, in respect to *neshek* written in reference

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to the lender, you must draw no distinction between money and provisions, *neshek* and *ribbith*. Whence do we know to extend [the law] to everything?⁶ From the verse, *neshek of anything that is lent upon usury*.

Rabina said: There is no need of any verse [to teach] either that the prohibition *neshek* in respect of victuals, or of *ribbith* in respect of money, [applies to the lender]. For were it written, 'Thy money thou shalt not give him upon *neshek*, and thy food upon *marbith*,' [it would be] even as you say.⁷ Since, however, it is written, *Thy money thou shalt not give him upon neshek and upon marbith thou shalt not lend thy victuals*,⁸ read it thus: 'Thy money thou shalt not give him upon *neshek* and upon *marbith*, and upon *neshek* and upon *marbith* thou shalt not give thy victuals.'⁹ But does not the Tanna state, 'it is said...it is said'?¹⁰ — He means this: if the verse were not written [in such a way], I should have adduced a *gezerah shawah*: now, however, that the verse is couched [thus], the *gezerah shawah* is unnecessary. Then for what purpose do I need the *gezerah shawah*? — In respect of *neshek of anything for which usury may be given*, which is not written in connection with the lender.¹¹

Raba said: Why did the Divine Law write an injunction against *ribbith*, an injunction against robbery, and an injunction against overreaching?¹² — They are necessary. For had the Divine Law stated an injunction against *ribbith* [only], [no other prohibition could be deduced therefrom] because it is anomalous,¹³ the prohibition lying even upon the debtor.¹⁴ Again, had the Divine Law written an interdict against robbery [I might argue that] that is because it is against his [the victim's] wish,¹⁵ but as for overreaching, I might maintain [that it is] not [forbidden].¹⁶ And were there a prohibition in the Divine Law against overreaching only, [I might reason,] that is because he [the defrauded] does not know [of his loss], to be able to pardon.¹⁷

Now one could not be deduced from another: but cannot one be derived from the other two? — Which could be [thus] deduced? Should the Divine Law omit the prohibition of usury, that it might follow from these [robbery and fraud]? [But I would argue,] The reason why these are [forbidden] is because they lack [the victim's] consent:¹⁸ will you say [the same] of usury, which is [taken] with his [the debtor's] consent? And if the Divine Law omitted the injunction against overreaching, that it might be deduced from the others, [I would argue:] The reason why the others are [forbidden] is because commerce¹⁹ is not carried on thus!²⁰ — But the Divine Law should not have stated the prohibition of robbery, and it would have followed from the others. For what objections will you raise: as for interest, that it is an anomaly? Then let overreaching prove it.²¹ [Should you argue,] As for fraud, [the reason of the prohibition] is that he [the victim] is in ignorance thereof, and cannot pardon: then let interest prove it.²² And thus the argument revolves: the distinguishing feature of one is not the distinguishing feature of the other, and vice versa. The characteristic common to both is that he robs him. So also may I adduce [actual] robbery [as prohibited]! — I will tell you: That indeed is so. Then what is the need of an injunction against robbery? In respect of withholding the payment of a hired worker. But [the prohibition against the] withholding of such payment is explicitly stated: *Thou shalt not oppress an hired servant that is poor and needy!* ... at his day thou shalt give him his hire!²³ — To teach that he [who withholds payment] transgresses two negative precepts.²⁴ Then let it²⁵ be referred to interest or fraud, that [in their case] two negative commands are transgressed?²⁶ — It is a matter deduced from its context,

1. The object of the loan being unspecified, it must include money, particularly as the verse ends, *neshek of anything for which there can be neshek*.
2. It is one of the methods of the Talmudic exegesis that if a verse is redundant in respect of its own subject, it is applied to some other.

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3. This verse is assumed to refer to the debtor, and thus translated: *Thou shalt not cause thy brother to take neshek, neshek of money, etc.* This follows because [H] is [H], causative; were the lender referred to, Scripture should have written [H]. Hence it teaches that if a borrower repays more than he receives, whether money or provisions, he transgresses two injunctions.
4. Lev. XXV, 37.
5. I.e., the prohibitions under *neshek* and *ribbith* apply to both money and food.
6. To things which are neither money nor food.
7. For then the two clauses would be distinctly separated, *neshek* being related to money, and *marbith* to provisions.
8. Literal translation with disregard of the accents.
9. I.e., since *neshek* and *marbith* are coupled in the middle of the verse, they are both read with the first half of the verse, which treats of money, and with the second half, dealing with provisions.
10. V. *supra*. Since the Tanna deduces its applicability to the lender by a *gezerah shawah*, how can Rabina, an Amora, maintain that it is inherent in the verse itself, it being axiomatic that an Amora cannot disagree with a Tanna?
11. V. p. 364. n. 4. Therefore the *gezerah shawah* teaches that the lender violates these injunctions, whatever he lends upon usury.
12. Since the essence of all three is the taking of money (or goods) to which one is not entitled, had one been prohibited, the others would have followed as a matter of course.
13. Lit., 'novel'.
14. It is a principle of exegesis that an anomaly cannot provide a basis of analogy for other laws.
15. The thing stolen is taken against the desire of its owner.
16. Since the money of which the victim is defrauded is given of his own free will.
17. So the injury remains permanently. But in robbery and usury the victim's forgiveness may wipe it out.
18. Even in fraud, though the money is given of one's free will, still he does not consent to be defrauded.
19. Lit., 'buying and selling'.
20. I.e., by robbery or usury. But overcharging is sometimes a normal incident in trade, i.e., when one is particularly in need of an article, he may knowingly overpay.
21. That robbery is prohibited, the prohibition against overreaching not being anomalous.
22. The interest charge is known to the debtor and yet is forbidden.

23. Deut. XXIV, 14f.

24. The one quoted and the one against robbery making the offender liable to a twofold penalty of lashes. [The same answer could not apply to robbery itself, as robbery does not carry with it the penalty of flogging. V. Mak. 17a (Tosaf).]
25. The superfluous injunction against robbery.
26. I.e., instead of saying that it intimates an additional injunction against withholding the wage of a hired worker.

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and it [the injunction against robbery] is written in connection with a hired worker.¹

What is the need of the injunction, Ye shall not steal,² which the Divine Law wrote? — For that which was taught: 'Ye shall not steal,'³ [even] in order to grieve;⁴ 'ye shall not steal,' [even] in order to repay double.⁵

R. Yemar said to R. Ashi: For what purpose did the Divine Law state [separately] the prohibition against [false] weights?⁶ — He replied: [To forbid] the steeping of weights in salt.⁷ But that is pure robbery! — [To teach] that one transgresses at the very moment that this is done.⁸

Our Rabbis taught: *Ye shall do no unrighteousness in judgment, in meteyard, and in weight, or in measure:*⁹ 'meteyard' means land measurement, [and] it forbids measuring for one in summer and for another in winter.¹⁰ 'In weight', prohibits the steeping of weights in salt; and 'in measure' [teaches] that one must not cause [the liquid] to foam.¹¹ Now surely, you can reason a *minori*: if the Torah objected to a [false] *mesurah*, which is but a thirty-sixth of a *log*, how much more so a *hin*, half a *hin*, a third of a *hin*, and a quarter of a *hin*; a *log*, half a *log* or quarter *log*.¹²

Raba said: Why did the Divine Law mention the exodus from Egypt in connection with interest, fringes and weights?¹³ The Holy One, blessed be He, declared, 'It is I who distinguished in Egypt between the first-born and one who was not a first-born;¹⁴ even so, it is I who will exact vengeance from him who

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ascribes his money to a Gentile and lends it to an Israelite on interest,¹⁵ or who steeps his weights in salt, or who [attaches to his garment threads dyed with] vegetable blue¹⁶ and maintains that it is [real] blue.¹⁷

Rabina happened to be in Sura on the Euphrates.¹⁸ Said R. Hanina of Sura on the Euphrates: Why did Scripture mention the exodus from Egypt in connection with [forbidden] reptiles?¹⁹ — He replied: The Holy One, blessed be He, said, I who distinguished between the first-born and one who was not a first-born, [even] I will mete out punishment to him who mingles the entrails of unclean fish with those of clean fish and sells them to an Israelite.²⁰ Said he: My difficulty is 'that bringeth you up'! Why did the Divine Law write 'that bringeth you up' here?²¹ — [To intimate] the teaching of the School of R. Ishmael, he replied. Viz., The Holy One, blessed be He, declared, 'Had I brought up Israel from Egypt for no other purpose but this, that they should not defile themselves with reptiles, it would be sufficient for me.'²² But, he objected, is their reward [for abstaining from them] greater than [the reward for obeying the precepts on] interest, fringes and weights?²³ — Though their reward is no greater, he rejoined, it is more loathsome to eat them [than to engage in the other malpractices].²⁴

AND WHAT IS *TARBITH*? THE TAKING OF INTEREST ON PRODUCE. E.G., IF ONE PURCHASES WHEAT AT A GOLD *DENAR*, etc. Is then the preceding example²⁵ not interest? — R. Abbahu said: Hitherto it [i.e., the first instance] is interest in the Biblical sense, but from here onward by Rabbinical law.²⁶ And Raba said likewise: Hitherto it is interest in the Biblical sense, but from here onward in the Rabbinical sense. So far,²⁷ *He* [sc. the wicked] *shall prepare it, and the just shall put it on.*²⁸ 'So far' and no further?²⁹ — But, [say] even thus far, '*He shall prepare it, and the just put it on.*' Thus far it is direct³⁰ interest, from here onward it is indirect interest.³¹

R. Eleazar said: Direct interest can be reclaimed in court,³² but not indirect interest. R. Johanan ruled: Even direct interest cannot be reclaimed in court. R. Isaac said: What is R. Johanan's reason?³³ The Writ saith, *He hath given forth upon usury, and hath taken increase: shall he then live? he shall not live: he hath done all these abominations:*³⁴ For it [this transgression] death is prescribed, but not return [of the money]. R. Adda b. Ahaba said: Scripture saith, *Take thou no usury of him, or increase: but fear thy God:*³⁵ fear is prescribed, but not return. Raba said: It follows from the essential meaning of the verse, *He shall surely die: his blood shall be upon him;*³⁶ thus those who lend upon usury are compared to shedders of blood:³⁷ just as those who shed blood can make no restitution, so those who lend upon interest can make no restitution.

R. Nahman b. Isaac said: What is R. Eleazar's reason?³⁸ Scripture saith,

1. Lev. XIX, 13: *Thou shalt not oppress thy neighbor, neither rob him: the wages of him that is hired shall not abide with thee all night until the morning* — and is by preference to be applied to the latter.
2. Ibid. II.
3. Adopting the reading as amended by Asheri and others. [The verse '*Thou shalt not steal*', Ex. XX, 13, given in cur. edd. is explained as an injunction against abduction; v. Sanh. 86a.]
4. I.e., even if the intention is merely to cause the owner temporary grief at his loss, and then return it.
5. One may not stage a theft in order to repay double and thus make a gift to his fellow.
6. Seeing that it is tantamount to robbery.
7. Which naturally makes them heavier, and then using them when buying.
8. I.e., merely steeping is forbidden, even without subsequent use.
9. Lev. XIX, 35, [H] '*meteyard*', is lineal measure; [H] '*measure*', means liquid measure of capacity.
10. Rashi: when brothers divide a landed legacy, one's portion must not be measured off in summer and another's in winter, because the measuring cord gives in winter and shrinks in summer.
11. The foam subsiding, the measure is found to be short.

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12. 1 *hin* = 12 logs = 6.072, lit. 1 log = 0.506 lit. J.E. XII, 484.
13. Interest: *Take thou no usury from him, nor increase ... I am the Lord your God, which brought you forth out of the land of Egypt* (Lev. XXV, 36, 38); fringes: *Speak unto the children of Israel, and bid them that they make fringes in the borders of their garments ... I am the Lord your God, which brought you out of the land of Egypt* (Num. XV, 38, 41); weights: *Just balances, just weights, a just ephah, and a just hin, shall ye have: I am the Lord your God which brought you out of the land of Egypt* (Lev. XIX, 36).
14. Though this, particularly where the child is a first-born on the father's and not on the mother's side, is not always known to man but only to God.
15. Gentiles being permitted to take interest, Jews pretended that their money belonged to them, and then lent it upon interest.
16. [Probably indigo blue, an imitation of the genuine blue; [H], obtained from the blood of a mollusc, is enjoined in Scripture; Num. XV, 38.]
17. These fraudulent actions may escape the notice of man, but not of God, who can distinguish what to man is indistinguishable.
18. [Not the Sura of academy fame, but a town on the right bank of the Euphrates, 45 parasangs N. of Circesium; v. Obermeyer, *op. cit.* p. 38.]
19. Lev. XI, 44, 45: *Neither shall ye defile yourselves with any manner of creeping thing that creepeth upon the earth. For I am the Lord that bringeth you up out of the land of Egypt.*
20. In a wider sense, [H] (reptiles) is used of all forbidden creatures, as here.
21. Whereas in connection with interest, etc. the expression is 'who brought you out of'; v. p. 366, n. 13.
22. I.e., I elevated them above such baseness, 'who brought you up' being understood in a spiritual sense.
23. This being implied by his answer.
24. So that 'brought you up', i.e., elevated you above such repulsiveness, is more appropriate to this than to the other laws.
25. [Lit., 'is that stated' according to MS.M.; cur. edd. 'Are all these stated'.] Viz., lending a *sela* that five *denarii* should be returned.
26. Lit., 'according to these words'. Lending a sum of money for a larger return is Biblically forbidden; but buying ahead, as illustrated in the Mishnah, was prohibited by the Rabbis.
27. I.e., usury as defined in the first clause.
28. Job XXVII, 17: i.e., if a man received interest, his heirs ('the just') are under no obligation to return it, but may put it to their own use.
29. Surely not! If interest that is Biblically forbidden is not returnable by the heirs, surely that which is only forbidden by the Rabbis need not be returned!
30. Lit., 'fixed'.
31. Lit., 'dust of interest' [H]. Lending a *sela* for five *denarii* is direct interest: speculating on 'futures' is only indirect interest, for it is not certain that the wine will appreciate in value.
32. Lit., 'through the Judges'.
33. For it is logical that that which is taken illegally should be returnable.
34. Ezek. XVIII, 13.
35. Lev. XXV, 36.
36. Ezek. *ibid.*
37. Translating the last phrase: 'his blood', i.e., the bloodshed by taking usury, shall be upon him.
38. That direct interest can be recovered in court.

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[*Take thou no usury of him, or increase: but fear thy God;*] *that thy brother may live with thee;* [implying] return it to him, that he may be able to live with thee.

Now how does R. Johanan interpret, '*that thy brother may live with thee?*' — He utilizes it for that which was taught: If two are travelling on a journey [far from civilization], and one has a pitcher of water, if both drink, they will [both] die, but if one only drinks, he can reach civilization, — The Son of Patura taught: It is better that both should drink and die, rather than that one should behold his companion's death. Until R. Akiba came and taught: '*that thy brother may live with thee:*' thy life takes precedence over his life.¹

An objection was raised: If their father left them usury money, though they know it to be usury, they are not bound to return it. [This implies,] But their father is bound to return it!² — In truth, their father too is not bound to return it: but because the second clause desires to state, 'If their father left them a cow, or a garment, or any distinguishable object [received as interest], they must return it for the sake of their father's honor,' the first clause too is taught with reference to them.³ But are they then bound to make restitution for the sake of their father's

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honor? [Why not] apply here, Thou shalt not curse a ruler of thy people,⁴ [which means], only if he acts as is fitting for 'thy people'?⁵ — It is as R. Phinehas [in another connection] said in Raba's name: If he repented; so here too, [we deal with a case] where he repented. But if he repented, how came it [the money] to be still in his possession?⁶ — He died before he had time to return it.

An objection was raised: Robbers, and those who lend on usury, even when they have exacted it, must make restitution. Now, how can 'even when they have exacted it' apply to robbers? If it is robbed, it is robbed; and if not, can you call them robbers? But say thus: Robbers; and those meant thereby are those who lend upon usury, even when they have exacted it, must make restitution! — It is a dispute of Tannaim. For it was taught: R. Nehemiah and R. Eliezer b. Jacob exempt the lender and the surety [from punishment],⁷ because they have a positive duty.⁸ Now, what is meant by a 'positive duty'? Surely that we bid them, 'Arise and return [the usury];' from which it follows that the first Tanna⁹ maintains that they are not bound to make a return.¹⁰ No! By 'positive duty' is meant [that they are bid] to tear up the bond [of indebtedness].¹¹ But what is his¹² opinion? If he maintains: A bond, which is destined to be exacted, is as though it were already exacted,¹³ they have [already] committed their transgression!¹⁴ Whilst if it is not as already collected, they have committed no wrong!¹⁵ — In truth, in his view a bond, destined to be exacted, is not as though already exacted, and what he teaches us is that the [mere] 'putting on' [of usury] is a transgression.¹⁶ This also stands to reason. For we learnt: The following transgress the negative injunction: the lender, the borrower, the surety and the witnesses.¹⁷ Now, with respect to all, it is well, [since] they commit an action. But what have the witnesses done? Hence it surely must be that the [mere] 'putting on' [of usury] is a substantial act [and in this case, a transgression]. This proves it.

R. Safra said: Wherever by their law [i.e., non-Jewish law] exaction is made from the debtor for the creditor, restoration is made by our law from the creditor to the debtor; wherever by their law there is no exaction from the debtor to the creditor, there is no restoration by our law from the creditor to the debtor. Said Abaye to R. Joseph: Now, is this a general rule? Behold, there is the case of a *se'ah* [lent] for a *se'ah* which, by their law, the debtor is forced to repay the creditor, yet by ours it is not returnable from the creditor to the debtor!¹⁸ He replied, They [regard it] as having come into his possession merely as a trust.¹⁹ Rabina said to R. Ashi: But mortgages without deduction,²⁰ which by their law is exacted from the debtor for the creditor,²¹

1. With thee implies that thy life takes first place, but that he too has a right to life after thine is assured. [For an excellent exposition of R. Akiba's dictum, v. Simon, Leon, Essays on Zionism and Judaism by Achad Ha-am (1922), pp. 236ff.]
2. Thus contradicting R. Johanan's ruling.
3. But the father himself cannot be compelled to make restitution.
4. Ex. XXII, 27: this is interpreted as a general injunction to safeguard another Jew's honor.
5. I.e., righteously. But if a man took usury, his children are under no obligation to safeguard his honor.
6. For true repentance necessitates the restoration of that which was wrongfully taken.
7. The penalty of lashes attached to the injunction against interest.
8. Lit., 'because there is "arise and do" in their case.' The transgression of a negative command is punished by flagellation, but not if it can be remedied by a subsequent positive action.
9. The existence of another Tanna who disputes this is assumed, since this is stated in the name of particular teachers, instead of anonymously.
10. [And consequently the wrong they had committed cannot be remedied.]
11. I.e., having lent money upon interest, and drawn up a bond, it is the lender's duty to tear it up, thus rendering it invalid. [Where, however, payment was exacted, restitution effects no remedy of the offence.]
12. I.e., R. Nehemiah's and R. Eliezer b. Jacob's.

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13. So that tearing up the bond is the equivalent of returning the interest.
14. [And if the tearing up of the bond is considered a remedial action, why should the return of the interest, where actually exacted, not be considered so?]
15. Who then can dispute that they are exempt from punishment?
16. Cf. Ex. XXII, 24. For which, in the view of the first Tanna, punishment is incurred, whilst R. Eliezer b. Jacob and R. Nehemiah exempt them therefrom, because it may be followed by a positive action remedying it.
17. *Infra* 75b.
18. Jewish law prohibits the lending of a measure of wheat for the return of a similar measure, as the wheat may at the time of repayment stand at a higher price (v. *infra* 75a); by Gentile law, this transaction is permissible, and the debtor must repay it to the creditor. Yet though Jewish law forbids it, the debtor cannot demand its return after repayment, since it is only indirect interest.
19. I.e., in their view, it is not interest at all. A entrusts a *se'ah* to B, and then B returns it. But R. Safra referred to what the Gentiles recognized as interest, which by their code is permissible.
20. I.e., the debtor mortgages a field of which the creditor takes possession and enjoys the usufruct without deducting its value from the principal. This is prohibited; v. 67b.
21. I.e., if the debtor retained the produce for himself the creditor can claim it from him at law.

Baba Mezi'a 62b

yet by our law is not restored from the creditor to the debtor?¹ — He replied: They [regard it] as having come into his hand by the law of purchase.² Then, when R. Safra said, 'Wherever by their law, etc.', what did he mean to tell us?³ — [This]: 'Wherever by their law exaction is made from the debtor for the creditor, restoration is made by our law from the creditor to the debtor;' this refers to⁴ direct interest, and in accordance with R. Eleazar.⁵ 'Wherever by their law there is no exaction from the debtor to the creditor, there is by our law no restoration from the creditor to the debtor;' this refers to prepaid and postpaid interest.⁶

E. G., IF ONE PURCHASED WHEAT AT A GOLD *DENAR* PER *KOR*, WHICH WAS THE CURRENT PRICE, etc. But what does it matter if he has no wine? Did we not learn:⁷ One must not fix a price [for produce] until the market price is known;⁸ once the market price is established, a fixed price may be agreed upon, for even if this [vendor] has no stock, another has?⁹ — Rabbah replied: Our Mishnah refers to the creating of a debt for the value thereof.¹⁰ And as it has been taught: If one was his neighbor's creditor for a *maneh*, and he went and stood at his [the debtor's] granary and demanded, 'Give me my money, as I wish to purchase wheat therewith;' to which he answered, 'I have wheat with which to supply you; go and calculate [the amount] at the current price, and I will furnish you with it, [spreading it over] the whole year,' — that is forbidden, because it is not as though the *issar*¹¹ had come to his hand.¹² Abaye said to him: If the reason [in the Mishnah is that] it is not 'as though the *issar* had come to his hand,' why particularly [state the case] where he has no wine? Even if he has, it is also [forbidden].¹³ But, said Abaye, our Mishnah is as R. Safra learnt in the collection of Baraithas on interest of the college of R. Hiyya. For R. Safra learnt in the collection of Baraithas on interest of the college of R. Hiyya: Some things are [essentially] permitted, yet forbidden as [constituting] an evasion of usury. How so? If A requested B, 'Lend me a *maneh*;' to which he replied, 'I have no *maneh*, but wheat to the value thereof, which I will give you;' and thereupon he gave him a *maneh*'s worth of wheat, [calculated on the current price] and repurchased it for twenty-four *sela*'s;¹⁴ now, this is [essentially] permitted, yet may not be done on account of evasion of usury. So here [in the Mishnah] too: e.g., A said to B, 'Lend me thirty *denarii*,' to which he replied, 'I have not thirty *denarii*, but wheat for the same, which I can give you.' He then gave him thirty *denarii*'s worth of wheat [calculated at the current price] and repurchased it for a gold *denar*.¹⁵ Now,¹⁶ if the debtor has wine, which he gives him

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against the thirty *denarii*, he [the creditor] merely receives provisions from him, and there is no objection; but, if not, since he has no wine, to receive money certainly smacks of usury.¹⁷ Raba said to him: If so [instead of], GIVE ME MY WHEAT, the Tanna should state, 'Give me the money for my wheat!'¹⁸ — Read: 'the money for my wheat.' [Instead of,] AS I WISH TO SELL IT, he should state, 'Which I sold you.' Read: 'which I sold you.' THE WHEAT SHALL BE ACCOUNTED AS A DEBT TO ME OF THIRTY *DENARII* — but from the very beginning, had it not been fixed thus against him?¹⁹ — He said thus to him, 'For the value of your wheat which you have accounted against me at thirty *denarii*, you have a claim of wine upon me', whereas he [the debtor] has no wine. But it is stated, [IF A MAN PURCHASED WHEAT] AT A GOLD *DENAR PER KOR*, WHICH WAS THE MARKET PRICE!²⁰ But, said Raba,²¹ when I die, R. Oshaia will come to meet me,²²

1. Because it is not accounted as direct interest, since the crop may fail.
2. I.e., theoretically a mortgaged field is sold to the creditor, which the debtor redeems by repaying the loan. Hence, if the debtor seizes its produce, he seizes something that belongs to the creditor by right of purchase, not as interest.
3. To what case does this actually apply?
4. Lit., 'and what is it?'
5. *Supra* 61b.
6. V. *infra* 75b. Such interest is not actionable in Gentile law, and therefore, if paid, is not returnable by Jewish law.
7. *Infra* 72a.
8. I.e., A must not buy ahead from B at a fixed price, paying him now.
9. I.e., B may undertake to supply A at the current price, even if he has no produce and may have to buy it himself later for delivery at a higher price; yet since B could immediately purchase it from some other merchant, it is not interest. Why then is this forbidden in the Mishnah?
10. The vendor did not return to the purchaser the money he had received from him for the wheat, but indebted himself for it on the basis of the present advanced price, and undertook to supply him with wine to its value.
11. I.e., the payment for the wheat.
12. Now, had he actually received money, it would not be forbidden as interest despite the

possible rise in the price, as on p. 372, n. 8, but as he receives no money, should he have to pay more later, the excess is usury; and it is likewise so in the Mishnah.

13. For in the Baraitha quoted, he actually has wheat, yet it is forbidden.
14. A *maneh* contains 100 *zuz*, and a *sela'* = 4 *zuz*; hence 24 *sela'* = 96 *zuz*. The debtor, being in urgent need of the money, had to sell it for less than its real worth.
15. I.e., 25 *denarii*, so that the debtor has to make, in addition to the gold *denar* which he received in cash, a return for their remaining five *denarii*, — a total of 30 *denarii*.
16. [When the creditor asks for the thirty *denarii* for the purpose of buying wine and the debtor offers to supply it.]
17. For the debtor actually received only 25 *denarii*, which the creditor paid him in cash for the wheat, whilst he repaid him 30 *denarii*. On this explanation, IF A MAN PURCHASED WHEAT AT A GOLD *DENAR PER KOR*, refers to the creditor as purchaser and the debtor as vendor. The rest of the Mishnah does not agree with this interpretation, and Raba proceeds to raise this objection.
18. Since the creditor had previously given the wheat to the debtor, and was now demanding payment.
19. I.e., this involves no new arrangement, as is implied in the Mishnah.
20. Whereas on this interpretation it is obvious that the creditor repurchased it at 25 when the current price was 30.
21. The reading of R. Han. and Alfasi is: This refers to a case where he wishes to create a debt for its value, and as R. Oshaia taught; v. p. 372, n. 9.
22. I.e., pay honor to me in the Great Beyond.

Baba Mezi'a 63a

for I interpret the Mishnayoth in accordance with his views. For R. Oshaia taught: If a man was his neighbor's creditor for a *maneh*, and he went and stood at his granary and said, 'Repay me my money, as I wish to purchase wheat therewith,' and he [the debtor] replied, 'I have wheat which I will supply you; go and charge me therewith against my debt at the current price.' The time came for selling,¹ and he said to him, 'Give me the wheat,² which I wish to sell and purchase wine with the proceeds;' to which he replied, 'I have wine; go and assess it for me at the current price.' Then the time came for

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selling wine, and he said to him, 'Give me my wine, for I wish to sell it and purchase oil for it;' to which he replied, 'I have oil to supply you; go and assess it for me at the current price:' in all these cases, if he possesses [these commodities] it is permitted; if not, it is forbidden.³ [So in the Mishnah.] And what is meant by 'IF A MAN PURCHASED'? He purchased against his debt.⁴ Raba said: Three deductions follow from R. Oshaia: [i] the debt may be offset against provisions, and we do not say, it is not as if the *issar* had come to his hand;⁵ [ii] but only if he [the debtor] possesses [these commodities]; and [iii] R. Jannai's view is correct, viz., what is the difference between them themselves [sc. the provisions] and the value thereof?⁶ For it was stated: Rab said: One may buy on trust against [future delivery of] crops, but not against [repayment of] money at [future prices].⁷ But R. Jannai said: What is the difference between them themselves [sc. the crops] and the value thereof?⁸

An objection was raised: In all these cases, if he possesses [these commodities], it is permitted.⁹ — R. Huna answered in Rab's name: This means that he drew [the produce into his possession].¹⁰ If he drew it into his possession, need it be taught?¹¹ — But, e.g., he assigned a corner [of the granary] to him.¹² Samuel said: This is taught in accordance with R. Judah, who ruled: One-sided usury is permitted.¹³ For it has been taught: If a man was his neighbor's creditor for a *maneh*, for which he [conditionally] sold him his field;¹⁴ if the vendor enjoys the usufruct, it is permitted; if the purchaser, it is forbidden.¹⁵ R. Judah ruled: Even if the purchaser has the usufruct, it is permitted.¹⁶ R. Judah said to them: It once happened that Boethus b. Zunin [conditionally] sold his field, with the approval of R. Eleazar b. Azariah, and the purchaser took the usufruct. Said they to him: [Would you adduce] proof from thence? The vendor enjoyed its usufruct, not the purchaser. Wherein do they¹⁷ differ? — Abaye said: They differ with respect to one-sided interest.¹⁸ Raba said: They differ with

respect to interest [received] on condition that it shall be returned.¹⁹

Raba said: Now that R. Jannai ruled:

1. There was a time when wheat was generally sold, when it generally appreciated in value.
2. He had not given it to him before.
3. If the debtor actually possesses these commodities, as soon as he agrees to furnish him with a certain quantity thereof, that quantity belongs to the creditor, even if he does not actually take it; and if it appreciates, his own appreciates, and there is no suggestion of usury, even if the transaction is made several times, each time at an enhanced value. But if the debtor lacks them, and when the bargain is struck, actually receives no money, it has the appearance of a ruse to increase his indebtedness (v. p. 373, nn. 4, 6), and is thus like usury, and consequently forbidden.
4. Thus: A owing a gold *denar* to B, credited him with a *kor* of wheat for it, which was the current price; then the *kor* appreciated to 30 *denarii*, and A credited B with wine to the value of 30 *denarii*. Actually Raba's explanation coincides with Rabbah's (*supra* 62b); this is particularly evident from the reading of R. Han. and Alfasi, given p. 374, n. 4, in which Raba uses the same words as Rabbah; Raba merely quotes R. Oshaia's dictum to dispose of the difficulties urged against Rabbah's explanation, as is seen in the deductions he makes: v. n. 2.
5. This disposes of the criticism leveled on 62b against Rabbah's explanation on the strength of the Baraita quoted there ... R. Oshaia's dictum differs from that Baraita, and Rabbah's interpretation, with which Raba's is identical (v. preceding note), agrees with R. Oshaia.
6. The Talmud proceeds to explain this.
7. I.e., a man may buy crops at present prices, paying immediately, for delivery at some future date, even though they may have appreciated in the meanwhile. But he may not arrange to receive the future value of the crops, for since he may thus receive in actual money more than he gave, it has the appearance of usury.
8. Since he may receive the crops, though they represent more than was paid, he may also receive money in lieu thereof. R. Oshaia's ruling, that the creditor may be credited with wine calculated on the low price and according to the appreciated value of the wheat, supports this view, that the crops owing to him may be deemed as actual money.

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9. Quoted from the Baraita of R. Oshaia cited above; as this supports R. Jannai (v. preceding note), it refutes Rab.
10. Hence it is actually his own, and not merely a debt, and therefore the subsequent transactions are permitted; v. p. 374, n. 8.
11. It is then obvious!
12. Declaring, 'The wheat in this corner be yours for my debt.' R. Oshaia thus teaches that mere assignation has legal validity to render it his, and no longer a debt.
13. I.e., that which might result in an appearance of usury, as in the case under discussion. For he may give him the crops, in which case there is no suspicion of usury; only when he gives money in lieu thereof, does it appear as such.
14. 'If I do not repay by a certain date, the field is sold to you from now;' v. *infra* 65b.
15. For should the money be repaid, he will have received usury thereon.
16. For it is not certain that the field will be redeemed, in which case there is no usury. Hence it is regarded as 'one-sided' usury', which R. Judah permits.
17. R. Judah and the Rabbis who oppose him.
18. As explained above.
19. I.e., even R. Judah admits that if the purchaser retains the crops after repayment, it is forbidden. But they differ where it is stipulated that if the loan is repaid, the creditor must return the value of the crops he has taken. R. Judah permits this arrangement, since thereby an infringement of usury is precluded, whilst the Rabbis maintain that even this is forbidden, for when he enjoys the usufruct it is actually interest on money lent (Rashi). Tosaf. explains that there is a real possibility of interest. Thus: should he fail to repay the entire loan, the creditor retains the whole value of the crops, even if it exceeds the deficit.

Baba Mezi'a 63b

We reason, 'What is the difference between them themselves [sc. the crops] and their value?' we argue [conversely] too, 'What is the difference between their value and them themselves?' and [consequently] one may contract to supply [provisions] at the current market price even if he has none.¹ R. papa and R. Huna the son of R. Joshua objected to Raba's [statement]: In all these cases, if he possesses [these commodities], it is permitted; if not, it is forbidden!² — He answered them:

There [the reference is to] a loan, here to a sale.

Rabbah and R. Joseph both said: Why did the Rabbis rule, A man may contract to supply [provisions] at the current market price, even if he has none? Because he [the purchaser] can say to him [the vendor], 'Take your favors and throw them in the bush! How do you benefit me? Had I money, I could have bought cheaply in Hini and Shili.'³ Abaye said to R. Joseph: If so, should it not be permitted to lend a *se'ah* for a *se'ah*, since he [the borrower] could say, 'Take your favors and throw them in the bush! For,' he could argue, 'would my wheat have gone to ruin in my granary?' — He replied: There it is a loan, here a purchase. R. Adda b. Abba said to Raba: But he would have to pay money to a broker!⁴ — He replied: He [the purchaser] must give that too to him. R. Ashi said: people's money is their broker.⁵

Rabbah and R. Joseph both said: He who advances money at the early market price⁶ must [personally] appear at the granary. For what purpose? If to acquire it — but he does not thereby acquire it!⁷ If that he [the vendor] may have to submit to [the curse], 'He who punished, etc.,'⁸ — even without his appearing there, he must submit thereto! — In truth, it is that he may submit to the curse; but he who advances money on an early market generally gives it to two or three people:⁹ hence, if he appears before him, [he shows] that he relies upon him [for supplies]; but if not, he [the vendor] can plead, 'I thought that you found better produce than mine, and bought it [intending that I should return your money].' R. Ashi said: Now that you say it is because of his relying upon him, then even if he met him in the market and said to him, ['I rely upon you,'] he relies upon him.¹⁰

R. Nahman said: The general principle of usury is: All payment for waiting [for one's money] is forbidden. R. Nahman also said: If one gives money to a wax merchant, when it is priced at four [standard measures per *zuz*],

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and he [the vendor] proposes, 'I will supply you five [per zuz];¹¹ if he possesses it, it is permitted; if not, it is forbidden. But this is obvious!¹² — It is necessary [to teach this] only when he has [wax] credits in town:¹³ I might think that in such a case it is as though [he had said, 'Lend me] until my son comes, or until I find the key:¹⁴ therefore he teaches, since it must yet be collected, it is as non-existent.

R. Nahman also said: If one borrows money from his neighbor and found a surplus therein, if it is an amount about which there could be an error, he must return it; otherwise, it is simply a gift. When is it 'an amount about which there could be an error'? — R. Abba, the son of R. Joseph said:

1. For, just as it is certainly permissible if he has the stock, so also when he has the money furnished by the purchaser to buy it, for there is no essential difference between stock and money. — In such passages the reference is to contracting ahead, when the crops are probably dearer.
2. Quoted from R. Oshaia's Baraita. Whereas Raba permits it even if he has none.
3. [On Hini and Shili, v. B.B. (Sonc. ed.) p. 753, n. 6. There was the central corn market, which supplied corn throughout Northern Babylon, and where wheat was procurable at lower prices (v. Obermeyer, *op. cit.* p. 32). I.e., 'I could buy it there before the rise in prices,' and thus the purchaser derives no benefit by advancing the money to the seller. The question of usury consequently does not arise.]
4. By paying for the wheat beforehand the buyer saves the broker's fee, which he would have had to pay each time he wanted to make a purchase. This saving constitutes interest on his money.
5. I.e., if he can pay cash, he needs no intermediary.
6. Soon after the harvest, before trade commences in earnest and a general price is fixed, there is some desultory selling at a low price. Buying ahead at this price is also permitted if the vendor has supplies.
7. Merely by appearing there, but must draw it into his possession — perform *meshika*.
8. V. *supra* 44a. So here too: the vendor should be morally bound, though the purchaser has not formally acquired it.
9. Presumably because the vendor would not accept a large order.

10. And thereby submits himself to the curse.
11. If you accept it later, though paying the money now.
12. As various Baraitas have already stated.
13. I.e., he has already paid for stocks, which are now due to him.
14. v. *infra* 75a; here too, I might regard it as being already in his possession, though temporarily inaccessible.

Baba Mezi'a 64a

In [denominations of] tens or fives.¹ R. Aha the son of Raba asked R. Ashi: But what if he [the lender] is a hard man, who never gives presents? — He replied: He may have robbed him [on a previous occasion], and now included it in the total sum. For it has been taught: If one robbed his neighbor, and then included it in the account, he is quit [of his obligation]. But what if he [the lender] had come from elsewhere, and had never had business dealings with him? — He replied: He [the borrower] might have been robbed by some other person, and might say to him [the lender], 'When so and so borrows money from you, include this in the sum.'

R. Kahana said: I was sitting at the end of Rab's sessions,² and heard him repeatedly mention 'gourds',³ but did not know what he meant. After Rab arose [and departed], I asked them [sc. the students], 'To what did Rab refer in his repeated mention of gourds?' — They answered me, Thus did Rab say: If a man gives money to a gardener for gourds, ten gourds of a span's length being priced [at a zuz], and says to him, 'I will give you [gourds] a cubit in length [for the money];' if he actually has them, it is permitted; but if not,⁴ it is forbidden.⁵ Is this not obvious? — I might think, since they naturally grow large [without requiring labor], it is in order. He therefore taught [otherwise]. With whom does this agree? — With the following Tanna. For it has been taught: If one is going to milk his goats, shear his sheep, or remove the honey from the combs, and meeting his neighbor, says to him, 'The milk which my goats will yield is sold to you; the wool sheared from my sheep is sold to you; the honey to be removed

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from my combs is sold to you;' it is permitted.⁶ But if he said to him, 'So much of my goats' milk yield is sold to you; so much of my sheep's shearings is sold to you; or so much of the honey which will be removed from the honeycombs is sold to you,'⁷ it is forbidden.⁸ Now, though such yield comes naturally,⁹ yet since it is non-existent just then [when the transaction is made], it is forbidden.¹⁰ Others Say, Raba ruled [in reference to the gourds]: Since they grow naturally, it is permitted. But it has been taught that 'so much and so much'¹¹ is forbidden! — There, the increase is not in [the product] itself, for the present yield is taken and other comes in its stead;¹² here, however, that itself [the produce he has in his garden] increases [in size], for if that is taken away, others do not grow in its place.¹³

Abaye said: A man may say to his neighbor, 'Here are four *zuz* for a barrel of wine; if it turns sour, it is in your ownership;¹⁴ but if it appreciates or depreciates [in value], it is in mine.' Said R. Sherabia to Abaye:

1. They used to count in fives and tens (Tosaf.). Now, if the amount should have been e.g., fifty, and it was fifty-five or sixty, the lender may have mistakenly counted eleven fives instead of ten, or six tens instead of five; but if it were fifty-two or-three, etc., it is impossible that it should have been an error.
2. [H]; the phrase seems to be a technical term denoting a special session at the end of a series of lectures devoted to the reviewing of the conclusions reached during the course. Kaplan *J. op. cit.* p. 257.]
3. [As a kind of mnemonic, *loc. cit.*]
4. His gourds being small, and the purchaser must wait until they grow.
5. For he gives him larger gourds in return for waiting, which looks like usury.
6. For it is a speculation: though the buyer may receive more than his money's worth (the price being fixed and paid in advance), the yield might also be poor, in which case he would lose.
7. And in each case giving him a particular low quotation in return for advance payment.
8. Since a definite quantity must be supplied, the lower quotation is usury.
9. Should there not be an immediate sufficiency, the goats, etc. will yield again.

10. Thus Rab's dictum is in accordance with this Baraitha.
11. Viz., the dealings stated above.
12. Hence it is forbidden.
13. Without replanting, since he supplies the gourds actually in his garden, it is not usury to keep them in the soil until they grow larger and then supply them.
14. So that another must be supplied.

Baba Mezi'a 64b

But that is near to profit [if it appreciates] and remote from loss.¹ — He replied: Since he accepts the risk of depreciation, it is near to both [profit and loss].

MISHNAH. IF A MAN LENDS [MONEY] TO HIS NEIGHBOUR, HE MUST NOT LIVE RENT-FREE IN HIS COURT, NOR AT A LOW RENT, BECAUSE THAT CONSTITUTES USURY.

GEMARA. R. Joseph b. Minyomi said in R. Nahman's name: Though it has been ruled, if one dwells in his neighbor's court without his knowledge, he need not pay him rent, yet if he lent him [money] and then dwelt in his court, he must pay him rent. What does he teach us? We have [already] learnt: IF A MAN LENDS [MONEY] TO HIS NEIGHBOUR, HE MUST NOT LIVE RENT-FREE IN HIS COURT, NOR AT A LOW RENT, BECAUSE THAT CONSTITUTES USURY? — If from the Mishnah, I might have thought that that holds good only of a court which exists for letting, and a man [sc. the creditor] who generally rents. But if it is a court which is not for letting, and a person who does not generally rent,² I would say, It is not so:³ therefore he teaches us [otherwise].

Others say: R. Joseph b. Minyomi said in R. Nahman's name: Though it has been ruled, if a man dwells in his neighbor's court without his knowledge, he is not bound to pay him rent, [yet if he proposes to him,] 'Lend me money, and live in my court,' he [the creditor] must pay rent. Now, he who rules, [Even] if he had [already] lent him, [he must pay rent], will certainly hold the same if he proposed, 'Lend me [etc.].' But he who rules, [if he says,] 'Lend me,' [he must pay him rent], will,

BABA METZIAH – 58b-90b

in the case where he has already lent him, hold that it is unnecessary. Why so? Since he did not originally lend the money for this purpose, there is no objection to it.⁴

R. Joseph b. Hama seized the slaves of people who owed him money and put them to service. Said his son Raba to him: Why does the Master do thus? — He replied: I agree with R. Nahman. For R. Nahman said: A slave[’s labor] is not worth the bread he eats.⁵ Said he to him: perhaps R. Nahman said this only of such as his servant Daru, who went about dancing in taverns; but did he say this of other servants! — He replied: I am of the same opinion as R. Daniel son of R. Kattina, who said in Rab’s name: If one seizes his neighbor’s slave and puts him to service, he is free [from payment],

1. Since he is safeguarded if it turns sour. Such an arrangement is forbidden *infra* 70a.
2. Because he has his own property (Rashi).
3. He is not bound to pay the rent.
4. I.e., having lived there, he is not bound to pay the rent. The Mishnah then which says that he must not live rent free means that no condition to that effect is permissible.
5. Hence, having to provide them with food, I gain nothing by their labor, and receive no interest.

Baba Mezi'a 65a

because he [the owner] is pleased that his slave does not become demoralized [through idleness]. But, he urged, that is only if one has no monetary claim upon him; since you, Sir, have a monetary claim upon them, it looks like usury. For R. Joseph b. Minyomi said in R. Nahman’s name: Though it has been ruled, if one dwells in his neighbor’s court without his knowledge, he is not bound to pay him rent; yet if he lent him [money] and then dwelt in his court, he must. He replied: Then I repent thereof.

Abaye said: If a man had a claim of usury upon his neighbor, and the market price of wheat was four grivas¹ a *zuz*, whilst he [the debtor] gave him five; when we reclaim it from him,² we only reclaim four, but as for

the other, he merely favored him with a cheap rate.³ Raba said: We reclaim five, because from the very outset he acquired it all as interest.

Abaye also said: If a man had a claim of four *zuz* in interest upon his neighbor, and he gave him a garment for it, when we compel repayment, we make him repay four *zuz*, but not the garment.⁴ Raba said: We compel him to return the garment. Why so? That people may not say, 'The garment he wears is a garment of usury.' Raba said: He who has a usury claim of twelve *zuz* upon his neighbor, and he [the debtor] rented him his courtyard, such as is generally let at ten *zuz*, for twelve; when we make him disgorge, we force him to repay twelve. R. Aha of Difti said to Rabina: But cannot he protest, 'When I rented it thus [at such a high rent], it was because I profited thereby;⁵ now, however, that I do not profit, just at [the same rate] as all rent it, so will I'?⁶ — Because he [the debtor] can say to him, 'You understood [its value] and accepted it [at twelve *zuz*].'

MISHNAH. RENT MAY BE INCREASED, BUT NOT THE PURCHASE PRICE. E.G., IF A MAN RENTS HIS COURT, AND SAYS TO HIM [THE TENANT], 'IF YOU PAY ME NOW [FOR THE YEAR], YOU CAN HAVE IT FOR TEN SELA'S PER ANNUM; IF MONTHLY, AT A SELA' PER MONTH — THAT IS PERMITTED. IF HE SELLS HIS FIELD, AND SAYS TO HIM [THE PURCHASER], 'IF YOU PAY ME NOW, IT IS YOURS FOR A THOUSAND ZUZ; BUT IF AT HARVEST TIME, FOR TWELVE MANEHS'⁷ — THAT IS FORBIDDEN.

GEMARA. What is the difference between the first clause and the second? — Rabbah and R. Joseph both said: Rent is payable at the end [of the year]; hence, since it is not yet time to claim, it is not payment for waiting,⁸ but this [a *sela'* per month] is its actual value; and as for his proposition, IF YOU PAY ME NOW [FOR THE YEAR], YOU CAN HAVE IT FOR TEN SELA' PER ANNUM, he is favoring him with a cheaper rent [than normal]. But in the second clause, the

BABA METZIAH – 58b-90b

reference is to purchase, where the money is immediately due; therefore [the higher price] is payment for waiting, which is forbidden. Raba said: The Rabbis scrutinized this ruling, and based it on Scripture: As the hiring of a year in a year,² [which intimates,] the hire of one year is not payable until the next.¹⁰

BUT IF AT HARVEST TIME, FOR TWELVE MANEHs — THAT IS FORBIDDEN. R. Nahman said: An increased credit price¹¹ is permitted. Rami b. Hama, others Say, R. 'Ukba b. Hama, refuted R. Nahman: BUT IF AT HARVEST TIME, FOR TWELVE MANEHs — THAT IS FORBIDDEN? — He replied: There [the increase] was stipulated; here no stipulation is made. R. papa said: The increased credit price which I take is permitted.¹² Why? Because my beer will not deteriorate [if I keep it until Nisan], [and] I am in no need of money;¹³ hence, I merely confer a benefit upon the purchaser [by letting him have it earlier]. But R. Shesheth the son of R. Idi said to R. papa: Why should you merely consider yourself? Consider them [the purchasers]: had they money, they would purchase at present prices; lacking it, they must buy it at the higher future prices.¹⁴ R. Hama said: My increased credit price is certainly permitted.¹⁵ Why? They are pleased that it shall remain in my ownership, so that wherever they go they are released from taxation and the market is held up for them.¹⁶

1. A dry measure. Jast. and J.E. XII, 488, identify it with a *se'ah*, on the strength of a passage in 'Er. 14b.
2. Direct interest can be reclaimed, *infra* 656.
3. Hence, it is not part of the interest.
4. The garment is regarded as a sale, and hence not returnable.
5. Receiving it as interest due.
6. I.e., only ten *zuz* should be reckoned for it.
7. = 1200 *zuz*.
8. I.e., the higher price for the monthly arrangement cannot be regarded as such, since the money is not yet due.
9. Lev. XXV, 53.
10. I.e., at the end of the year. This is a mere support, not the actual source of the law.
11. Tarsha, lit., 'deaf or silent usury' (Jast.); i.e., selling goods on credit at more than cash price

but without stipulating that the addition is on account of credit.

12. R. Papa was a manufacturer of beer. He sold it in Tishri, when prices are low, to be paid for in Nisan at Nisan prices, which are higher.
13. To have to sell it earlier — he was a wealthy man.
14. So that it is usury from their point of view.
15. R. Hama sold goods where they were cheap at the higher cost of some other place. The purchaser then conveyed the goods there at R. Hama's risk. Since R. Hama bore the risk, the goods were his until brought there, therefore they really sold his wares, and so he was entitled to the prices of that place.
16. No one being permitted to sell until they had sold out, which was the scholar's privilege.

Baba Mezi'a 65b

Now, the law is as R. Hama;¹ and the law is as R. Eleazar;² and the law is as R. Jannai, who said: What is the difference between them themselves [sc. the provisions] and the value thereof?³

MISHNAH. IF A MAN SOLD A FIELD, AND HE [THE BUYER] HAVING PAID PART OF THE PURCHASE PRICE, THE VENDOR PROPOSED, 'WHENEVER YOU DESIRE, BRING ME THE BALANCE AND TAKE YOUR OWN' [SC. THE FIELD], THAT IS FORBIDDEN.⁴ IF HE LENT MONEY ON A FIELD AND SAID TO HIM [THE DEBTOR], 'IF YOU DO NOT REPAY ME WITHIN THREE YEARS, IT [THE FIELD] IS MINE' — IT BECOMES HIS; AND THUS DID BOETHUS B. ZUNIN DO, [ACTING] WITH THE APPROVAL OF THE SAGES.

GEMARA. Who enjoys the usufruct? — R. Huna said: The vendor; R. 'Anan said: It is entrusted to a third party.⁵ But there is no dispute: the former is the case if he stipulated, 'When you bring it [the balance], [then] acquire it';⁶ the latter if he stipulated, 'When you bring it, acquire it from now.'⁷

R. Safra learnt in the [collection of Baraitas on] usury of the School of R. Hiyya: Sometimes both [the vendor and the purchaser] are permitted [to enjoy the usufruct]; sometimes both are forbidden;

BABA METZIAH – 58b-90b

sometimes the vendor is permitted and the purchaser forbidden; and sometimes the purchaser is permitted and the vendor forbidden.⁸ Thereupon Raba explained: 'Sometimes both are permitted,' viz., if he stipulates, 'Acquire [forthwith] in proportion to your deposit;⁹ 'sometimes both are forbidden,' if he stipulates, 'When you bring it [the balance], let it be yours from now;¹⁰ 'sometimes the vendor is permitted but the purchaser forbidden,' if he stipulates, 'When you bring it, [then] acquire it;' 'and sometimes the purchaser is permitted and the vendor forbidden,' if he states, 'Let it be yours from now, and the balance be a loan [from me to you].'

Which Tanna holds that both are forbidden? — R. Huna the son of R. Joshua said: It does not agree with R. Judah; for were it in accordance with R. Judah — surely, he maintained that one-sided interest is permitted.¹¹

If a man mortgages a house or a field, and he [the creditor] says to him, 'Should you wish to sell it, you must let me have it at this price [less than its value],' — that is forbidden: 'at its real value,' — that is permitted. Which Tanna maintains that [if he stipulates] 'at this price,' it is forbidden — R. Huna the son of R. Joshua said: It does not agree with R. Judah; for were it in accordance with him — surely he holds that one-sided interest is permitted.¹²

If he sells a house or a field, and says to the purchaser, 'When I have money, resell it to me,' — that is forbidden. [If the buyer says], 'When you have money, I will resell it to you,' — that is permitted.¹³ With which Tanna does this agree? — R. Huna the son of R. Joshua said: Not with R. Judah; for if it agreed with him — surely he ruled that one-sided interest is permitted.¹⁴ What is the difference between the first clause and the second? — Raba answered: In the second clause, he [the buyer] stipulated that it [the re-sale] should be voluntary.¹⁵

A man once sold an estate to his neighbor without surety.¹⁶ Seeing that he [the

purchaser] was disquieted, he said to him, 'Why are you disquieted? Should it be seized from you [for a debt of mine], I will repay you out of the best of my estate, [even] for your improvements and the crops.' Said Amemar:

1. With reference to this form of interest.
2. *Supra* 61b, that direct interest is legally reclaimable.
3. *Supra* 63a.
4. Rashi: When the balance is paid, the field shall have belonged to the buyer from the time of purchase. Now, should the vendor take the usufruct, when the balance is paid, he has enjoyed that which really belonged to the purchaser, and it looks like interest on the balance, for which he waited. On the other hand, should the purchaser take its profits from the time of the deposit and never complete the transaction, the deposit being returned, he has thus received interest on it.
5. Who retains them for one or the other, as the case may be.
6. Hence in the meanwhile the profit is the vendor's.
7. Therefore neither the vendor nor the purchaser can take the profit, and hence it is entrusted to a third party.
8. Without stating the conditions of each.
9. Then they share the profit on a pro rata basis.
10. As explained on p. 384, n. 5.
11. V. p. 384, n. 7. Here too, should the vendor take the usufruct and the sale remain uncompleted, there is no interest, and therefore on R. Judah's view, it is permitted.
12. V. *supra* 63a. Here too, there is no certainty that the mortgagee will sell his field at all.
13. The first is forbidden, as it looks like evasion of usury: the purchaser gives a sum of money to the vendor, in return for which he uses the field until the former repays him.
14. V. *supra* 63a. Here too, it may be that the field will not be repurchased, in which case there is no interest.
15. At the option of the buyer; therefore it is purely a business deal. But when the vendor stipulates that the buyer must re-sell, it is a disguised loan.
16. V. *supra* 14a.

Baba Mezi'a 66a

They are merely words of good cheer¹ R. Ashi said to him: Why so? [Is it] because the buyer should have stipulated, whilst here the vendor did so, and therefore you maintain

BABA METZIAH – 58b-90b

that they were merely words of good cheer? But [what of] the Baraita wherein it is taught: [If the purchaser says,] 'When you have money, I will resell it to you,' that is permitted? Now, surely [there too] though the vendor should have made this stipulation,² the vendor did not stipulate but the buyer; and yet when we asked,³ What is the difference between the first clause and the second, Raba answered: In the second clause he [the purchaser] stipulates that it [the resale] should be voluntary, thus implying that if he does not stipulate that it should be voluntary [the transaction would be forbidden], and we do not assume that [his offer] was merely words of good cheer!⁴ — He replied: What was said was that it is accounted as though he had stipulated that it [the re-sale] should be voluntary.⁵

A certain sick man⁶ wrote a get⁷ for his wife.⁸ He then groaned and sighed, whereupon she [his wife] said to him, 'Why do you sigh? should you recover, I am yours.' Said R. Zebid: These were mere words of consolation. R. Aha of Difti asked Rabina: And what if they were not mere words of consolation? Does it lie within her power to insert a condition in the get? Surely it rests only with him to give the get on a condition! — I might think, he himself meant to give the get in accordance with her desires.⁹ Hence he teaches otherwise.¹⁰

IF HE LENT MONEY ON A FIELD. R. Huna said: [If he stipulated thus] when lending the money, it becomes completely his;¹¹ if after, he acquires [of the field] only in proportion to the money owing. R. Nahman said: [Even if the stipulation was made] after lending the money, it becomes completely his. Now, R. Nahman gave a practical decision at the Resh Galutha's [court]¹² in accordance with his ruling. Rab Judah [however] tore up the document [embodying his decision]. Said the Resh Galutha to him: Rab Judah has torn up your document. He replied: Did then a child tear it up? It was a great man who tore it up. He must have seen some reason therein [to invalidate it], and hence tore it up. Others

say: He [R. Nahman] replied: A child has torn it up, for in civil law everyone is a child compared to me.

Subsequently R. Nahman ruled: Even [if the stipulation was made] when the money was being handed over, he [the creditor] acquires no rights therein at all. Raba objected to R. Nahman: **IF YOU DO NOT REPAY ME WITHIN THREE YEARS, IT [THE FIELD] IS MINE,** — **IT BECOMES HIS!** — He replied: I used to rule that an *asmakta*¹³ is binding, but Minyomi ruled that it is not.¹⁴ But [then] according to Minyomi, is not our Mishnah difficult? — If you wish, I can answer that the Mishnah agrees with R. Jose, who ruled that an *asmakta* is legally valid;

1. I.e., to tranquilize the buyer, but not seriously meant, and therefore of no legal consequence.
2. The attachment to one's soil is very strong, and when a man sells his estate through financial exigencies, it may be assumed that he would like the option of repurchasing.
3. *Supra*.
4. But binding, though it is to the purchaser's disadvantage.
5. Since it is a stipulation which would come most naturally from the vendor, whereas it was actually made by the purchaser, its voluntary character is inherent. On this interpretation Raba's dictum supports Amemar.
6. [H], a man expecting to die.
7. v. [Glos.](#)
8. He was childless, and the divorce was to free her from the tie of his brother (v. Deut. XXV 5ff), but he did not stipulate that it should be valid only if he died.
9. Therefore the stipulation should be regarded as his, and so valid.
10. That her words were not meant to be binding at all.
11. If the loan is not repaid.
12. Resh Galutha, Exilarch, was the official title of the head of Babylonian Jewry, whose son-in-law R. Nahman was.
13. V. [Glos.](#)
14. And he persuaded me to his ruling.

Baba Mezi'a 66b

alternatively, it means that he said to him: 'Let it be yours from now.'¹

BABA METZIAH – 58b-90b

Mar Yanuka and Mar Kashisha, the sons of R. Hisda,² said to R. Ashi: Thus did the Nehardeans say in R. Nahman's name: An *asmakta*, in its time, is binding; out of its time, it is not binding.³ Said he to them: Every agreement [not merely an *asmakta*] is binding only when it matures, but not otherwise! perhaps you mean thus: If he [the debtor] meets him [the creditor] within the period [of repayment] and says to him, 'Take possession,⁴ he acquires it; if after the time [fixed for repayment] and he says to him, 'Take possession,' he does not acquire it. Why? He spoke thus [merely] through shame.⁵ Yet that is incorrect:⁶ even if within the period, he obtains no legal right, and as for his saying, 'Take possession,' he intends [thereby] that when the time comes he shall not trouble him.⁷

R. papa said: An *asmakta* is sometimes legally binding and sometimes not. If he [the creditor] found him [the debtor] drinking beer [at the expiration of the period], it is binding; if he was endeavoring to procure money, it is not binding.⁸ R. Aha of Difti said to Rabina: perhaps he was drinking to drown his anxiety, or else someone had assured him of the money? But, said Rabina, if he insists on its full value, it [his offer to the creditor to take the field] is certainly valid.⁹ Said R. Aha of Difti to Rabina: perhaps that is due to fear lest his land lose its worth?¹⁰ But, said R. Papa, if he is particular about his land, it [his offer to the creditor] is certainly binding.¹¹

R. Papa also said: Although the Rabbis ruled that an *asmakta* gives no legal title, yet it creates a mortgage from which payment may be exacted.¹² Said R. Huna the son of Nathan to R. Papa: Did he then say to him, 'Let it be yours for the exaction of your debt'? Mar Zutra, the son of R. Mari, objected before Rabina: But even if he had said, 'Let it be yours for the exaction of your debt' — has he a legal title? After all, it is an *asmakta*, and an *asmakta* is not binding. But when did R. Papa rule that it creates a mortgage? — If he stipulated, 'You shall receive payment only out of this.'¹³

A man once sold land to his neighbor with security. Said he [the purchaser] to him, 'Should this be seized from me, will you repay me out of your "very best"?' — He replied, 'I will not repay you out of the "very best", as I want them for myself, but out of other "best" which I possess.'¹⁴ Subsequently it was seized from him. Then there came an inundation and swamped the very best [land]. R. Papa thought to rule: He promised him of 'the best', which is intact. Said R. Aha of Difti to him: But he [the vendor] can plead, 'When I promised to repay you from the "best", the "very best" was existent; but now the "best" has replaced the "very best".'¹⁵

Rab b. Shaba owed money to R. Kahana. 'If I do not repay you by a certain date', said he to him, 'you may exact your debt out of this wine.'¹⁶ Now, R. papa thought to argue, Where do we rule that an *asmakta* is not binding, only in respect of land, which is not for sale;¹⁷ but as for wine, since its purpose is to be sold, it is just the same as money. But R. Huna, the son of R. Joshua, said to R. Papa: Thus is it stated in Rabbah's name: No 'if' is binding.¹⁸

R. Nahman said: Now that the Rabbis have ruled, An *asmakta* gives no claim, both the land and its produce are returnable.¹⁹ Shall we say that R. Nahman holds that renunciation in error is invalid?²⁰ Surely it has been stated: If one sells his neighbor the fruit of a palm tree — R. Huna said: As long as it is non-existent [the fruit not having grown yet], he can retract;²¹ but when it is [already] come into existence, he cannot. R. Nahman said: Even when it has come into existence, he can retract. Yet R. Nahman said: I admit that if he [the purchaser] snatched and consumed it, he [the vendor] has no claim upon him!²² — There it is a sale; here it is a loan.²³

Raba said:

1. In which case it is not an *asmakta* at all. For the money is given as the purchase price, not as a loan, save that the vendor has the option of repurchase.

BABA METZIAH – 58b-90b

2. Yanuka is derived from a root meaning youth, Kashisha, age. Accordingly, Rashi in Keth. 89b says that Mar Yanuka was the younger, and Mar Kashisha the older. Tosaf. in B.B. 7b, s.v. [H], reverses it: Mar Yanuka means a son born in R. Hisda's youth, Mar Kashisha, in his old age.
3. R. Ashi assumed this to mean: when the obligation matures, it is binding, and the creditor can foreclose; but not before.
4. I.e., I have no intention of redeeming it when the time comes.
5. At not having repaid the loan, yet was not in earnest; therefore it is an *asmakta* and non-binding.
6. Granted that this is your meaning, the ruling is incorrect.
7. By demanding repayment.
8. If repayment was due, and the debtor told him to take the field, at the same time engaging in frivolous pursuits, it is evident that he does not care about it and is in earnest. But if he was attempting to find the money, he was obviously anxious to retain his estate, and therefore his offer was not really meant and is not binding.
9. Rashi: if when selling some of his articles he insists on obtaining their full value, he is not anxious for the field, as otherwise he would sell for less and repay. Tosaf.: If, when he borrowed, he was mindful of borrowing to the full value of the field, he must have borne in mind the possibility of non-redemption, and therefore means the creditor to have it now.
10. If he were seen selling articles (on Rashi's interpretation) or mortgaging a field (Tosaf.) at less than their value, his financial straits would be known, with the result that his property would drop in price. Yet he really may wish to retain the field
11. Rashi: if he is particular not to sell any land, even for its full value, he is obviously not anxious to retain the mortgaged estate, as otherwise he would have sold off some other field. (Presumably this assumption is made because he could not have obtained on a mortgage the same money as by a sale in the open market) Tosaf.: If, when borrowing, he was insistent that the mortgage should be on that particular field, he evidently anticipated the possibility of non-redemption, and was reconciled to it.
12. I.e., though the creditor cannot seize the whole field, which is probably worth more than the debt, he can claim payment from that particular field, and refuse to be fobbed off with another.
13. Since he assigned the field for repayment in all circumstances, it is no longer *asmakta* as far as the amount of the debt is concerned.
14. 'Very best', [H], and 'best', [H], denote two grades of soil.
15. So that he must be indemnified out of medium quality soil.
16. And a valuation was made, but it subsequently appreciated.
17. V. p. 386, n. 6; therefore the offer to give land is not genuine.
18. A stipulation, "'if' I do not repay, take so and so,' is not binding.
19. The reference is to the case stated in the Mishnah on 65b. If the creditor after three years returns the field and enjoys the usufruct, he must return both. [Maim. Yad., Laweh. VI, 4, and Alfasi, include in the return also the usufruct enjoyed by the creditor during the three years.]
20. The debtor, in permitting the creditor to possess its usufruct, has obviously renounced his own rights; but erroneously, not knowing that the creditor's title is invalid, and R. Nahman rules that the produce is returnable.
21. Because one cannot give possession of that which is non-existent.
22. Though the vendor permitted him only because he was unaware that he could retract, hence in error; thus proving that an erroneous renunciation is valid.
23. And in a loan it looks like interest.

Baba Mezi'a 67a

I was sitting before R. Nahman,¹ and wished to refute him from the law of 'overreaching';² but observing [my intentions] he drew my attention to the case of a barren woman.³ [Raba proceeds to explain.] Now 'overreaching', being as it is [the result] of renunciation in error,⁴ [we find that it] is not a [legal] renunciation! 'But observing [my intention], he drew my attention to a barren woman,' for a barren woman [makes] renunciation in error, and yet it is valid. For we learnt:⁵ An objecting woman,⁶ a consanguineous relation in the second degree,⁷ and a constitutionally barren woman can claim no *kethubah*,⁸ usufruct,⁹ alimony,¹⁰ or worn out raiment.¹¹ But it is not so: neither [the law of] 'overreaching' refutes him, nor [that of] a 'barren woman' supports him. [Thus: the law of] overreaching does not refute him, for he [the victim did not know

BABA METZIAH – 58b-90b

that he was defrauded at all, that he should forego it.¹² Nor does [the law of] a 'barren woman' support him, because she is satisfied to be designated a married woman.¹³

A woman once instructed a man, 'Go and buy me land from my relatives,' and he went and did so. Said he [the vendor] to him [her agent], 'If I have money, will she return it to me?' 'You and Nawla,'¹⁴ he replied, 'are relatives.'¹⁵ Rabbah son of R. Huna said: Whenever one says, 'You and Nawla are relatives,' he [the vendor] relies upon it, and does not completely transfer it [the object of sale].¹⁶ Now, the land is [certainly] returnable; but what of the crops?¹⁷ Is it as direct usury, which can be legally reclaimed;¹⁸ or perhaps it is only indirect¹⁹ usury, and cannot be reclaimed? — Rabbah b. Rab said: It stands to reason that it is considered indirect usury and cannot be reclaimed in court. And thus did Raba say, It is considered indirect usury and cannot be reclaimed in court.

Abaye inquired of Rabbah: What of a mortgage?²⁰ Is the reason there [in the previous case] that he made no stipulation? Then here too there was no stipulation!²¹ Or, perhaps, there it is a sale, but here a loan? — He replied: The reason there is that no stipulation was made; so here too there was no stipulation. R. Papi said: Rabina gave a practical decision, calculated [the value of] the crops, and ordered it to be returned, thus disagreeing with Rabbah son of R. Huna.

Mar,²² the son of R. Joseph, said in Raba's name: With reference to a mortgage: Where it is customary to make [the creditor] quit [whenever the loan is repaid],²³ if he took the usufruct to the amount of the loan, he must quit it;²⁴ but if in excess thereof, [the surplus] is not returnable;²⁵ nor is one loan²⁶ balanced against another.²⁷ But when it [the mortgaged estate] belongs to orphans, if he [the creditor] enjoyed its usufruct to the amount of the loan, he must quit it; if it [the usufruct] exceeded it, [the surplus] is returnable, and one loan is balanced against another. R. Ashi said: Now

that you rule, If the usufruct exceeded the loan, [the balance] is not returnable; then even if it [merely] equaled it, he must not be dismissed without payment. Why? Because to dismiss him without payment is tantamount to making him return [what he has already had]; whereas it is only indirect interest, which is not reclaimable at law. R. Ashi gave a practical decision in reference to orphans [minors],

1. When he said, 'I admit that if he removed, etc.'
2. *Supra* 51a: though given voluntarily, and hence an erroneous abandonment, it is nevertheless returnable.
3. [H], a woman constitutionally incapable of child-birth.
4. Since the money fraudently taken is given under the mistaken impression that it is due.
5. Keth. 100b.
6. [H], lit., 'a woman who refuses'. If a girl, a minor, was married by her mother or elder brothers, who by Rabbinical law were empowered to marry her, on attaining her majority she could annul the marriage merely by objecting to it.
7. Lit., 'a second'. E.g., the Bible interdicts marriage with one's mother; the Rabbis add, one's grandmother; this is called forbidden relationship in the second degree.
8. V. [Glos.](#)
9. The Rabbis enacted that the usufruct of the wife's *melog* property (v. [Glos.](#)) belongs to the husband, in return for which he must ransom her, should she ever be taken captive. These are not entitled to this consideration, and yet if divorced cannot demand repayment of the usufruct seized by the husband.
10. The conditions depriving maintenance rights, in respect of an objector, are stated in Keth. 107b thus: If she borrows money in the husband's absence for her maintenance, and then, on his return, she objects, her creditor cannot obtain repayment from him. Tosaf. here states that similar conditions apply to the constitutionally barren woman, her borrowings having been made before she was certified as such. With respect to a 'secondary relation', Tosaf. maintains that the reference is to her widowhood; after her husband's death, she cannot demand maintenance from his estate.
11. If raiment formed part of the dowry she brought her husband, and it became worn out, so that it is no longer in existence, she cannot claim payment for it (Tosaf.). Rashi: She cannot demand even her worn out raiment

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which is still fit for some use. Now, with respect to a barren woman, though her renunciation of ownership rights in her dowry in favor of her husband was in error, for when marrying him, she did not foresee that she would prove incapable of childbirth, that renunciation is valid, and she cannot demand their return.

12. So that there is no renunciation at all, even in error, and therefore it must be returned.
13. And in return for that she knowingly, not in error, brings in a dowry to her husband, even if she should have to forfeit it eventually.
14. [A proper noun; others: 'and so-and-so,' 'and she'.]
15. She will certainly permit you to repurchase the land when you are able.
16. Hence the sale is conditional, and the field can always be redeemed.
17. Raised after the sale.
18. Since such a sale is really a loan (v. Mishnah on 65b), the crops which the purchaser enjoys are in the nature of direct interest.
19. V. *supra*, 61b.
20. If a field was mortgaged and no stipulation made about its crops, and the creditor took them.
21. Hence it is not returnable.
22. *Var. lec.*: Raba.
23. And until then, he is in possession and enjoys its usufruct.
24. I.e., if the debtor makes the claim, the usufruct is counted as repayment, and the creditor has no further title.
25. Because it is not direct interest.
26. Lit., 'bond.'
27. I.e., if the debtor owes him more money on another bond, the excess cannot be deducted from it.

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just as though they were adults.¹

Raba, the son of R. Joseph, said in Raba's name: With reference to a mortgage, where it is the usage to make [the creditor] quit [whenever] the loan is repaid,² one must not enjoy the usufruct without making a [fixed annual] deduction.³ But a scholar must not enjoy the usufruct even at a [fixed] allowance. How else shall he take them? — By a stipulated time limit.⁴ Now, this is well on the view that a stipulated time limit is permitted; but on the view that it is forbidden, what can you say? For it has been stated: As for a

stipulated time limit, R. Aha and Rabina differ therein: one maintained that it is permitted — the other that it is forbidden. What is meant by a 'stipulated time limit'? — If he [the creditor said], 'For the first five years, the usufruct is mine without deduction; thereafter, I will make you a full allowance for the crops.' Others maintain: Any arrangement involving no deduction is forbidden. What then is meant by a 'stipulated time limit'? — If he [the creditor] said to him, 'For the first five years the usufruct is mine at a [fixed] deduction;⁵ thereafter, I will make you a full allowance for the crops.' Now, he who forbids the first arrangement will permit the second; but he who forbids [even] the second, on what condition may he [a scholar] have the usufruct? — When it is as the mortgage bonds arranged in Sura, in which it was written, 'On the expiry of a certain number of years this estate reverts [to the debtor] without any payment.'⁶

R. Papa and R. Huna, the sons of R. Joshua, said: As for a mortgage, where it is the practice to make [the creditor] quit [whenever the loan is repaid], the [creditor's] creditor cannot exact his debt from it,⁷ the first-born receives no double portion therein,⁸ and the seventh year cancels it [the privilege of usufruct].⁹ But where the creditor is not obliged to give up possession [whenever the loan is repaid], his creditor can exact his debt from it, the first-born receives a double portion, and the seventh year does not cancel it.¹⁰

Mar Zutra also said in R. Papa's name: With reference to mortgaged property, where it is the usage to make [the creditor] quit, he must give up possession [absolutely], even of the dates on the mattings;¹¹ but if he has already picked them up [and placed them] in baskets, they are his.¹² But on the view that the purchaser's utensils effect ownership for him even in the domain of the vendor,¹³ even if they have not been gathered into baskets, they are his.¹⁴

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Now, it is obvious, where the usage is that the creditor must quit, but he stipulated [when making the loan], 'I will not quit it [before a certain time]' — then surely he has so stipulated [and it is binding]. But what if he promised to quit [immediately on repayment] where the usage does not compel him to go: is it necessary to submit him to a binding act¹⁵ or not?¹⁶ — R. Papa said: It is unnecessary; R. Shesheth the son of R. Idi ruled: It is necessary. And the law is that he must perform a binding act.

Now, if he [the debtor] states, 'I am about to bring you the money,'¹⁷ he [the creditor] may not take the usufruct [in the meanwhile].¹⁸ [Where he however states] 'I will go, make earnest effort [to obtain it], and bring the money' — Rabina ruled: He may take the usufruct; Mar Zutra, the son of R. Mari, said: He may not. And the law is that he may not take the usufruct.

R. Kahana, R. Papa and R. Ashi did not take usufruct with deduction; Rabina did. Mar Zutra said: What is the reason of him who takes it with deduction? — Because it is analogous to 'a field of possession';¹⁹ with respect to this, did not the Divine Law order, even though there may be greater usufruct therefrom,

1. And did not allow the dismissal of the creditors without payment in spite of the discrimination above in their favor.
2. V. *supra* n. 2.
3. For every year of possession the creditor must allow a fixed deduction from the debt, even if the usufruct in a particular year amounts to less. This removes it from the category of loans and turns it into a temporary sale, so that even when the usufruct exceeds the allowance it is not interest.
4. This is explained below.
5. Less than the average value of the crops.
6. Converting it into a sale.
7. If the creditor dies, and the usufruct of the estate passes on to his children, his creditor cannot demand repayment out of the usufruct of the field. For since it must be returned whenever the loan is repaid, the heirs have no possible title to the land itself, but to its usufruct, which, regarded as movable

- property, cannot be distrained upon from the heirs for debt.
8. On the view that a first-born receives no double portion of debts (v. B.B. 124b), and since the creditor may have to quit the land at any moment, this is merely a debt.
 9. Like any other loan on a written bond. Though a loan against a pledge consisting of movable property is not cancelled by the seventh year, this is not regarded as such.
 10. For in these circumstances he is regarded as having bought the land for the period arranged.
 11. Spread on the ground to receive the dates falling 'at gleaning'. He must quit immediately on receiving his money, and may take nothing whatsoever.
 12. For the 'lifting up' from the mats effects possession.
 13. V. B.B. 85a and b.
 14. Because the mats spread by the creditor are his utensils, and the dates falling upon them, become his.
 15. I.e., that he shall perform a symbolical act (*kinyan* q.v. [Glos.](#)) to bind him to his undertaking.
 16. Since usage is otherwise, his mere word may not be binding.
 17. Where usage forced the creditor to quit immediately.
 18. Since the debtor has the money ready, it is accounted as though he had already repaid him.
 19. [H], Lev. XXVII, 16-18: if one sanctified 'a field of his inheritance' from the year of jubilee, it was to be redeemed at a fixed price, as stated; and if he sanctified it some years after the jubilee, the redemption price was proportionate to the number of years left until the next jubilee.

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that it should be redeemed at four *zuz*?¹ So here too, it is in no way different.² But he who holds it forbidden argues thus: 'a field of possession' is a matter of sanctification, which the Divine Law based upon [a fixed] redemption;³ here, however, it is a loan, and so it looks like interest.

R. Ashi said: The elders of the town Mehasia told me that an unconditional mortgage⁴ is for a year. What is the practical outcome [of this fact]? That, if he [the creditor] has

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enjoyed the usufruct for a year he can be forced to quit, but not otherwise.

R. Ashi also said: The elders of the town of Mehasia told me, What is the meaning of *mashkanta* [a pledge]? That it abides with him [the mortgagee].⁵ In respect to what has this a practical bearing? — In respect to [the right of] pre-emption.⁶

Raba said: The law permits neither the credit interests of R. papa, nor the bonds of the Mahuzeans, nor the Narshean tenancies. The credit interests of R. Papa means the credit sales arranged by R. Papa.⁷ 'The bonds of the Mahuzeans' they add the [estimated] profit to the principal and record it [the whole] in a bond;⁸ for who knows that there will be profit?⁹ Mar, the son of Amemar, said to R. Ashi: My father does so, but when they [his agents] come before him [and declare that they have earned no profit], he believes them. He replied: That is well whilst he is alive: but what if he dies and the notes are transferred to his heirs?¹⁰ (This [supposition] was '*an unwitting order which proceedeth from the ruler*',¹¹ and Amemar died.)

'Narshean tenancies': — for they wrote thus: A mortgaged his field to B, and then he [the debtor] rented it from him.¹² But when did he [the creditor] acquire it, to transfer it to the debtor?¹³ Nowadays, however, that the note is drawn up thus: He [the creditor] hath acquired it from him, hath been in possession such and such a time,¹⁴ and then re-rented it to him, so as not to shut the door in the borrowers' faces;¹⁵ it is well. But, still this is no justification.¹⁶

MISHNAH. A MAN MAY NOT COMMISSION A TRADESMAN ON A HALF PROFIT BASIS,¹⁷ NOR ADVANCE MONEY FOR PROVISIONS [TO BE SOLD] ON HALF PROFITS, UNLESS HE PAYS HIM A WAGE AS A WORKER. FOWLS MAY NOT BE SET TO BROOD ON HALF PROFITS,¹⁸ NOR MAY CALVES OR FOALS BE ASSESSED THUS,¹⁹ UNLESS HE PAYS HIM FOR HIS LABOUR AND FOODSTUFFS. BUT CALVES AND FOALS MAY BE ACCEPTED [WITHOUT ASSESSING

THEIR VALUE AT ALL] ON HALF PROFITS;²⁰ AND THEY ARE BRED UNTIL A THIRD GROWN; WHILST AN ASS IS BRED UNTIL IT CAN BEAR BURDENS.²¹

GEMARA. It has been taught: [Unless he is paid] as an unemployed worker.²² What is meant by, 'as an unemployed worker'? —

1. That is the redemption price per annum of a field that requires a *homer* of barley seed. *Shekel* (Biblical) = *sela*' = 4 *zuz*.
2. I. e., the fixed deduction may be less than the average value of the crops.
3. I. e., to sanctify an inherited field is equivalent to dedicating a certain sum fixed by Scripture.
4. I. e., where no conditions were stipulated as to its length.
5. [H] is derived from [H], 'to abide.'
6. When a person sells a field, the adjoining neighbor (of this field) has the first option to buy it.
7. V. *supra* 65a.
8. I. e., they supplied goods to their agents for sale on a profit-sharing basis, calculated their share, and then drew up a note against the agent for the entire amount.
9. Hence they appear to be taking interest.
10. They would simply see the debt, and might not believe the agents.
11. Eccl. X, 5: such an order is nevertheless obeyed.
12. At a fixed rental, paid in produce.
13. Hence it is direct interest thinly disguised.
14. Taking the usufruct at a fixed allowance on the debt.
15. A proverbial expression. Unless the creditor received certain privileges, no man could ever borrow.
16. Hence even this practice is forbidden.
17. I. e., give him goods to sell in his shop and take half a share of the profits. Under this arrangement the retailer generally accepted complete responsibility for half the stock, and even if it depreciated, rendered payment in full. Consequently, the half is a loan, since its owner takes no risk whatsoever therein, and the labor of selling the second half for the owner's benefit is interest on the first, and hence forbidden. V. *infra* 104b.
18. I. e., one may not give eggs to a fowl keeper for hatching, the latter to receive half the profits, but on the other hand, take full responsibility for half the eggs.
19. As before, one may not commission a farmer to breed them, to receive half the profits, whilst bearing full responsibility for the present value of half the stock.

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20. No value was attached to them at all, but when grown, the breeder received half their worth for his labor. On the other hand, when they perished, he bore no responsibility: consequently it did not come within the category of a loan.
21. It was customary to breed them to that stage before the profits were shared.
22. Referring to the Mishnah.

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Abaye said: As a laborer unemployed in his craft.¹ Now they [the first two clauses of the Mishnah] are [both] necessary. For if the case of a tradesman were taught, I would think that only a storekeeper is it sufficient to pay as an unemployed worker, seeing that his efforts are not great;² but [when one is advanced] money for buying provisions, his toil being great,³ I would think it insufficient to pay him [merely] as an unemployed artisan. Whilst if [the case of advancing] money to buy provisions were taught, I would think that only there must he be paid as an unemployed worker, since much work is involved; but for a shopkeeper, who makes very little effort, I would think a mere trifle sufficient, e.g., even if he just dipped [his bread] into his vinegar, or ate a dried fig of his, it is enough. Therefore both are necessary.

(Mnemonic:⁴ How much are goats and fowls assessed?) Our Rabbis taught: How much must he be paid?⁵ Whether much or little [it matters not]: this is R. Meir's view. R. Judah said: Even if he merely dipped [his bread] into his vinegar, or joined him in a dried fig, that is his pay. R. Simeon b. Yohai said: He must remunerate him in full.

Our Rabbis taught: Neither goats, sheep, nor anything which does not toil for its food⁶ may be assessed on halfprofits.⁷ R. Jose, son of R. Judah, said: Goats may be assessed, because they yield milk; and sheep, because they yield wool by being shorn, by passing through water⁸ and by being plucked;⁹ and fowls, because they lay [eggs] for their food. But [what of] the first Tanna: are the shearings

and milk insufficient to pay for his labor and food?¹⁰ — As for the shearings and milk, all agree [that they are adequate]. The conflict refers to whey and wool refuse:¹¹ the first Tanna is of R. Simeon b. Yohai's opinion, who maintained that he must remunerate him in full;¹² whilst R. Jose son of R. Judah agrees with his father, who ruled that even if he merely dipped [his bread] into his vinegar, or joined him in a dried fig, that is adequate payment.

Our Rabbis taught: A woman may hire a fowl to her neighbor in return for two fledglings.¹³ If a woman proposes to her neighbor, 'I have a fowl, and you have eggs: let us equally share the fledglings,'¹⁴ — R. Judah permits, whilst R. Simeon forbids it. But [what of] R. Judah: does he not require payment to be made for labor and food? — There are the added eggs.¹⁵

Our Rabbis taught: Where it is the usage to make a payment for shouldering beasts,¹⁶ such payment may be made, and general custom must not be abrogated. R. Simeon b. Gamaliel said: A calf may be assessed with its mother, and a foal with its mother, and even where it is customary to make a monetary payment for shouldering.¹⁷ But R. Simeon b. Gamaliel! Does he not require payment for his labor and food?¹⁸ — There is the dung.¹⁹ But the other?²⁰ — The ownership of dung is renounced.²¹

R. Nahman said: The *halachah* is as R. Judah; the *halachah* is as R. Jose son of R. Judah; and the *halachah* is as R. Simeon b. Gamaliel.

A bond was issued against the children of R. 'Ilish, stipulating half profits and half loss.²² Said Raba: R. 'Ilish was a great man, and he would not have fed [another person] with forbidden food.²³ It must be taken to mean:²⁴ either half profit and two thirds loss;

1. E.g., if he was originally a carpenter, who works very hard, and accepted a commission to sell provisions instead on half profits, he must be paid in addition as much as the

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average man would demand for changing over from strenuous labor to work of a lighter nature.

2. The goods being given him.
3. As in addition to selling he has the work of buying too.
4. A few words or letters, each being the catchword of a subject, strung together and generally forming a simple phrase, as an aid to the memory.
5. Referring to the Mishnah.
6. Lit., 'and eats'.
7. I.e., on an arrangement such as is forbidden in the Mishnah; v. p. 397, n. 6. But if it toils for its food, e.g., an ox that plows or an ass that bears burdens, the breeder has the profit of its work in return for its food and his own labor, and therefore it does not fall under the ban of usury.
8. Subjected to a vigorous washing, which removed their wool; v. Hul. 137a.
9. In passing through bushes, etc. (Jast.)
10. Surely not!
11. [Where the breeder is allowed only these.]
12. Hence whey and wool refuse are insufficient.
13. I.e., she may receive the eggs from her neighbor, set her own fowl to brood upon them, and receive two fledglings for her trouble.
14. [In this case, the owner of the fowl, while assuming full responsibility for half the eggs, receives no extra compensation for her trouble.]
15. These cannot be hatched, and the egg-owner receives them in return for her labor. This, of course, is very little, but R. Judah has already stated above that even the smallest payment is sufficient. — Addled eggs may be eaten, and hence are of some slight value.
16. I.e., where calves and foals are given to breed at half profits, but the breeder is paid for having to carry them on his shoulder whilst they are very small.
17. If both the mother and the young are given to breed on a profit sharing basis, the profit which the breeder receives from the work of the mother is adequate compensation for both, and no further payment is necessary.
18. The objection is raised on the hypothesis that unless the breeder receives some separate payment for the young, the arrangement amounts to usury; v. p. Mishnah 68a.
19. Which has a monetary value.
20. The first Tanna, who insists upon payment.
21. The owner does not want it in any case, and so it constitutes no payment.
22. I.e., a bond whereby R. 'Ilish had undertaken to trade on these terms: this arrangement is forbidden as usury; v. *infra* 104b.

23. He would not have made an arrangement whereby another should enjoy the illegitimate profits of usury.

24. Lit., 'whatever be your opinion.'

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or half loss and two thirds profit.¹ R. Kahana said: I repeated this ruling before R. Zebid of Nehardea, whereupon he suggested to me: But perhaps R. 'Ilish had dipped his bread into his vinegar, and R. Nahman has ruled, The *halachah* is as R. Judah?² — He replied: It was not stated that such is the *halachah*, but that [all three proceed on the same] principle. That is logical too; for should you not agree thereto, why enumerate the *halachah* [of every case]? He should have stated, The *halachah* is as R. Judah, who is the most lenient of all.³

Rab said: [If one stipulates, 'Receive] the excess above a third as your remuneration,' it is permitted.⁴ But Samuel said: And if there was no excess above a third, shall he go home empty handed?⁵ Hence, said Samuel, he must stipulate a *denar* [for his labor]. Now, is it Rab's opinion that a *denar* need not be fixed? But Rab said: The calf's head is the breeder's.⁶ Surely that means that he said to him, 'Receive the excess above a third as your payment'?⁷ — No. It means that he said to him,⁸ 'Either the excess above a third, or the calf's head for the breeder.'⁹ Alternatively, when did Rab rule that [a stipulation], 'Receive the excess above a third as your payment,' is permitted, when he [the breeder] has a cow of his own, for people say, 'It is the same whether one mixes fodder for an ox or for oxen.'¹⁰

R. Eleazar of Hagrulia¹¹ bought a cow and gave it to his *aris*.¹² The latter fattened it, and received the head in payment and also half the profit.¹³ Said his [the aris's] wife to him, 'Had you been in partnership with him, he would have given you the tail too [as your share].' So he went and bought [a cow] in partnership with him, but he [R. Eleazar] divided the tail, and then said: 'Come, let us

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divide the head too.' 'What! Shall I not receive even as much as before?' exclaimed he. 'Until now', he [R. Eleazar] replied, 'the money was [altogether] mine; had I not given you a little more [than half], It would have looked like usury. Now, however, we are partners: what will you plead? I have worked rather more? But people say 'The average *aris* binds himself to the landowner to find him pasture.'¹⁴

Our Rabbis taught: If one entrusts his neighbor with cattle on a valuation,¹⁵ how long is he bound to attend thereto? Symmachus said: In the case of asses, eighteen months; small cattle,¹⁶ twenty-four months. Should he wish to divide [the profits] within this period, his partner can prevent it, but the attention of the first year cannot be compared with that of the second.¹⁷ Why say 'but'?¹⁸ — Therefore [say thus]: Because the attention necessary in the first year cannot be compared with that of the second.¹⁹

Another [Baraita] taught: If one entrusts his neighbor with cattle on valuation, how long is he bound to attend to the young?²⁰ In the case of small cattle, thirty days; large cattle, fifty days. R. Jose said: In the case of small cattle, three months, because they need much attention. How [do they need] much attention? Because their teeth are very small.²¹ Thereafter, he [the breeder] receives his own half [of the young] and a half of his neighbor's half.²² R. Menashia b. Gada took his own half and half of his partner's half. Then he came before Abaye. Said he to him: Who divided for you?²³ Moreover, the local usage here is to breed [until fully grown], and we learnt: Where it is the usage to breed, they [the young] must be fully bred.²⁴

Two Cutheans²⁵ entered on a share partnership.²⁶ Then one went and divided the money without his partner's knowledge. So they came before R. Papa.²⁷ Said he to him [the plaintiff]: What difference does it make? Thus did R. Nahman rule: Monies are held to be already divided. The following year they bought wine in partnership. Thereupon the

other arose and divided it without his partner's knowledge. Again they came before R. Papa. Said he to him: Who divided it for you? — I see, he replied, that you are biased in my partner's favour.²⁸ Said R. Papa:

1. I.e., the man on whose behalf R. 'Ilish had traded must be content with this arrangement, either to receive half the profits but to bear two-thirds of the loss, or if R. 'Ilish were to stand half the loss, he must receive two-thirds of the profit. That interpretation had to be put upon the bond.
2. That this is sufficient to remove a 50% profit and loss arrangement from the category of usury.
3. Then the rest would have followed automatically. Hence, in fact, such small remuneration is inadequate, and therefore Raba was justified in his assumption.
4. If one gives calves or foals to a breeder on a half profit half loss basis, which, as stated above, is forbidden, but adds that should it appreciate by more than a third of its present value, the excess belongs to the breeder, that constitutes payment, though such appreciation is uncertain.
5. I.e., such a speculation does not obliterate the character of usury.
6. If one accepts a calf for fattening on a fifty-fifty basis, he must receive its head in return for his labor, and the rest is shared.
7. But as there was no excess, he must receive the calf's head instead, proving that Rab admits that the breeder must receive a definite payment that is independent of speculative appreciation.
8. [MS.M. rightly omits 'that he said to him.']
9. [MS.M. rightly omits 'for the breeder.']
10. No additional labor is entailed, and therefore a speculative arrangement is permitted.
11. [A suburb of Nehardea, Obermeyer, *op. cit.*, p. 265ff.]
12. V. [Glos.](#)
13. The arrangement having been on a fifty-fifty basis of profit or loss.
14. I.e., the slight additional work done by the *aris* is really an unexpressed part of his contract.
15. For breeding. V. Mishnah 68a, and notes a.l.
16. E.g., sheep, goats.
17. Which involves greater expenditure in food.
18. On the contrary, this states the reason.
19. Therefore the owner can insist on his keeping it for two years.
20. The young too are shared as part of the profit. Now, the breeder would naturally wish to divide immediately on birth, since he has no profit in the owner's half.

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21. And it is a tacit understanding that the breeder should attend to it until it needs only normal attention.
22. The original arrangement to share in the profits extends to the increased value of the young which he must continue to look after as stated above, and he takes his own half complete, plus half the increased value of the owner's half.
23. Who checked your assessment of the value of half a share?
24. Hence he is only entitled to his own half, and no more.
25. Samaritans.
26. As in the case of breeding, one investing the money, and the other trading with it.
27. This shows that though by this time Jews regarded them as Gentiles, they nevertheless submitted to Jewish jurisdiction.
28. For last year you upheld his dividing without my knowledge, but now disallow mine without his.

Baba Mezi'a 69b

In such a case¹ it is certainly necessary to inform him [of the grounds of my verdicts]: As for coins, would he take good coins and leave short-weight ones [for you]? But in the case of wine, everybody knows that some wine is sweet and some is not.²

The above text states: 'R. Nahman said: Monies are held to be already divided.' But that is only if they are all good or of full weight, but not if some are good, and others of full weight.³

R. Hama used to hire out a *zuz* for a *peshita* per day.⁴ [As a result] his money evaporated.⁵ Now he argued, [Wherein does it differ] from a spade?⁶ But the analogy is false: the self-same spade is returned, and its depreciation is assessable; whereas the self-same coins are not returned, nor can their depreciation be estimated.⁷

Raba said: One may say to his neighbor, 'Take these four *zuz* and lend money to so-and-so,⁸ [because] the Torah forbade only usury which comes from the borrower to the lender. Raba also said: One may say to his neighbor, 'Here are four *zuz*, and persuade so-and-so to lend me money.' Why so? He

merely receives a fee for his talking; just as Abba Mar, the son of R. Papa, used to take balls of wax from wax dealers, and then persuade his father to lend them money. But the Rabbis protested to R. papa: Your son enjoys usury. He replied: Such interest we may enjoy: the Torah forbade only interest that comes from the borrower [direct] to the lender; but here he receives a fee for his talking, which is permitted.

MISHNAH. ONE MAY ASSESS COWS, ASSES, AND ALL ANIMALS WHICH TOIL FOR THEIR FOOD ON HALF [PROFIT AND LOSS].² WHERE IT IS THE USAGE TO DIVIDE THE YOUNG IMMEDIATELY [ON BIRTH], THEY MUST DIVIDE; WHERE IT IS CUSTOMARY TO BREED THEM, THEY MUST BE BRED. R. SIMEON B. GAMALIEL SAID: A CALF MAY BE ASSESSED WITH ITS MOTHER, AND A FOAL WITH ITS MOTHER.¹⁰ AND ONE MAY OFFER AN INCREASED LAND RENTAL WITHOUT FEAR OF USURY.¹¹

GEMARA. Our Rabbis taught: One may offer an increased land rental without fear of usury. E.g., If one rents a field from his neighbor for ten *kor* annually, and proposes, 'Give me two hundred *zuz* to expend thereon [sc. in improving the land], and I will pay you twelve *kor* annually,' it is permitted. But an increased rental may not be offered for a shop or a ship.¹² R. Nahman said in the name of Rabbah b. Abuhah: Sometimes an increased rental may be offered for a shop, [e.g., in consideration of a loan] for decorations; or for a ship, to build a sail-yard therein. For a shop, in return for decorations, that it may be attractive for customers and thus earn more profit; and for a ship, to build a sail-yard therein; for the more beautiful its sail-yard, the greater is the hire.¹³

As for a ship, Rab said: Both hire and loss [is permitted].¹⁴ Said R. Kahana and R. Assi to Rab: If hire, no loss; if loss, no hire.¹⁵ Thereupon Rab was silent [being unable to answer]. R. Shesheth observed: Why was Rab silent? Had he never heard what was taught: 'Though it was ruled that one must not accept

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from an Israelite "iron flock" [investment with absolute immunity for the investor],¹⁶ yet such may be accepted from heathens!¹⁷ It was, nevertheless, ruled that if one assesses a cow for his neighbor, and says to him, "Your cow is charged to me at thirty *denarii*,¹⁸ and I will pay you a *sela'* per month," — it is permitted, because he did not assess it as money.' But did he not? — R. Shesheth said: He did not assess it as money whilst alive, but only in case of death.¹⁹ R. papa said: The law is: For a ship, both hire and loss [is allowed],

1. That the litigant doubts my impartiality.
2. Hence there can be no question of unfair division of money, as there may be in respect of wine.
3. Some coins of particular mint were preferred to any others for current use; they were considered 'good'; on the other hand, money-changers, who assessed them by weight, preferred those of full weight. Now, if all are 'good' or of full weight, one partner himself may make the division; but if some are 'good' and the others of full weight, they are not accounted as already divided, since some prefer the first and others the second.
4. I.e., instead of calling it lending, he hired out money, as one hires any other commodity. [Such an arrangement was not without advantage to the borrower, as it exempted him, in the same way as any other hirer, from responsibility in case of an unpreventable accident befalling the money, v. *infra* 93b (cf. Tosaf.)].
5. V. *infra* 71a; the penalty for usury is that one's wealth disappears.
6. One may charge for hiring a spade; why not for hiring out money?
7. Even if by chance the same coins should be returned.
8. Though the lender thus receives interest.
9. V. *supra* p. 398, n. 7.
10. V. p. 399, n. 10.
11. This is discussed in the Gemara.
12. In consideration of a loan for stock. In the first case, the money is expended on the field itself and therefore it is the equivalent of renting a better field, and hence worth more, notwithstanding that the 200 *zuz* must be separately repaid. But here the capital value of the shop and ship is not increased; therefore the money advanced for stock is an ordinary loan, and the higher rental constitutes interest.
13. In each case the money is expended in the shop or ship itself and therefore permitted.

14. I.e., one may hire a ship at the lessee's risk in case it is damaged or sunk.
15. I.e., the two together should be forbidden. For if the ship be assessed and the lessee accepts all responsibility, it is as though he had borrowed money to its value, and the rent is usury.
16. [H] (V. B.B. Sonc. ed. p. 206, n. 3) I.e., one may not accept a business on a profit sharing basis, whilst guaranteeing the investor absolute safety of his money, like 'iron sheep', which cannot come to harm. For if the investor's money is secured, it is a loan, on which he receives half profit as interest.
17. Because one may receive from or give interest to a heathen.
18. Should it perish or come to harm.
19. I.e., only if it perishes is he responsible for it; but should there be a price-drop whilst it is alive, the hirer is not responsible, and this saves it from being considered a loan. Hence in the case of the ship too, since the lessee is responsible only for shipwreck, but not for a drop in its market value, it is not an ordinary loan, and therefore a hiring fee is permissible.

Baba Mezi'a 70a

and the practice of shipowners¹ is [to receive] the hire at the time of *meshikah*² and the [payment for] loss when it is shipwrecked. But does such a thing depend upon custom?³ — The usage arose as the result of the Baraitha which was taught.⁴

R. 'Anan said in Samuel's name: Orphan's money may be lent out at interest.⁵ R. Nahman objected: Because they are orphans we are to feed them with forbidden food! Orphans who eat what is not rightfully theirs may follow their testator! Now tell me, said he, what actually transpired?⁶ — He replied: A cauldron, belonging to the children of Mar 'Ukba [who were orphans], was in Samuel's care, and he weighed it before hiring it out and weighed it when receiving it back, charging for its hire and for its loss of weight: but if a fee for hiring, there should be no charge for depreciation, and if a charge for depreciation, there should be no fee for hiring.⁷ He replied: Such a transaction is permitted even to bearded men, since he [the owner] stands the loss of wear and tear, for the more the copper is burnt, the greater is its depreciation.⁸

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Rabbah b. Shilah said in R. Hisdah's name — others state, Rabbah b. Joseph b. Hama said in R. Shesheth's name: Money belonging to orphans may be lent on terms that are near to profit and far from loss.²

Our Rabbis taught: [One who invests money on terms] near to profit but far from loss is a wicked man; near to loss but far from profit is a pious man; near to both or far from both — that is the arrangement of the man in the street.¹⁰ Rabbah asked R. Joseph: What is done with orphan's money? — He replied: It is entrusted to Court, and paid out to them in instalments.¹¹ But surely the principal will disappear! he urged. What then would you do? he asked. — He replied: We seek out a man who possesses broken pieces of gold,¹² take the gold from him,¹³ and entrust to him the orphan's money on terms that are near to profit and far from loss. But an object which bears an identification mark¹⁴ cannot [be taken as a security]¹⁵ lest it was [merely] entrusted to him, and its owner may come, state the mark [which proves his ownership] and take it away. R. Ashi demurred: That is well if you find a man who possesses broken gold; but if you do not, is the orphan's money to be frittered away? — But, said R. Ashi, we seek out a man whose property is secure,¹⁶ who is trustworthy, obedient to the law of the Bible,¹⁷ and will not suffer a ban of the Rabbis,¹⁸ and the money is given to him in the presence of a *Beth din*.¹⁹

1. Lit., 'the pitchers', those who pitch their boats.
2. V. [Glos.](#)
3. It depends upon whether it is permissible or not, for were the latter the case, such usage would have to be abrogated.
4. *Supra* 69b end.
5. I.e., if they are minors.
6. R. Nahman assumed that R. 'Anan had not actually heard such a law from Samuel, but must have deduced it from some incident.
7. V. p. 405, n. 2; the same reasoning applies here, and therefore he concluded that interest may be taken on orphan's money.
8. Though the hirer pays for actual loss of weight, yet even the rest loses in value the more often it is placed upon the fire, and therefore the hiring fee is not interest.

9. I.e., the orphans taking a share of the profit, but none of the loss. Though this is forbidden to adults as indirect interest, the Rabbis permitted it in the case of orphans who, being unable to earn money themselves, might soon be reduced to penury if not permitted to put out their money on advantageous terms.
10. 'Near to both' — taking more than half the profit, and standing more than half the loss; 'far from both' — less than half the profit or loss.
11. Lit., 'coin by coin.'
12. Then they are certainly his, for when money is given into the safe-keeping of others, only proper coins are given — i.e., a wealthy person is sought.
13. [Omitted in some texts, v. Rashal and D.S.]
14. I.e., any object which a person may claim as his own on the strength of identification marks.
15. [Or, as proof of wealth.]
16. I.e., whose ownership thereof is universally acknowledged.
17. [MS.M. rightly omits 'of the Bible', there being no distinction between Rabbinic and Biblical law in regard to the obedience expected of a man to be entrusted with orphan's money.]
18. Who will obey them rather than come under their ban.
19. That he may be duly impressed with the solemnity of his obligations (Asheri).

Baba Mezi'a 70b

MISHNAH. ONE MAY NOT ACCEPT FROM AN ISRAELITE AN 'IRON FLOCK' [INVESTMENT WITH COMPLETE IMMUNITY FOR THE INVESTOR], BECAUSE THAT IS USURY. BUT SUCH MAY BE ACCEPTED FROM HEATHENS.¹ AND ONE MAY BORROW FROM AND LEND TO THEM ON INTEREST. THE SAME APPLIES TO A RESIDENT ALIEN.² AN ISRAELITE MAY LEND A GENTILES MONEY [ON INTEREST] WITH THE KNOWLEDGE OF THE GENTILE, BUT NOT OF THE ISRAELITE.³

GEMARA. Shall we say that it stands under the ownership of the contractor?⁴ But the following is opposed thereto: If one undertakes [to breed sheep] on 'iron flock' terms for a heathen,⁵ the young are exempt from [the law of] firstlings!⁶ — Abaye answered: There is no difficulty; in the one case, he [the owner] accepted [the risk of]

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unpreventable accident and depreciation; in the other, he did not.² Said Raba to him: If the owner accepts the risk of depreciation and [unpreventable] accidents, do you designate it 'iron flock'? Moreover, instead of the second clause teaching, **BUT SUCH MAY BE ACCEPTED FROM GENTILES**, let a distinction be drawn and taught in that [sc. the first clause] itself, [thus:] When does this hold good [that 'iron flock' may not be accepted from a Jew], only if he [the investor] does not bear the risk of unpreventable accidents or depreciation; but if the investor accepts these risks, it is permissible? — But, said Raba, in both cases [viz., as taught in our Mishnah and with reference to firstlings] he [the investor] does not accept the risk of accidental damage or depreciation; but with respect to the firstlings, this is the reason that the young are exempt thereof: since if he [the breeder] did not render the money,⁸ the heathen would come and seize the cow [entrusted to the breeder in the first place], and should he not find the cow, seize the young, it is a case of 'the hand of a heathen coming in the middle',² and wherever that is so, there is exemption from the law of firstlings:

*He that by usury and unjust gain increaseth his substance, he shall gather it for him that pitieth the poor.*¹⁰ Who is meant by, for him that pitieth the poor? — Rab said: e.g., King Shapur.¹¹ R. Nahman observed: Huna told me that [this verse] is needed to show that usury [taken] even from a heathen [leads to loss of one's wealth]. Raba objected to R. Nahman: Unto a stranger *tashshik*:¹² now, what is meant by '*tashshik*': surely that 'thou mayest receive usury'? — No: 'thou mayest give usury.'¹³ [What!] Cannot one do without?¹⁴ — It is to exclude 'thy brother,' [to whom thou mayest] not [give usury].¹⁵ As for thy brother, is it not explicitly stated, *but unto thy brother thou shalt not give usury*?¹⁶ — [To intimate] that both a positive and negative injunction are violated.¹⁷ He [further] raised an objection: **ONE MAY BORROW FROM AND LEND MONEY TO THEM ON INTEREST, AND THE SAME APPLIES TO**

A RESIDENT ALIEN!¹⁸ — R. Hiyya, the son of R. Huna, said: This [permission] is granted only [up to]

1. V. p. 405, n. 3.
2. Heb. [H], one who, for the sake of acquiring citizenship in Palestine, renounced idolatry and undertook to observe the Seven Noachian laws, the laws binding upon all mankind. [For a full discussion of the term v. Moore, G. F., Judaism I. 338ff.]
3. The meaning of this is discussed in the Gemara.
4. Since it is regarded as interest.
5. I.e., to divide the profit, whilst guaranteeing the heathen full security against loss.
6. As stated above (Mishnah, 69b), the young are equally divided between the investor and breeder. Now, if the young themselves calved, though half of them belong to the Jew, the obligation of firstlings does not apply to them. This proves that they are regarded as the property of the investor, not the contractor.
7. If the investor accepts these risks ([H]), the property stands under his ownership, and hence the law of firstlings does not apply. If the contractor accepts full risks, there is usury, which in the case of a Jewish investor is forbidden. [Gulak, *Tarbiz*. III, p. 140, suggests that the phrase [H] means accident due to fall in the market price. Abaye accordingly was referring to the original type of 'iron flock' investment in which the responsibility assumed by the contractor was limited to injuries to the 'body of the investment itself.']
8. Due pursuant to the agreement.
9. I.e., the heathen retains certain rights therein.
10. Prov. XXVIII, 8.
11. Shapur I, King of Persia, and a contemporary of Samuel (third century), with whom he was on terms of intimacy. He took money from the Jews and made grants thereof to poor heathens. (Rashi: To heathens, who are poor in that they have no fulfillment of precepts and good deeds to their credit.)
12. Deut. XXIII, 21.
13. V. p. 363, n. 4.
14. This objection is based on the hypothesis that the verse cannot be merely permissive, 'thou mayest give usury to heathens', since there was never any reason for supposing otherwise. Hence it can only mean (on R. Nahman's interpretation), 'thou must give usury to a Gentile', which is absurd.
15. I.e., the law is only permissive, but stated in order to exclude a Jew, by implication.
16. So rendered on R. Nahman's views.
17. By giving usury to a Jew. For the negative implication of 'unto the Gentile thou mayest

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give usury' is technically a positive command, since cast in that form.

18. Thus distinctly stating that it is permitted.

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the [minimum] requirements of a livelihood.¹ Rabina said: Here [in the Mishnah] the reference is to scholars. For why did the Rabbis enact this precautionary measure?² Lest he learn of his ways.³ But being a scholar, he will [certainly] not learn of his ways.

Others referred this statement of R. Huna to [the teaching] which R. Joseph learnt: *If thou lend money to any of my people that is poor by thee:*⁴ [this teaches, if the choice lies between] my people and a heathen, 'my people' has preference; the poor or the rich — the 'poor' takes precedence; thy poor [sc. thy relatives] and the [general] poor of thy town — thy poor come first; the poor of thy city and the poor of another town — the poor of thine own town have prior rights. The Master said: '[If the choice lies between] my people and a heathen — "my people" has preference.' But is it not obvious? — R. Nahman answered: Huna told me it means that even if [money is lent] to the heathen on interest, and to the Israelite without [the latter should take precedence].

It has been taught: R. Jose said: Come and see the blindness of usurers. If a man calls his neighbor wicked, he cherishes a deep-seated animosity against him;⁵ whilst they bring witnesses, a notary, pen and ink, and record and attest, 'So-and-so has denied the God of Israel.'⁶

It has been taught: R. Simeon b. Eleazar said: He who has money and lends it without interest, of him Scripture writes. *He that putteth not out his money to usury, nor taketh reward against the innocent. He that doeth these things shall never be moved;*⁷ thus you learn that he who does lend on interest, his wealth⁸ dissolves.⁹ But do we not see [people] who do not lend on interest, yet their wealth dissolves? — R. Eleazar said: The latter sink

[into poverty] but re-ascend, whereas the former sink but do not re-ascend.¹⁰

*Wherefore lookest thou upon them that deal treacherously, and holdest thy tongue when the wicked devoureth the man that is more righteous than he?*¹¹ R. Huna said: 'the man that is [merely] more righteous than he,' he devoureth: but the man that is completely righteous, he cannot devour.

It has been taught: Rabbi said: The righteous proselyte¹² who is mentioned in connection with the sale [of oneself for a slave], and the resident alien who is mentioned with reference to usury — I know not their purpose. 'The righteous proselyte who is mentioned in connection with a sale' — as it is written, *And if thy brother that dwelleth with thee be waxen poor, and be sold unto thee;*¹³ and not only 'unto thee' [a Hebrew], but even to a proselyte, as it is written, *[and sell himself] unto a proselyte;*¹⁴ and not alone to a righteous proselyte, but even to a resident alien, as it is written, *to a proselyte [and] a settler;*¹⁵ or *to a family of the proselyte* — i.e., to a heathen; hence, when it is said, *or to the stock*, etc. it must refer to one who sells himself to the service of the idol itself.¹⁶

Now,¹⁷ the Master said: 'And not only *unto thee*, but even unto a proselyte,' as it is written, *[and sell himself] unto a proselyte.*' Are we to say that a proselyte may acquire a Hebrew slave? But the following contradicts it: A proselyte cannot be acquired as a Hebrew slave, nor may a woman or a proselyte acquire a Hebrew slave. 'A proselyte cannot be acquired as a Hebrew slave', for the verse, *and he shall return unto his own family*, must be applicable. which it is not [in the case of a proselyte];¹⁸ 'nor may a woman or a proselyte acquire a Hebrew slave' — a woman, because it is not seemly;¹⁹ a proselyte, because it is a tradition that he who can be acquired can himself acquire, but he who cannot be acquired, cannot himself acquire! — R. Nahman b. Isaac said: He cannot acquire [him] under the provisions of an Israelite [owner], but may acquire [him] as

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a non-Israelite [master]. For it has been taught: He [sc. a Hebrew slave] whose ear is bored,²⁰ and he who is sold to a heathen, serve neither the son nor the daughter.²¹

The Master said: 'Nor may a woman or a proselyte acquire a Hebrew slave.' Must we assume that this disagrees with R. Simeon b. Gamaliel? For it has been taught: A woman may acquire female but not male slaves. R. Simeon b. Gamaliel ruled: She may acquire even male slaves! — It may agree even with R. Simeon b. Gamaliel, yet there is no difficulty: the former applies to a Hebrew slave, the latter to a Canaanite slave. A Hebrew slave she deems to be self-respecting;²² whereas a Canaanite slave she deems unreservedly dissolute.²³ But what of that which R. Joseph learned: A widow may not breed dogs,²⁴ nor permit a scholar to live with her as a boarder? Now, [the prohibition] of a scholar is intelligible, since she deems him self-respecting; but as for a dog since it will follow her [if she commits bestiality], she will surely be afraid!²⁵ — I will tell you: since it follows her even if she merely throws it a piece of meat, that will be assumed the cause of its attachment.²⁶

'The resident alien who is mentioned with reference to usury:' — What is it? — For it is written, *And if thy brother be waxen poor, and fallen in decay with thee; then thou shalt relieve him; yea, though he be a proselyte or a settler, that he may live with thee. Take thou no usury of him nor increase: but fear thy God; that thy brother may live with thee.*²⁷ But the following opposes it: ONE MAY BORROW FROM AND LEND TO THEM ON INTEREST; THE SAME APPLIES TO A RESIDENT ALIEN! — R. Nahman b. Isaac replied: Is it then written, 'Take thou no usury of them'?²⁸ 'of him' is written, [meaning] of an Israelite.²⁹

Our Rabbis taught: *Take thou no usury of him, or increase, but thou mayest become a surety for him.*³⁰

1. But one may not take usury from a Gentile in order to accumulate wealth.

2. Of forbidding usury from a heathen, on R. Nahman's view. Though R. Nahman based his opinion on a verse of Proverbs, it is obvious that it is only a Rabbinical, not a Biblical interdict.
3. Rashi: Through business intercourse with him.
4. Ex. XXII, 24.
5. Lit., 'descends (in his rage) against his life'.
6. To exact usury in defiance of the Biblical precept is tantamount to rejection of God — the highest degree of wickedness.
7. Ps. XV, 5.
8. Lit., 'his possessions'.
9. I.e., he is 'moved'.
10. Translating, *he that doeth these things shall not for ever be moved*, i.e., shall not sink into penury for good.
11. Hab. I, 13.
12. [[H] 'Righteous' in the sense of 'upright', 'genuine', 'real'. V. Moore, *op. cit.* I, 338.]
13. Lev. XXV, 39.
14. Ibid. 47.
15. Ibid. This deduction is arrived at by treating [H], (proselyte) and [H] (settler, citizen) as two separate substantives, thus: *and sell himself unto a proselyte and unto a resident alien.* i. e., even as they are treated at the beginning of the verse: *and if a proselyte ([H]) or a settler ([H]) wax rich*, etc. (Rashal).
16. To hew wood and draw water in its service. This Baraitha is quoted more fully in 'Ar. 20b; the successive depths of degradation are the fate of him who trades in the commodities of the seventh year, this being deduced from the fact that these laws of sale follow those of the seventh year prohibitions.
17. He now proceeds to explain Rabbi's difficulty.
18. V. Lev. XXV, 10. Because a proselyte loses all relationship with his former kin, hence has no family.
19. Lest she be suspected of immoral designs.
20. V. Ex. XXI, 5f.
21. As heirs. Thus, a proselyte can acquire a Hebrew slave under the laws applicable to a heathen owner, so that if he dies his children do not inherit him (the slave), but not as an Israelite, who is able to transmit him as a legacy.
22. I.e., he has a feeling of shame and regard for appearances. Therefore she may be emboldened to an illicit relationship, in the certainty that he will not disclose the fact: hence she may not purchase him.
23. Feeling no shame therein; therefore she fears intimacy with him, lest he boast thereof, and so may buy him.
24. For fear of malicious slander, but not because she is actually suspected of bestiality (Tosaf.).
25. Why is she then forbidden to breed dogs?

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26. Hence she does not fear to commit bestiality, and though, as stated in n. 3, she is not suspected thereof, yet the mere fact that she can indulge without fear of discovery gives tongue to slander.
27. Lev. XXV, 35f; this implies that usury may not be taken from a citizen proselyte.
28. Which would apply to all the antecedents.
29. ['Proselyte' being mentioned only with reference to assisting him in his need.]
30. I.e., for one who is borrowing money on interest.

Baba Mezi'a 71b

A surety to whom? Shall we say to an Israelite?¹ But we learnt: The following violate the negative precept: The lender, the borrower, the surety, and the witnesses!² Again if it means to a heathen:³ since, however, it is the law of the heathen⁴ to claim direct from the surety, it is he [the surety] who borrows from him!⁵ — R. Shesheth answered: It means that he engaged himself to bring his actions in accordance with Jewish law.⁶ But if he engaged to abide by Jewish law, he should not take usury either! — R. Shesheth replied: He pledged himself for the one but not for the other.

AN ISRAELITE MAY LEND A HEATHEN'S MONEY [ON INTEREST] WITH THE KNOWLEDGE OF THE HEATHEN, BUT NOT OF THE ISRAELITE. Our Rabbis taught: An Israelite may lend a heathen's money [on interest] with the knowledge of the heathen, but not of the Israelite. E.g., if an Israelite borrowed money from a heathen on interest, and was about to repay it, when another Israelite met him and proposed. 'Give it to me and I will pay you as you pay him' — that is forbidden; but if he presented him to the heathen,² it is permitted.⁸ Similarly, if a heathen borrowed money from an Israelite on interest, and was about to repay it, when another Israelite met him and proposed. 'Give it to me, and I will pay you as you pay him,' it is permitted; but if he presented him to the Israelite, it is forbidden.⁹ Now, the second clause is well, for there the ruling is in the direction of greater stringency; but as for the first clause, since

the law of agency does not apply to a heathen, it is he [the Israelite] who takes interest from him [his fellow-Israelite].¹⁰ — R. Huna b. Manoah said in the name of R. Aha, the son of R. Ika: Here it is meant that he [the heathen] said to him [the Israelite], 'put it [the money] on the ground and you may go.'¹¹ If so, why state it? — But, said R. Papa, it means, e.g., that he [the heathen] took it [from the first creditor] and personally gave it [to the second]. Yet even so, why state it? — I might think that the heathen himself, in acting so, transfers the money pursuant to the wish of the Israelite,¹² therefore it is taught otherwise. R. Ashi said: When do we maintain that agency cannot be vested in a heathen, only in reference to *terumah*;¹³ but in all other Biblical matters the principle of agency holds good in the case of a heathen. This [distinction], however, of R. Ashi must be rejected.¹⁴ For why does *terumah* differ, that [agency] is not [allowed to a heathen]? Because it is written, [Thus] ye, ye also [shall offer an heave offering, etc.],¹⁵ [teaching], just as ye are members of the Covenant, so also must your deputies be members of the Covenant! But [is not] the principle of agency, as applied to all Biblical matters, derived from *terumah*!¹⁶ Hence R. Ashi's distinction is to be rejected.

Others state: R. Ashi said: In what sense do we maintain that agency cannot be vested in a heathen, only that they cannot be agents for us; but we can be agents for them.¹⁷ But this [distinction] of R. Ashi is to be rejected. For why the difference, that they cannot be agents for us? Because it is written, 'Ye, ye also', which teaches the inclusion of your agents; just as 'ye' are members of the Covenant, so must your agents be members of the Covenant? But with reference to ourselves being agents to them, does not the same [exegesis] apply: by 'just as "ye" [who appoint agents],' members of Covenant are meant.¹⁸ Hence R. Ashi's distinction is non-acceptable.

Rabina said: Though a heathen has no power of agency, yet, by Rabbinical law, one can

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obtain possession on his behalf. For this is similar to a minor: surely, a minor, though excluded from the principle of agency,

1. I.e., on behalf of a Jew borrowing from a Jew.
2. *Infra* 75b.
3. I.e., a surety on behalf of a Jewish borrower to a Gentile lender.
4. [I.e., according to Persian law, v. B.B. 173b.]
5. From the point of view of Jewish law there are two transactions in this loan: the surety borrows money from the Gentile and pays interest thereon, and lends money to the Jew, upon which he receives interest. Hence it should be forbidden.
6. Should the debtor fail to repay, he would bring an action against him first.
7. I.e., obtained the Gentile's authority for the transaction.
8. For then the Jew is merely the agent of the Gentile, and it is the latter who makes the loan, not the former.
9. For then the Gentile is merely the agent of the Jew.
10. There is a well-defined principle in Jewish law that a man's agent is legally as himself. But this does not hold good between a Jew and a heathen. Now, in the second clause, where the heathen presents the Jewish borrower to the Jewish lender, yet actually gives his own money, the transaction should be permitted, because he cannot be legally regarded as the Jew's agent. Nevertheless, since the transaction does appear as between two Jews, the heathen acting merely as a vehicle of delivery, the Rabbis recognized the principle of agency, and forbade it. But in the first clause, where the Jew actually gives the money to his fellow-Jew, why should he be regarded as an agent of the heathen, and the transaction rendered legal?
11. So that the second Jew does not receive it from the first.
12. I.e., that he is merely the means of the actual loan from one Jew to another.
13. V. [Glos.](#) A Jew cannot appoint a heathen to separate his *terumah* for him.
14. [H] V. *Supra*, p. 47, n. 1.
15. Num. XVIII, 28. It would have been sufficient to state, '*Thus ye shall offer*, etc.'; it is a general principle of exegesis that 'also' ([H]) denotes extension; hence 'ye also' implies that someone besides yourselves may separate your *terumah*. At the same time, since the extension is directly applied to 'ye', those whom it includes must be similar to 'ye'.
16. In Kid. 41b; hence just as a heathen cannot be deputed to separate *terumah*, so he is invalid in all other matters.

17. Hence in the first clause under discussion the loan is permissible, if the second Jew was presented to the heathen, even if the money passed directly from one Jew to another.

18. I.e., the same exegesis which shows that the agents must be Jews, also shows that the principals must be Jews.

Baba Mezi'a 72a

is nevertheless, by Rabbinical law, eligible to [vicarious] possession;¹ so here too, there is no difference.² But the analogy is false; an Israelite [minor] comes [eventually] within the principle of agency, but a heathen never does.³

Our Rabbis taught: If an Israelite borrowed money on interest from a heathen and then recorded them [Viz., the principal and the interest] against him as a loan,⁴ and he [the creditor] became a proselyte: if this settlement preceded his conversion, he may exact both the principal and the interest; if it followed his conversion, he may collect the principal, but not the interest.⁵ Similarly, if a heathen borrowed money on interest from an Israelite, and then recorded them [the principal and the interest] against him as a loan, and became a proselyte: if the settlement preceded his conversion, he [the Israelite] may exact both the principal and the interest; if it followed his conversion, he may exact the principal but not the interest. R. Jose ruled: If a heathen borrowed money from an Israelite on interest, then in both cases [whether conversion preceded the settlement or the reverse] he may collect both the principal and the interest. Raba said in the name of R. Hisda in the name of R. Huna: The *halachah* is as R. Jose. Raba said: What is the reason of R. Jose? That it should not be said that he turned a proselyte for the sake of money.⁶

Our Rabbis taught: If a bond contains interest written therein, he [the note-holder] is penalized and can collect neither the principal nor the interest; this is R. Meir's view. The Sages maintain: He may exact the principal, but not the interest. Wherein do

BABA METZIAH – 58b-90b

they differ? — R. Meir is of the opinion that we inflict the forfeiture of what is permissible on account of what is forbidden; whilst the Sages hold that we do not inflict the forfeiture of the permissible on account of the forbidden.

We learnt elsewhere: Ante-dated bonds are invalid; post-dated bonds are valid.² But why invalid? Though a seizure cannot be made by means of them as from the earlier [incorrect] date, why not seize [estate for repayment] as from the later [correct] date?³ — R. Simeon b. Lakish said: This was taught as a matter of dispute, and agrees with R. Meir.⁹ R. Johanan said: It may agree even with the Rabbis; but it is a precautionary measure, lest he exact [his debt from sold property] as from the earlier date.¹⁰

A man once pledged an orchard to his neighbor for ten years.¹¹ After he [the creditor] had taken its usufruct for three years, he proposed to him [the debtor], 'If you sell it to me, it is well; if not, I will hide the mortgage deed and claim that I have bought it.'¹² Thereupon he [the debtor] went, arose, transferred it to his young son [a minor], and then sold it to him. Now, the sale is certainly no sale;¹³ but is the [purchase-]money accounted as a written debt, and collectable from [sold] mortgaged property, or perhaps it is [only] as a verbal debt, which cannot be collected from mortgaged property?¹⁴ Said Abaye: Is this not covered by R. Assi's dictum? Viz.,

1. I.e., an adult may take possession on behalf of a minor.
2. Hence in the first clause, where the second borrower is presented to the heathen, the first Jew takes possession of the money which he was about to repay on behalf of the heathen, and therefore it is the latter's money that is lent on interest, and hence permissible.
3. For to take possession on another man's behalf is akin to becoming his agent. Thus the Rabbis conferred upon a minor the privilege of being so benefited, because he is potentially an agent or a principal, but a heathen is not even potentially so. [Levinthal, I.H., JQR, (N.S.) XIII, p. 150, suggests the principal reason swaying the Rabbis in their decision barring

the heathen from acting as agent to have been the fact that the agent in Jewish law is frequently compelled to take an oath, and the oath being considered a most sacred role in the life of the people there was no desire to force a heathen to comply with the strictness of that act.]

4. I.e., drew up a bond in which the combined principal and interest figured as the principal.
5. Since the bond was drawn up when he was forbidden usury.
6. To evade the payment of interest.
7. Sheb. X, 5; v. *supra* 17a.
8. Though it is only right that the creditor should not seize land sold after the date of the bond but prior to the actual loan, why should he not seize land sold after the loan was made?
9. Who maintains that we inflict the forfeiture of what is permissible on account of what is forbidden. So here too.
10. To prevent this, such a bond was declared entirely invalid.
11. [So according to some texts; v. D.S.]
12. Three years' possession of an estate establishes a presumptive title thereto, even without a deed of sale, the onus of disproof lying upon the first owner.
13. Because it no longer belonged to the debtor (Rashi).
14. When one sold land, he indemnified the purchaser against its possible seizure for the vendor's debt by mortgaging his other property to him, which he could in turn seize even if subsequently sold. Similarly, in a written loan the debtor's estates were held to be pledged, even if subsequently sold; but if the loan was merely verbal, the debt could be exacted only from the free estate. Now the question arises whether the purchase money in this case, which of course, the vendor must return, ranks as a written debt, or only as a verbal one.

Baba Mezi'a 72b

If he [the debtor] admits the genuineness of a bond, he [the creditor] need not confirm it¹ and can collect [his debt] from mortgaged property [sold after the debt was contracted]!² Thereupon Raba said to him: How compare? There it is permissible to write it, but here it is not permissible to write it at all!³ Now, Meremar sat and recited this discussion, whereupon Rabina said to Meremar: If so, when R. Johanan said;⁴ It is a precautionary measure, lest he exact his

BABA METZIAH – 58b-90b

debt as from the earlier date, — let us say that it was not permissible to write it at all! — Said he: Is there the least analogy? There, granted that it was not permissible to write it from the earlier date, it was permissible to write it from the later date; but here it was not permissible to write it at all. But surely with respect to that which has been taught: As to claims for land improvement,⁵ e.g., if one took away unlawfully a field from his neighbor and sold it to another, who effected improvements therein, and then it was seized from him [by the first owner], when he [the buyer] exacts [his due from the robber], he may collect the principal [even] from mortgaged property [that has since been sold], but the improvements only from the free [i.e., unsold] property⁶ — let us say that it [the deed of sale] was not permissible to be written at all!⁷ — How now? There, whether on the view that he [the vendor] is anxious not to be called a robber, or on the view that he is desirous of retaining his [the purchaser's] trust,⁸ he seeks to pacify the first owner, so as to validate the deed.⁹ Here, however, it was his purpose to save it from his clutches, shall he then validate the deed?¹⁰

MISHNAH. A MAN MUST NOT FIX A PRICE FOR PRODUCE UNTIL THE MARKET PRICE IS KNOWN; ONCE THE MARKET IS ESTABLISHED, A FIXED PRICE MAY BE AGREED UPON, FOR EVEN IF ONE HAS NO STOCK, ANOTHER HAS. IF HE WAS OF THE FIRST HARVESTERS, HE [THE BUYER] MAY ENTER INTO A CONTRACT FOR [THE CROPS IN] THE STACK,¹¹ THE BASKET OF GRAPES,¹² THE VAT OF OLIVES,¹³ POTTERS' LUMPS OF CLAY,¹⁴ AND FOR LIME WHEN IT HAS ALREADY BEEN PLACED IN THE KILN.¹⁵ ONE MAY ALSO MAKE A FIXED CONTRACT FOR MANURE FOR THE WHOLE YEAR. R. JOSE MAINTAINED: NO CONTRACT FOR MANURE MAY BE ENTERED INTO UNLESS HE [THE VENDOR] HAS THE MANURE IN DUNG PITS; BUT THE SAGES PERMIT IT. AND ONE MAY ALSO BARGAIN FOR THE LOWEST PRICE.¹⁶ R. JUDAH SAID: EVEN IF HE DID NOT STIPULATE FOR THE LOWEST PRICE, HE

MAY DEMAND, 'SUPPLY ME AT THIS PRICE, OR RETURN MY MONEY.'¹⁷

GEMARA. R. Assi said in R. Johanan's name: One may not fix a contract at market prices.¹⁸ R. Zera questioned R. Assi: Did R. Johanan rule thus even of a great fair?¹⁹ He replied: R. Johanan referred only to town markets, where values fluctuate.²⁰ Now, on the original hypothesis that R. Johanan referred even to a great fair, how is our Mishnah conceivable, which teaches, A MAN MUST NOT FIX A PRICE FOR PRODUCE UNTIL THE MARKET PRICE IS KNOWN; ONCE THE MARKET PRICE IS ESTABLISHED, A FIXED PRICE MAY BE AGREED UPON? — Our Mishnah relates to wheat in granaries and ships, whose fixed price extends over a long period.²¹

Our Rabbis taught: One may not contract for commodities until the market price is out; once the market price is established, a contract may be entered into, for even if one [the vendor] has no stock, another has. If the new supplies were at four [se'ahs per sela'] and the old at three, a contract may not be made until the price has been equalized for the new and old.²² If the gleaned grains²³ were [priced] at four [se'ahs and upward per sela'], whilst ordinary stock²⁴ at three, a contract must not be entered into [at a fixed maximum price] until the same market price has been established for the gleaner²⁵ and the merchant.

R. Nahman said: One may contract for gleanings at the price of gleanings.²⁶ Said Raba to R. Nahman: Why does the gleaner differ?²⁷ Because if he lacks stock, he will borrow from his fellow gleaner? Then even a merchant²⁸ can borrow from a gleaner!²⁹ — He replied: A merchant deems it undignified to borrow from a gleaner. Alternatively, he who pays money to a merchant expects to receive best quality produce.³⁰

R. Shesheth said in R. Huna's name: One may not borrow upon the market price.³¹ Thereupon R. Joseph b. Hama said to R. Shesheth — others say, R. Jose b. Abba said

BABA METZIAH – 58b-90b

to R. Shesheth: Did R. Huna actually rule thus? But a problem was propounded of R. Huna: The students who borrow in Tishri and repay in Tebeth — is it permitted or forbidden?³² He replied: Wheat may be procured in Hini and Shili:³³ if they wish, they can buy [in Tishri] and repay!³⁴ — At first R. Huna held that one must not borrow, but on hearing that R. Samuel b. Hiyya said in R. Eleazar's name that one may, he too ruled likewise.

Our Rabbis taught: If a man was transporting a load from place to place,³⁵ when his neighbor met him and proposed: 'Let me have it, and I will pay you for it the price you would obtain there,'

1. For if the debtor asserts that it is forged, the signatories thereto must attest their signatures.
2. [V. *supra* 7a. Similarly here, since he admits having written the deed, the money liability involved ought to rank as a written debt!]
3. [Since the sale was invalid.]
4. With reference to an ante-dated bond of indebtedness.
5. V. *supra* 14b.
6. He is empowered to collect the principal even from sold property in virtue of the deed of sale, which guarantees to indemnify the purchaser in the event of its being seized and mortgages the vendor's estates for that purpose.
7. Hence should be invalid.
8. V. *supra* 15b.
9. I.e., when selling the field, it is his intention to compensate the first owner, so that the deed drawn up for the second may be valid. Consequently, it is genuine, and the purchaser can act thereon.
10. Surely not! Hence its writing was unwarranted, and therefore it may be regarded as invalid.
11. I.e., for the grain already in stacks, though no market price has been established.
12. A basket used for carrying grapes during the vintage; the meaning is that one may fix a price for the wine to be manufactured from grapes already vintaged in baskets.
13. As in the preceding note.
14. I.e., for the earthenware to be manufactured thereof.
15. In all these cases the vendor is held to be in possession of the articles he is selling, though they are not completely manufactured.

Consequently, a price may be agreed upon and paid, and though delivery will not be effected until later, by which time the market price may have advanced (for in all these cases the reference is to a sale before a market price has been established at all), it is nevertheless permissible, the lower pre-payment not ranking as interest.

16. Lit., 'the high price', i.e., the price at the height of the market when the commodity is cheap. After fixing a price, the vendor may contract to supply stock throughout the year at the lowest price prevailing at the time of each delivery. Thus, the first price fixed is only to be regarded as a maximum, not to be exceeded if the market price advances.
17. In the whole Mishnah the reference is to advance payment at a fixed rate. R. Judah maintains that even without a definite stipulation it is always implied, therefore the purchaser can insist upon the advantage of a price-drop or rescind the sale, without being deemed dishonorable and subject to the curse. (V. *supra* 44a.)
18. I.e., to supply for a certain period at the market price prevailing at the time of the contract. This prohibition naturally refers only to the case where the vendor himself lacks supplies when making the contract.
19. That one may not contract at the market price ruling in great fairs, though such are generally stable, and a fair indication of value. — Durmos, the word in the text, is a disguise of [G], or Mercurius, the divinity of commerce to whom a great annual fair, probably of Tyre, was dedicated (Jast.). [Krauss, *Lehnwörter*, connects it with the [G], race-course, which was also the market-place.]
20. Lit., 'are not fixed.'
21. When the wheat has been stored, or sufficient has been imported, its price is stabilized and there is no fear of appreciation, which may result in an appearance of interest.
22. New supplies were cheaper, because they were not yet fully dried. Now the purchaser, though paying early, does not receive the wheat until that too becomes old, and if he contracts for the whole at the price of new, he receives interest. Therefore he must wait until the same market price is fixed for both.
23. I.e., grains gleaned in small quantities from many fields, and consequently of inferior quality and cheaper.
24. Lit., 'of all men'.
25. I.e., the petty trader in gleanings.
26. Though a contract may not be made until the prices are equalized, that is only if the vendor may supply gleanings or ordinary stock; but if

BABA METZIAH – 58b-90b

the vendor is a gleaner, supplying only gleanings, the transaction is permitted.

27. That you permit it.
28. Lit., 'a householder', 'landlord'.
29. Hence the transaction should be universally permitted, for even an ordinary factor may obtain supplies of gleanings when his own stock is exhausted.
30. Hence, if he pays the lower price of gleanings, he receives interest for advancing the money.
31. Rashi: One may not borrow money with the stipulation that if it is not repaid by a certain date, provisions will be supplied in its stead at the market price prevailing at the time of the loan, which is lower than that which will prevail later. Others: One may not borrow a *se'ah* of corn to repay a *se'ah* later, when its value will have advanced, in reliance upon the fact that the corn has a fixed market price, and it is possible for the borrower to obtain a *se'ah* now or at any time that the price remains unaltered, either by cash or on credit, and keep it until repayment is due.
32. Tishri is the seventh month of the Jewish year, Tebeth the tenth. If they borrow money in Tishri and repay in kind in Tebeth at the prices of Tishri; or (taking the second interpretation, p. 420, n. 11) if they borrow provisions in Tishri and return the same quantity in Tebeth, is the transaction permitted?
33. V. p 377, n. 3.
34. Hence the transaction is not usurious. This contradicts R. Huna's former ruling.
35. To sell, its value there being greater.

Baba Mezi'a 73a

if the vendor retains the title thereto, it is permitted; if the vendee, it is forbidden.¹ If he was transporting provisions from place to place, when his neighbor met him and proposed, 'Let me have them, and I will supply you [later] with provisions that I have there,' if he actually possesses provisions there, it is permitted;² if not, it is forbidden. But carriers³ supply in the dearer place at the prices of the cheaper,⁴ without fear [of incurring the guilt of usury]. Why? — R. Papa said: They are satisfied by being informed of the market price.⁵ R. Aha the son of R. Ika said: They are satisfied with the extra discount they receive.⁶ Wherein do they differ? — In respect of a new trader.⁷

In Sura four [se'ahs] went [to the *zuz*]; in Kafri,⁸ six. So Rab gave money to the carrier,⁹ accepted himself the risks of carriage, and received five [se'ahs per *zuz*]. But why not take six?¹⁰ — For a man of great repute it is different.¹¹

R. Assi propounded of R. Johanan: May this be done with small ware?¹² — He replied: R. Ishmael son of R. Jose wished to do so with linen garments, but was not allowed by Rabbi. Others say, Rabbi wished to do so with small ware, but R. Ishmael son of R. Jose did not allow him.

An orchard:¹³ Rab forbade it; Samuel permitted it. Rab forbade it: Since it is worth more later on, it looks like payment for waiting.¹⁴ Samuel permitted it: Since there may be cause for regret,¹⁵ it does not look like payment for waiting.¹⁶ R. Shimi b. Hiyya said: But Rab agrees [where the plowing is done] with [the aid of] oxen, since great loss is caused.¹⁷

Samuel said to those who advance seed grain to be returned in new grain:¹⁸ Busy yourselves¹⁹ in the field, that ye may have a title to the soil itself;²⁰ for if not, it will be accounted as a loan to you, and forbidden.

Raba advised those who keep watch over the cornfields: Go out and find some occupation²¹ in the barn, that your wages may not be payable until then;²² since wages are not payable until the end [of one's task], and it is only then that they make you the gift.²³

The Rabbis protested to Raba: You enjoy usury. For everyone [who leases a farm] accepts four [*kor* as annual rent] and dismisses the tenant in Nisan;²⁴ whilst you wait until Iyar²⁵ and receive six.²⁶ He retorted: It is you who act contrary to the law; the land is in bond to the tenant;²⁷ if you make him quit in Nisan [before the crops are ripened], you cause him much loss. Whereas I wait until Iyar, thus greatly enhancing his profits.²⁸

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1. I.e., if the vendor bears the risk of carriage thither, it is not a loan, the vendee really selling it there on his behalf, and hence permitted. But if the vendee assumes responsibility, it immediately passes into his possession, and he is indebted for its value as a loan. Hence, since he repays more than it is worth where he receives it, it is usury.
2. For it is as though they were immediately transferred to the lender, and if they appreciate, it is the lender's which appreciates.
3. Lit., 'ass drivers.'
4. They receive money in the dearer place to supply provisions at a later date at the lower price of elsewhere.
5. For through the ready money they thus have in hand they are recognized as traders and receive credit, and this is ample repayment for their labor of bringing the provisions at their risk from one place to another (Rashi). Tosaf. in name of R. Han.: They are satisfied by being kept informed, by those who advance them money, of any rise in the market price in the dearer place during their absence, and thus aided in their sales.
6. [In consideration of the fact that they supply the produce in the dearer place at cheap rates.]
7. I.e., if the carrier has only just begun to trade thus. On the first view, that it is permitted because they are satisfied to be known as merchants and receive credit, it is permitted here too, since the same reason operates; (according to Tosaf., being new traders and inexperienced in price fluctuations, they are sufficiently compensated by being informed thereon). But on the second view, being new, they lack the farmer's confidence, who may not believe that they are supplying the produce in the dear place at cheap rates, and hence receive no additional discount. Therefore the transaction is forbidden, for his labor of carriage is merely on account of the money advanced, and thus partakes of the nature of usury.
8. [South of Sura, Obermeyer, *op. cit.*, p. 316.]
9. To bring the produce from Kafri.
10. As above; the more so in that since he accepted the risks of the road, it was an ordinary purchase.
11. He must be more considerate.
12. Does the above law of carriers hold good for all merchandise, or only for wheat? For it may be argued that the two reasons stated apply only to wheat, in which there are frequent price fluctuations and a constant demand. But in other merchandise the prices are more stable, which disposes of the first reason as explained by Tosaf., and the demand is less constant, and hence he is not likely to receive a greater discount, for the demand having been satisfied, it will not recur for a considerable time; nor is he, for the same reason, likely to receive recognition as a trader.
13. Rashi: 'vineyard'. I.e., to advance money at a fixed price for the fruits of the orchard before they are ripe, to be delivered when ripe. The fixed price is naturally less than that of ripe fruit.
14. V. *supra* 63b.
15. If the orchard is smitten with hail, or the plants with disease, the risks of which are borne by the purchaser. [Others: 'a mishap may befall it.]
16. But as a speculation. He may (and probably will) receive more than his money's worth, but on the other hand he may lose it.
17. V. *supra* 30a top. Hence there is a greater element of risk which converts it into a speculation. [Tosaf.: Cattle breeders (who buy the offspring before it is born) since the risks are great.]
18. Rashi and Jast. Tosaf.: who advance money for loads of faggots, to be delivered at vintage time. Lit., 'who cut grapes or branches.'
19. Lit., 'turn over.'
20. On which the grain grows; hence the grain, or, as Tosaf. interprets, the growing faggots are already yours. To do some work in a field was a method of obtaining a title thereto.
21. Lit., 'turn over.'
22. I.e., until you have finished those self-imposed tasks.
23. Lit., 'remit in your favor' (what they pay you over and above the stipulated wage). These watchers were not paid until the corn was winnowed, though wages were due to them immediately after harvesting; but in consideration thereof they were given something above their due. Now this has the appearance of interest, therefore Raba advised them to find some small tasks in the barn, so that their wages should not be legally payable until they actually received them, in which case the 'tip' would be a gift, not interest. [So according to some texts; cur. edd.: 'They reduce the price in your favor. According to this reading the watchers received payment in kind at a cheaper rate in compensation for waiting for their wages; hence Raba's advice.]
24. The first month of the Jewish Year. They insist that he shall reap then and quit the field. [This haste in harvesting the corn before it was quite ripe was due to the unsettled state of the country during the Persian — Roman wars. Funk, S., *Die Juden in Babylonian*, II, p. 85.]
25. The second month.

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26. The protest was based on the assumption that the additional two was payment for waiting the extra month.
27. I.e., he has a title thereto until the crops are fully ripe.
28. Hence I am entitled to a greater rental in return for the greater value they receive [Raba's prominence assured his property of government protections and he could safely 'allow his crops to remain in the field until they ripened fully. Funk, *loc. cit.*]

Baba Mezi'a 73b

A certain heathen gave a house in pledge¹ to R. Mari b. Rachel,² and then sold it to Raba. Thereupon he [R. Mari] waited a full year, took the rent, and offered it to Raba.³ Said he to him: 'The reason that I have not offered you rent before this is that an unspecified pledge is a year. Had the heathen wished to make me quit [within the year], he would have been unable;⁴ but now you must take rent for the house'. He replied: 'Had I known that it was pledged to you, I should not have bought it. Now I will treat you according to their laws; for until they redeem the pledge⁵ they receive no rent; so I will take no rent from you until you are paid out'.⁶

Raba of Barnesh⁷ said to R. Ashi: See, Sir, the Rabbis enjoy⁸ usury. For they advance money for wine in Tishri, and receive choice quality in Tebeth!⁹ He replied: They too pay their money for wine, not vinegar, and from the very beginning, wine is wine, and vinegar, vinegar;¹⁰ it is then [when they pay] that they select choice wine.¹¹

Rabina gave money [for wine] to the residents of Akra dishanwatha,¹² and they supplied¹³ a liberal addition.¹⁴ So he went to R. Ashi and asked him: Is it permitted?¹⁵ Yes, he replied; they but forego [their rights] in your favour.¹⁶ But, said he, the land is not theirs!¹⁷ — The land is pledged for the land tax, he replied, and the king has decreed: He who pays the land tax is entitled to the usufruct.

R. Papa said to Raba: See, there are some scholars who advance money for people's poll tax and then put them to much service! — He

replied: I might have died, without telling you this thing. Thus said R. Shesheth: The surety¹⁸ of these people lies in the king's archives, and the king has decreed that he who does not pay his poll tax is made the servant of him who pays it [on his behalf].

R. Se'oram, Raba's brother, used to seize people of disrepute and make them draw Raba's litter. Said Raba 'to him: You have done well. For it has been taught:¹⁹ If you see a man who does not behave in a seemly fashion, whence do we know that you may make him your servant? From the verse, They [sc. Canaanite slaves] shall be your bondmen forever and your brethren the children of Israel [likewise].²⁰ I might think that this is so even of one who behaves in a seemly fashion; therefore it is taught, but over your brethren, the children of Israel, ye shall not rule one over another with rigour.²¹

R. Hama said: If a man gives his neighbor money to buy wine for him, and he negligently fails to do so, he must compensate him as it is sold in the market of Belshafat.²² Amemar said: I repeated this ruling before R. Zebid of Nehardea, whereupon he observed: R. Hama's dictum applies only to unspecified wine, but not to a particular wine, [for] who knows that he could have obtained it for him?²³ R. Ashi said: Even for unspecified wine it is also not [correct]. Why? Because it is an *asmakta*, and an *asmakta* establishes no legal claim.²⁴ But in R. Ashi's view, how does this differ from what we learnt: [If the tenant-farmer declares], 'If I let it lie waste without cultivating it, I will pay with the best [of produce,'²⁵ he is bound to do so]? — There it is in his power [to cultivate it];²⁶

1. V. *supra* 67b.
2. He was the son of a Jewess and a proselyte, conceived before conversion and born after, and was therefore called by his mother's name.
3. For the coming year, but not for the past.
4. Therefore I was entitled to live rent-free in the house. V. *supra* 67b.
5. Lit., 'make (the creditor) quit.
6. Lit., 'until I cause you to quit by (payment of) money,' i.e., until I compel the heathen to

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repay you. This was not forbidden as usury, since not Raba but the heathen owed him money (Rashi).

7. [Near Matha Mahasia, a suburb of Sura, Obermeyer, *op. cit.* p. 297.]
8. Lit., 'devour'.
9. Whereas had they taken it in Tishri, it might have turned sour by Tebeth. Thus in return for their advancing the money before the receipt of the goods the vendor takes the risk of deterioration, which is usury. Now, though it was stated, *supra* 72b, that one may buy wheat ahead if the buyer has stock when the money is paid, Raba of Barnesh thought that wine is different, because it is liable to turn sour. (Rashi).
10. I.e., good wine remains good; if it turns now, it was poor from the very beginning, already containing the germs of deterioration, as it were, but its faultiness was not then discernible.
11. And they insist on receiving it, because only if it is sound now was it sound then.
12. [Fort of Shanutha, 4 parasangs west of Bagdad, and identical with Be-Kufai; v. B.B. (Sonc. ed.) p. 120, n. 8, the former being the Arabic, the latter the Aramaic name of the Fort, Obermeyer, *op. cit.*, p. 268.]
13. Lit., 'they poured'.
14. [So Jast. Others: an additional jug, measure.]
15. Or is it usury for having paid the money in advance?
16. The right of giving you exactly the stipulated quantity.
17. By paying the land tax on behalf of the original owners, who, being unable to pay it, had fled, they had become possessed thereof, and it is questionable whether they have the right to dispose of the wine.
18. So Jast. Rashi: the service-warrant.
19. [So according to some texts; cur. edd.: 'we learnt'. The quotation however is not from a Mishnah.]
20. Lev. XXV, 46.
21. Ibid. The verse, of course, is not actually thus interpreted, but merely cited in support of his practice, with the caveat that men of good standing must not be molested.
22. Walshafat, v. B.B. (Sonc. ed.) p. 409, n. 6. Having neglected to buy a vintage, when wine is cheap, so that it must now be bought at ordinary market prices, he must duly compensate him. [Obermeyer, *op. cit.* p. 185, renders: he pays him (the agent) only in accordance with the (low) price current in the wine market of Balash-Abad.]
23. Even had he not been negligent, he might have failed to obtain the particular wine ordered.

24. V. Glos. Even if the agent undertook to forfeit the loss, should he not buy the wine, his pledge is invalid, not having been meant seriously.

25. V. *infra* 104a.

26. Therefore his undertaking is not an *asmakta*, but seriously meant.

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here it does not rest with him.¹

Raba said: If three men gave money to one person to purchase something for them, and he purchased on behalf of one only, he has purchased [it] for all three.² This is so only if he [the agent] did not make up a separate sealed package of each man's money; but if he did, then for whom he has bought, he has bought, and for whom he has not bought, he has not bought.

R. Papi said in Raba's name: The mark [on the wine-barrels]³ gives possession. In respect of what [does it affect a title]? — R. Habiba said: In respect of actual possession.⁴ The Rabbis said: For the acceptance of the curse.⁵ And the law is that [it gives possession only] in respect of submission to the curse. But where it is the usage that this gives actual possession, it does so [with full legal recognition].⁶

IF HE WAS OF THE FIRST HARVESTERS. Rab said: If [only] two [processes] are wanting [before the crops are ready for delivery] a contract may be made; if three, no contract may be made. Samuel said: [If they are to be done] by man, even if a hundred [are lacking] an agreement may be effected; if by Heaven,⁷ even when one [is lacking] no contract may be made. We learnt: HE MAY ENTER INTO A CONTRACT FOR [THE CROPS IN] THE STACK. But it still wants spreading out in the sun to dry, threshing, and winnowing?⁸ — It means that it had already been spread out [and dried] in the sun. But on Samuel's view, that if dependent on Heaven, even when one [process is lacking] no contract may be made, does it not need winnowing, which is in the

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power of Heaven?² — It can be done with a fan.

AND FOR THE BASKET OF GRAPES. But they yet need heating,¹⁰ placing in the press, treading, and being drawn [into the pit]!¹¹ As R. Hiyya learnt: [A contract may be made] in respect of the heated mass of olives; so here too, it is for the heated mass of grapes. But three processes are still wanting! — [It refers] to a place where the buyer draws [the wine into the pit].¹²

AND FOR THE VAT OF OLIVES. But it must yet be heated, placed between the boards [of the olive press], pressed, and conducted [into the oil pit]! — As R. Hiyya taught: [The contract may be made] in respect of the heated mass of olives. [So here too.] But three processes are still wanting! — [It refers] to a place where the buyer draws [the oil into the pit].

AND FOR POTTERS' LUMPS OF CLAY. But why? Surely it requires molding, drying, placing in the oven, burning, and taking out! — [It means,] when they have been molded and dried. But there are still three [processes wanting]! — [It refers] to a place where the buyer removes [the earthenware from the oven.]

AND FOR LIME, WHEN IT HAS ALREADY BEEN PLACED IN THE KILN. But it requires to be burnt, removed [from the kiln], and crushed!¹³ — [It refers] to a place where the purchaser crushes it. But on the view of Samuel, who maintained that if they are to be done by man, even when a hundred [processes are wanting] a contract may be made, why must it have 'BEEN PLACED IN THE KILN? — Say thus: when it is ready for placing in the kiln.¹⁴

AND FOR POTTERS' LUMPS OF CLAY. Our Rabbis taught: Contracts may not be entered into for potters' lumps of clay until they are kneaded [into lumps]: this is R. Meir's view. R. Jose said: This refers only to white earth;¹⁵ but for black earth, such as that of Kfar Hanania and its environs, Kfar

Sihin¹⁶ and its environs, an agreement may be concluded, for even if one [merchant] has none, another has.

Amemar paid money [for earthenware] when he [the manufacturer] had stocked himself with the earth. In accordance with whom [did he do this]? If in accordance with R. Meir? Surely R. Meir ruled [that no contract may be made] until they are kneaded [into clay]!¹⁷ If with R. Jose, surely he said, Even if one has none, another has?¹⁸ — In truth, it was in accordance with R. Jose, but in Amemar's locality earth [for this purpose] was rare; hence, if he is stocked therewith, each places full reliance;¹⁹ if not, they place no reliance.²⁰

ONE MAY ALSO MAKE A FIXED CONTRACT FOR MANURE FOR THE WHOLE YEAR. But are not the Sages identical with the first Tanna?²¹ — Raba said:

1. For he might have failed to procure the wine at the stipulated price in any case. Hence his undertaking was an *asmakta*.
2. All three must share it.
3. [H]. When merchants bought wine, they left it in the cellars of the growers, taking out barrel by barrel according to need, and affixed a mark on each that they had bought. [Asheri in name of R. Han. explains it as 'handshake', a recognized method among traders of closing a deal.]
4. That by affixing a mark it passes completely into the possession of the merchant, as though *meshikah* (v. [Glos.](#)) had taken place, and henceforth he must bear all risks.
5. Lit., 'He who punished, etc. '; v. *supra* 44a. It still belongs to the wine-grower (the payment of money not effecting a change of ownership), but should he desire to rescind the sale, as he may legally do, he must submit to the curse.
6. I.e., a method of acquisition based on local usage receives full legal recognition.
7. I.e., processes not dependent on man.
8. This refutes both Rab and Samuel, for three processes are wanting, one of which, at least, sc. drying by the sun, is not in man's power.
9. This was done by throwing the corn to the wind, which separated the grain from the chaff.
10. prior to manufacture the grapes were heated and caused to shrink by exposure to the sun.
11. This too refutes Rab and Samuel.

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12. Hence only two processes are wanting.
13. Before it is fit for use.
14. I.e., when he has the materials for making the lime, the fuel, etc., with which the kiln was fired.
15. Which is rare and difficult to obtain.
16. Both in Galilee.
17. But not while it is still earth.
18. So that Amemar could have given money even sooner.
19. Upon the transaction, which cannot be rescinded without submission to a curse.
20. And each may retract.
21. V. Mishnah, 72b.

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They differ with respect to winter.¹

AND ONE MAY ALSO BARGAIN FOR THE LOWEST PRICE. A man once paid money [in advance] for his father-in-law's dowry,² [i.e., the trousseau comprised therein.] Subsequently the dowry fell in price.³ So they came before R. Papa. Said he to him [the purchaser]: If you have contracted for the lowest price, you can take at present prices; if not, you must accept at the original price. But the Rabbis protested to R. Papa: Yet if he did not stipulate [thus], must he accept at previous prices? Surely it is only money [that has passed between them], and money gives no title! — He replied: I too spoke only with reference to submission to the curse. If he stipulated for the lowest price, and the vendor wishes to retract, the vendor must submit to the curse; if no stipulation has been made, and the purchaser wishes to retract, the purchaser must submit to the curse. Rabina said to R. Papa: Whence do you know that it [our Mishnah under discussion] accords even with the Rabbis who disagree with R. Simeon and maintain that money does not affect possession;⁴ and yet even so, [only] if he stipulated for the lowest price does he receive at the present value, but if not, he must accept it at the previous price?⁵ Perhaps it accords [only] with R. Simeon, who maintained that money effects possession,⁶ so that, if he stipulated for the lowest price, he receives it at current values, but if not, he must accept it at previous

prices, because his money has effected possession for him; whereas in the opinion of the Rabbis, whether he stipulated or not, he can take it at present prices, for a man's intention is for the lowest price?⁷ — He replied: You must assume that R. Simeon ruled [that the purchaser is morally in possession after paying money] only if the price remained uniform; but did he rule thus when there were two prices?⁸ For should you not admit this, does R. Simeon maintain that the provision of the curse never applies to the purchaser?⁹ And should you rejoin, That indeed is so — surely it has been taught: At all events, such is [merely] the *halachah*; but the Sages said, He who punished, etc.¹⁰ What is meant by 'at all events'? Surely that it matters not whether the vendor or the purchaser [retracts], he must submit to the curse? Hence R. Simeon gave his ruling [that the vendee cannot legally cancel the sale] only if the price remained uniform, but if not there were two prices.

R. Aha, the son of Raba, said to Raba: But does it not follow [that there is no curse in the case under discussion], since in the first place he [the father-in-law] had only appointed him [the son-in-law] as his agent?¹¹ — He replied: This refers to a merchant who buys and sells.¹²

MISHNAH. A MAN MAY LEND HIS TENANTS¹³ GRAIN FOR [AN EQUAL QUANTITY OF] GRAIN [TO BE RETURNED] FOR SOWING PURPOSES, BUT NOT FOR FOOD. FOR RABBAN GAMALIEL USED TO LEND HIS FARMER-TENANTS GRAIN FOR GRAIN FOR SOWING; AND IF IT WAS DEAR AND BECAME CHEAP, OR CHEAP AND BECAME DEAR, HE WOULD ACCEPT [A RETURN] ONLY AT THE LOWER PRICE;¹⁴ NOT BECAUSE THE *HALACHAH* IS SO, BUT BECAUSE RABBAN GAMALIEL DESIRED TO SUBMIT HIMSELF TO GREATER STRINGENCY.¹⁵

GEMARA. Our Rabbis taught: A MAN MAY LEND HIS TENANTS GRAIN FOR GRAIN FOR SOWING. That is only if he [the tenant]

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has not entered therein;¹⁶ but if he has entered therein, it is forbidden. Why does our Tanna draw no distinction whether he has entered therein or not, whereas the Tanna of the Baraitha does? Raba replied: R. Idi explained the matter to me: In the locality of our Tanna the *aris* provided the seed, and whether he has yet entered therein or not, as long as he has not provided the seed he [the landlord] can make him quit;¹⁷ hence, when he enters therein [and the owner provided the seed] it is [straightway] for a lower return.¹⁸ But in the locality of the Tanna of the Baraitha the landowner provided the seed;¹⁹ hence, if he [the *aris*] has not yet entered therein, so that he [the landlord] can make him quit, when he does enter, it is for a lower return; but if he has already²⁰ entered, so that he cannot force him to quit, it is forbidden.²¹

Our Rabbis taught: A man may propose to his neighbor,

1. When very little dried manure for fertilizing is available. The first Tanna permits a contract even for winter ('FOR THE WHOLE YEAR'); but the Sages, who permit the transaction because even if one has none another may have it, refer only to summer, when it is plentiful, but not to winter, when there may be a shortage amongst all merchants.
2. Which the father in-law was to provide, the father-in-law having made him his agent.
3. Before delivery.
4. In respect of both the vendor and purchaser; v. *supra* 44a.
5. Or rescind the sale only on submission to a curse.
6. In respect of the purchaser, viz., that he cannot rescind the bargain at all, even on pain of submission to the curse.
7. Since the Rabbis maintain that the vendee may rescind the sale even without a drop in price, but that he is subject to the curse, it may be that if the price falls, he is even morally entitled to retract, for a 'most favored-sale' is implicit in every such transaction.
8. I.e., if the price fell.
9. For if the sale is always legally binding upon the purchaser there is no possibility of his ever having to submit to the curse.
10. V. *supra* 48a; this was said by R. Simeon.
11. Since the father-in-law provides the dowry, the son-in-law merely acted on his behalf in placing the order. The latter is not subject to

the curse, since he does not retract, whilst the former may repudiate his agent for not having fulfilled his task in a proper manner by making the necessary stipulation.

12. The son-in-law did not act as an agent, but bought on his own account, to sell to his father-in-law.
13. *Aris*, a tenant who pays a percentage of the crops as rent.
14. I.e., if he lent them grain when it was cheap, and then it advanced, he would only accept current value, hence a smaller quantity.
15. Therefore the Tanna finds it necessary to state the true *halachah*.
16. I.e., has not commenced any work in the field.
17. Even if he has plowed the field, he can be forced to quit.
18. Since he could have been forced to leave the field altogether, the seed which the owner provides is not regarded as a loan but as an addition, as it were, to the land he leases him; and in consideration thereof the *aris* is to pay him the same quantity over and above what he would otherwise have to pay him. Therefore, even if the seed advances in price, there is no interest on a loan.
19. I.e., normally; but in this case, owing to the superior quality of the soil, the owner had stipulated that the *aris* was to provide it.
20. And then agreed to provide the seed himself, contrary to local usage, and then the owner advanced it, the same quantity to be repaid later.
21. For in that case, the land already having been leased, it cannot be maintained that the seed advanced is an addition to the field.

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'Lend me a *kor* of wheat,' and stipulate a monetary return:¹ if it depreciates, he returns wheat; if it advances, he repays its value [as at the time of borrowing]. But did he not stipulate?² — R. Shesheth answered: It is thus meant: if no stipulation is made, and it depreciates, he takes wheat; if it advances, he repays its [original] value.

MISHNAH. A MAN MAY NOT SAY TO HIS NEIGHBOUR, 'LEND ME A *KOR* OF WHEAT AND I WILL REPAY YOU AT HARVEST TIME';³ BUT HE MAY SAY, 'LEND ME UNTIL MY SON COMES, OR UNTIL I FIND THE KEY.'⁴ HILLEL, HOWEVER, FORBADE [EVEN THIS.] AND THUS HILLEL USED TO SAY: A WOMAN MUST NOT LEND A LOAF TO HER

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NEIGHBOUR WITHOUT FIRST VALUING IT, LEST WHEAT ADVANCES AND THUS THEY [THE LENDER AND BORROWER] COME TO [TRANSGRESS THE PROHIBITION OF] USURY.

GEMARA. R. Huna said: If he possesses a *se'ah*, he may borrow a *se'ah*; two *se'ahs*, he may borrow two *se'ahs*.⁵ R. Isaac said: Even if he has only a *se'ah*, he may borrow many *kors* against it.⁶

R. Hiyya taught the following, which is in support of R. Isaac: [One may not borrow wine or oil for the same quantity to be returned, because] he has not a drop of wine or oil.⁷ Surely then, if he has, he may borrow a large quantity against it.⁸

HILLEL, HOWEVER, FORBADE [EVEN THIS]. R. Nahman said in Samuel's name: The *halachah* agrees with Hillel's ruling. The law is nevertheless not in accordance with him.⁹

AND THUS HILLEL USED TO SAY, A WOMAN MUST NOT LEND, etc. Rab Judah said in Samuel's name: This is Hillel's view, but the Sages maintain, One may borrow and repay unconditionally.

Rab Judah also said in Samuel's name: The members of a company who are particular with each other¹⁰ transgress [the prohibition of] measure, weight, number, borrowing and repaying on the Festival,¹¹ and, according to Hillel, usury too.¹²

Rab Judah also said in Samuel's name: Scholars may borrow from each other on interest. Why? Fully knowing that usury is forbidden, they merely present gifts to each other.¹³ Samuel said to Abbuha b. Ihi: Lend me a hundred peppercorns for a hundred and twenty. And this is well.¹⁴

Rab Judah said in Rab's name: One may lend to his sons and household on interest, in order to give them experience thereof.¹⁵ This, nevertheless, is incorrect, because he will come to cling thereto.¹⁶

MISHNAH. A MAN MAY SAY TO HIS NEIGHBOUR, 'HELP ME TO WEED, AND I WILL HELP YOU; ASSIST ME TO HOE, AND I WILL ASSIST YOU.'¹⁷ BUT HE MAY NOT SUGGEST, 'DO YOU WEED WITH ME, AND I WILL HOE WITH YOU; DO YOU HOE WITH ME, AND I WILL WEED WITH YOU.'¹⁸

1. Viz., its value when borrowing.
2. To return money; why then repay wheat if its value falls?
3. Lest it become dearer.
4. I.e., he has it, but it is temporarily inaccessible. Since the prohibition of lending a *se'ah* for a *se'ah* is only Rabbinical, it was not enacted when the borrower actually possesses the grain.
5. The reference is to 'LEND ME UNTIL MY SON COMES, etc.'
6. For in point of fact, the *se'ah* that he has does not pass into the lender's possession, and he could, if he wished, dispose of it and then purchase a *se'ah* for repayment, even at a higher price. Thus, having borrowed one *se'ah*, he is at liberty to dispose of the first and remain in debt for what he borrowed: this *se'ah* (the borrowed one) then serves as a standby for another, and the second for a third, and so on.
7. Hence, if the price of wine or oil advances, there is usury.
8. Lit., 'many drops'.
9. Sc., R. Nahman in Samuel's name.
10. I.e., members of a company at one table, each of whom has his own provisions, and when one borrows from another, are particular to weigh, measure, or count, that the exact quantity may be returned.
11. On a Festival one may borrow from his neighbor, but not by weight, measure or number. Likewise, he may not use the terms 'lend' and 'repay', for these belong to monetary transactions. Now Rab Judah observes, when members of a company are particular with each other, they are likely to be led into the transgression of these prohibitions.
12. When members of a company are not particular with each other, and one borrows and returns the same amount after it has advanced, there is no usury, since neither cares whether the exact amount is returned or not. But if they are particular, every change in value is scrupulously noted, and therefore, if it advances, there is usury. This does not refer particularly to Festivals. Since Rab Judah maintains that Hillel's ruling applies only to members who are particular with each other,

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it follows that neighbors, in respect of whom Hillel stated his view, are always so regarded. (Tosaf.)

13. This refers only to a trifling matter, such as might be given in any case. (Tosaf.) [They are not as petty and niggardly in their relations to one another as those whose only common bond of interest is the dining table; v. Rappaport, J.H., *Das Darlehen*, p. 135.]
14. I.e., it is not usury.
15. Lit., 'to let them know the taste of usury'; i.e., that they should know the bitterness and cankering cares of having to return more than is borrowed.
16. In teaching his children the dark side of interest, he himself will be impressed with its happy side-for the lender-and engage in it.
17. Though by the time he comes to reciprocate labor costs may have advanced.
18. One may be more difficult than the other, and so there may be an appearance of usury.

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ALL THE DAYS OF THE DRY SEASON ARE EQUAL,¹ AND LIKEWISE OF THE RAINY SEASON.² [BUT] ONE MAY NOT SAY, 'PLOW WITH ME IN THE DRY SEASON, AND I WILL PLOW WITH YOU IN THE RAINY SEASON'.³ RABBAN GAMALIEL SAID: THERE IS [A FORM OF] PREPAID INTEREST AND ONE OF POSTPAID INTEREST. E. G., IF ONE MADE UP HIS MIND TO BORROW FROM HIS NEIGHBOUR AND SENT HIM [A GIFT], SAYING, 'IT IS IN ORDER THAT YOU SHOULD LEND ME' — THAT IS INTEREST IN ADVANCE. IF HE BORROWED FROM HIM, REPAID HIS MONEY, AND THEN SENT HIM [A GIFT], SAYING, 'IT IS ON ACCOUNT OF YOUR MONEY WHICH, [AS FAR AS YOU WERE CONCERNED], LAY IDLE WITH ME' — THAT IS POSTPAID INTEREST. R. SIMEON SAID: THERE IS A FORM OF VERBAL INTEREST. [THUS:] HE [THE BORROWER] MAY NOT SAY TO HIM [THE LENDER], 'KNOW THAT SO-AND-SO HAS COME FROM SUCH AND SUCH A PLACE.'⁴

THE FOLLOWING TRANSGRESS NEGATIVE INJUNCTIONS: THE LENDER, THE BORROWER, THE SURETY, AND THE WITNESSES; THE SAGES ADD, THE NOTARY TOO. THEY VIOLATE: THOU SHALT NOT

GIVE [HIM THY MONEY UPON USURY],⁵ TAKE THOU [NO USURY] OF HIM,⁶ THOU SHALT NOT BE TO HIM AS AN USURER,⁷ NEITHER SHALL YE LAY UPON HIM USURY,⁸ AND THOU SHALT NOT PUT A STUMBLING BLOCK BEFORE THE BLIND, BUT SHALT FEAR THY GOD: I AM THE LORD.⁹

GEMARA. It has been taught: R. Simeon b. Yohai said: Whence do we know that if a man is his neighbor's creditor for a *maneh*, the latter must not extend a greeting to him, if that is not his usual practice? From the verse, Usury of any word which may be usury, [teaching] that even speech is forbidden.

THE FOLLOWING TRANSGRESS. Abaye said: The lender infringes all;¹⁰ the borrower: *Thou shalt not cause thy brother to take usury,*¹¹ *but unto thy brother thou shalt offer no usury,*¹² *and thou shalt not put a stumbling block before the blind. The Surety and the witness: only, neither shall ye lay upon him usury.*¹³

It has been taught: R. Simeon said: Those who lend on interest lose more than they gain.¹⁴ Moreover, they impute wisdom¹⁵ to Moses, our Teacher, and to his Torah, and say, 'Had Moses our Teacher known that there is profit in this thing [sc. usury], he would not have prohibited it.'¹⁶

When R. Dimi came,¹⁷ he said: Whence do we know that if one is his neighbor's creditor for a *maneh* and knows that he has naught [for repayment], he may not even pass in front of him? From the verse, Thou shalt not be to him as an usurer.¹⁸ R. Ammi and R. Assi say: It is as though he subjected him to a twofold trial,¹⁹ for it is written, *Thou hast caused man to ride over our heads; we went through fire and through water.*²⁰

Rab Judah said in Rab's name: He who has money and lends it without witnesses infringes, and thou shalt not put a stumbling block before the blind.²¹ Resh Lakish said: He brings a curse upon himself, as it is written, *Let the lying lips be put to silence; which speak*

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*grievous things proudly and contemptuously against the righteous.*²²

The Rabbis observed to R. Ashi: Rabina fulfils all the Rabbinical requirements. He [R. Ashi] sent word to him [Rabina] on the eve of the Sabbath: 'Please, let me have [a loan of] ten *zuz*, as I just have the opportunity of buying a small parcel of land.' He replied, 'Bring witnesses and we will draw up a bond.' 'Even for me too!' he sent back. 'You in particular,' he retorted, 'being immersed in your studies, you may forget, and so bring a curse upon me.'

Our Rabbis taught: Three cry out²³ and are not answered. Viz., he who has money and lends it without witnesses; he who acquires a master for himself; and a henpecked husband. 'He who acquires a master for himself;' what does this mean? — Some say: He who attributes his wealth to a Gentile;²⁴ others: He who transfers his property to his children in his lifetime; others: He who is badly-off in one town and does not go [to seek his fortune] elsewhere.

CHAPTER VI

MISHNAH. IF A MAN ENGAGES ARTISANS AND THEY DECEIVE EACH OTHER, THEY CAN ONLY CHERISH RESENTMENT AGAINST EACH OTHER.²⁵ IF HE HIRES AN ASS-DRIVER OR A WAGGONER²⁶ TO BRING LITTER-CARRIERS AND PIPERS FOR A BRIDE OR FOR THE DEAD,²⁷ OR LABOURERS TO REMOVE HIS FLAX FROM THE WATER OF STEEPING, OR ANYTHING WHICH WOULD BE IRRETRIEVABLY LOST,²⁸ AND THEY [THE WORKERS] BREAK THEIR ENGAGEMENT;²⁹ IF IT IS A PLACE WHERE NO OTHERS ARE AVAILABLE AT THE SAME WAGE, HE MAY HIRE [WORKERS] AGAINST THEM³⁰ OR DECEIVE THEM.³¹ IF HE ENGAGES ARTISANS AND THEY RETRACT [AFTER DOING SOME WORK]. THEY ARE AT A DISADVANTAGE;

1. Lit., 'one.'
2. I.e., there is no fear that one day may be longer than another or more difficult for

working, so that the value of labor on one is greater than on the other.

3. In different seasons the work is of unequal difficulty.
4. The mere giving of information which he would otherwise not have given, is interest. But the text in J. a.l. is, 'Know that if so-and-so has come, etc.' On this reading, it is the lender who speaks thus to the borrower, and to make the sense complete, Maim. Yad, Loweh, 13, adds, 'and when he comes, show him hospitality.' Now, though the borrower would probably have done this in any case, his doing it at the lender's behest becomes interest, and is forbidden. The passage then must be translated: R. Simeon said, There is a form of interest arising through (the creditor's) words (orders). (V.J.D. CLX, 12 [H] a.l. § 5 and [H] a.l. § 21.)
5. Lev. XXV, 37.
6. Ibid. 36.
7. Ex. XXII, 24.
8. Ibid.
9. Lev. XIX, 14. The borrower, by offering interest and appealing to the creditor's avarice, places a stumbling block before him.
10. The injunctions enumerated in the Mishnah.
11. Deut. XXIII, 20. For this translation v. p. 363, n. 4.
12. Ibid. 21. Alfasi and the Asheri Omit this, and Maim.'s text likewise appears to have omitted it.
13. I.e., take no part in a transaction which imposes usury.
14. V. *supra* 71a: He who lends on interest, his wealth dissolves ... and he sinks into poverty, never to rise again.
15. A euphemism for folly.
16. Lit., 'written it'.
17. From Palestine to Babylon.
18. I.e., do not emphasize that he is in your debt: and so put him to shame.
19. Lit., 'judged him with two verdicts.'
20. Ps. LXVI, 12; v. Ber. 6b.
21. Lev. XIX, 14.
22. Ps. XXXI, 19; when the creditor demands repayment, and the debtor denies the loan, he is reviled for preferring unjust claims.
23. I.e., vent their grievances at law.
24. V. p. 367, n. 2; the Gentile may learn of this, and demand its return.
25. But have no legal redress. In the view of the Rabbis, even for resentment there must be some justifiable cause; otherwise it is morally wrong.
26. The Karlsruhe MS. and Tosaf. read [H], ([H] to roll, drag; cf. [H] a wagoner). Our editions read [H], which, according to Jast., is a dialect form of [H]. Tosaf. suggests that [H] (a potter)

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may be used in the Mishnah, because potters generally have wagons (for conveying their wares).

27. It was a custom to have professional mourners and pipers, who played sad music at funerals. The numbers varied according to wealth and social position, but even the poorest had at least one professional mourner and two pipers.
28. If postponed. The bringing of pipers for a funeral or marriage is included in this category, because they are required for a particular time, and without them the ceremony suffers (Tosaf.).
29. Lit., 'withdrew' in the middle of their work.
30. I.e., at a higher wage. and claim the difference from the first.
31. This is discussed in the Gemara.

Baba Mezi'a 76a

IF THE EMPLOYER RETRACTS, HE IS AT A DISADVANTAGE.¹ HE WHO ALTERS [THE CONTRACT] IS AT A DISADVANTAGE,² AND HE WHO RETRACTS IS AT A DISADVANTAGE.

GEMARA. It is not stated, One or the other retracts. but **THEY DECEIVE EACH OTHER**, implying the artisans deceive each other:³ viz., the employer instructed him [sc. his employee]. 'Go and hire me workers;' whereupon he went and deceived them. How so? If the employer's instructions were at four [zuz per day], and he went and engaged them for three, what cause have they for resentment? They understood and agreed! Whilst if the employer's instructions were for three, and he went and engaged them at four, what then were the conditions? If he [who engaged them] said to them, 'I am responsible for your wages.' he must pay them out of his [pocket]. For it has been taught: If one engages an artisan to labor on his [work], but directs him to his neighbor's, he must pay him in full, and receive from the owner [of the work actually done] the value whereby he benefitted him!⁴ — It is necessary to teach this only if he said to them, 'The employer is responsible for your pay.' But let us see at what rate workers are engaged?⁵ — It is necessary [to teach this] only when some [workmen] engage themselves for four [zuz]

and others for three. Hence they can say to him, 'Had you not told us that it is for four zuz, we would have taken the trouble to find employment at four.'⁶ Alternatively, this may refer to a householder.⁷ Hence he can say to him, 'Had you not promised me four, it would have been beneath my dignity to accept employment.' Or again, it may refer, after all, to [normal] employees. Yet they can say to him [the foreman], 'Since you told us it was for four, we took the trouble of doing the work particularly well.' But then let us examine the work?⁸ — This refers to a dyke.⁹ But even [in] a dyke, it [superior workmanship] may be distinguished! — It means that it is filled with water, and so not noticeable. Another possibility is this: In truth, it means that the employer gave instructions for four, and he went and engaged them for three; but as to your objection, 'They understood and accepted!' — they can remonstrate with him. 'Do you not believe in, *Withhold not good from them to whom it is due?*'¹⁰

It is obvious, if the employer instructed him [to engage laborers] for three [zuz per day], and he went and promised them four, but they stipulated, 'According to the employer's instructions', that their reliance was upon him [who engaged them],¹¹ But what if the employer instructed him [to engage them] at four, and he went and promised them three, and they said, 'Be it as the employer instructed'? Did they rely on his [the agent's] words, saying to him, 'We believe you that the employer has instructed you thus'; or perhaps they relied upon the words of the employer?¹² — Come and hear: [If a woman said to a man.] 'Bring me my divorce,' and [he went and stated to her husband,] 'Your wife authorized me to accept the divorce on her behalf;' [to which] he replied. 'Take it, in accordance with her instructions,' — R. Nahman said in the name of Rabbah b. Abuhah in Rab's name: Even when the divorce reaches her hand, she is not divorced. This proves that he [the husband] relies upon his [the agent's] statement. For should you maintain that he relies upon hers, then at

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least when the divorce reaches her hand, let her be divorced!¹³ Said R. Ashi:

1. Thus, in the first instance, if labor costs increased after they retracted, the employer may deduct the increase that he will have to pay from the wages due for the work already done. If, on the other hand, they decrease, the profit is the employer's, and the workers cannot demand the whole sum originally agreed upon less the (diminished) cost of completing the work. In the second instance, the employer must pay his workmen for what they have already done pro rata even if labor costs advance, and he must pay more for the rest. Should they decrease, however, he is bound to pay the whole sum originally agreed upon less only the diminished cost of the rest.
2. E.g., if a dyer was ordered to dye wool red, and dyed it black, he can only demand either his own expenses for dyeing or the increased value of the wool, whichever is less.
3. Because to denote that the employer and employees deceived each other, the Mishnaic idiom requires the first phrase.
4. And when an employer instructs a foreman to engage laborers at three sins, and he engages them at four, it is as though he had engaged them for himself but directed them to his employer's work.
5. For if four *zuz* is the usual wage. the foreman has a right to claim that sum from the employer, as stated in the Baraita just cited, he receives the value whereby he benefitted him. If, on the other hand, three is the usual wage, the workers must accept this without any resentment, since he explicitly stipulated that the responsibility for their wages rested on the employer.
6. Hence they have righteous cause for resentment. Yet, since he stipulated that the employer was responsible for their wages, they have no legal redress.
7. I.e., who works for himself, but if offered a high wage, is willing to work for another.
8. To see if it is really worth the higher wage, in which case the employer must pay four, notwithstanding his instructions. This, however, is only when some receive four *zuz* for superior work, but if none do, they have no legal claim. (H.M. CXXXII, 1 and [H], a.l.)
9. They were engaged to dig a dyke.
10. Prov. III, 27. Though they undertook to work for three they are justified in resenting that the employer's agent offered them less than he might have done.
11. I.e., they certainly did not stipulate for less.
12. I.e., by saying, 'Be it as the employer instructed', they meant to stipulate that if he

had stated more than three, they were to receive the higher wage.

13. A woman is not divorced until the divorce actually reaches her hand or the hand of an agent appointed by her for the express purpose of accepting it on her behalf: further, an agent's powers are strictly limited to the terms of his appointment, and he may not exceed them in the least. Now, in this case, the wife merely authorized the agent to bring it to her, whereas the agent stated to the husband that he was delegated to accept it on her behalf; whilst the husband, in handing him the divorce, asserted that he was giving it in accordance with her instructions. Now, no man can take a divorce to a woman on her husband's behalf, unless her husband appoints him for that purpose; and a husband cannot authorize a man to accept a divorce on his wife's behalf, i.e., that by his acceptance she shall be divorced, for such appointment is the wife's prerogative. Hence, when the husband said, 'Take it in accordance with her instructions', he must have meant, 'I believe that she appointed you to accept it on her behalf, that by your acceptance she should become divorced'; consequently he did not appoint him as agent to take it to his wife. (For though the wife had appointed him as her agent to bring it to her, the husband too must appoint him as his agent to take it to her; otherwise the divorce is invalid. But in this case, the husband, believing that he was agent for acceptance, would naturally not instruct him to take it to her.) Therefore, she is not divorced at all, neither by his acceptance, since she did not authorize him to accept it for her, nor even by her own, since he had not been authorized by the husband to take it to her. Now, this holds good on the hypothesis that the husband relied on the agent's statement only. But, if it be assumed that he meant, 'I give it to you exactly in accordance with her instructions, and not merely in accordance with your word,' that is tantamount to saying, 'As she has instructed you to be her agent to bring it to her, so do I instruct you to be my agent to carry it to her'; and therefore, when it reaches her hand, she should certainly be divorced. This proves that the husband relied on the agent's statement only, and by analogy, the workers rely upon the employer's delegate.

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How now! That were well, had the reverse been taught, thus: [If a woman said to a man,] 'Accept the divorce on my behalf;' and he

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[went and stated to her husband.] 'Your wife instructed me, Bring me my divorce,' [to which] he replied. 'Take it, in accordance with her instructions: and had R. Nahman ruled [thereon] in the name of Rabbah b. Abbuha in Rab's name that immediately the divorce comes into his [the agent's] hands, she is divorced; that would have proved that he [the husband] relied upon her word.¹ Again had he ruled that [only] when the divorce reaches her hand, is she divorced; that would show that he relied upon the agent's statement.² But there [where R. Nahman did state his ruling], it is because the agent himself entirely cancelled³ his appointment, by declaring, 'I am willing to be an agent for acceptance, but not for delivery.'⁴

[Reverting to the Mishnah:] If you prefer I can say, this Tanna designates retracting too, 'deceiving'.⁵ For it has been taught: If one hires laborers and they deceive the employer, or the employer deceives them, they have nothing but resentment against each other [but no legal redress]. Now, this holds good only if they have not gone [to the scene of their labor]; but if ass-drivers [are engaged to convey a load of grain from a certain place and] go [there] and find no grain, or laborers [hired to plow a field] go and find the field a swamp [unfit for plowing], he must pay them in full; yet travelling with a load is not the same as travelling empty-handed, nor is working the same as sitting idle.⁶ [Moreover,] this holds good only if they have not commenced work; but if they have commenced work, the portion done is assessed for them.⁷ E.g., if they contract to harvest [a field of] standing corn for two *sela's* and they harvest half, and leave half; or to weave a garment for two *sela's*, and they weave half and leave half, the portion done is assessed: if it is worth six *denarii*, he must pay them a *sela'* [Four *denarii*], or they can complete the work and receive two *sela's*;⁸ if it is worth a *sela'*, he must pay them a *sela'*.⁹ R. Dosa said: That which still remains to be done is assessed. [Thus:] if it is worth six *denarii*, he pays them a *shekel* [two *denarii*], or they can complete their work and receive

two *sela's*¹⁰ if a *sela'*, he must pay them a *sela'*. Now, this holds good only if there is no irretrievable loss [if the work is postponed until fresh laborers are found]; but if there is, he can engage [workers] at their cost, or deceive them. How does he deceive them? He says to them, 'I have promised you a *sela'*; come and receive two.' To what extent may he engage [workers] against them? Even to forty or fifty *zuz*.¹¹ But when is this said, [only] if no artisans are available for hiring;¹² but if there are, and he [the first worker] says to him, 'Go out and engage one of these,' he has nothing but resentment against him.¹³

A Tanna recited before Rab:¹⁴ He must pay them in full. Whereupon he [Rab] observed: My uncle [R. Hiyya] said, 'Were it I, I would have paid them only as unemployed labourers:'¹⁵ yet you say, 'he must pay them in full!' But surely, it is taught thereon: But travelling with a load is not the same as travelling empty-handed, nor is working the same as idling! — Now it [the Baraita] had not been completed before him [Rab].¹⁶ Others say, it had been completed before him,¹⁷ and he [Rab] observed thus: My uncle said, 'Were it I, I would not have paid him at all';¹⁸ yet you say [he must pay him] as an unemployed laborer! But this [Baraita] opposes it! — There is no difficulty: the latter ruling is if he viewed the field the previous evening; the former, if he did not.¹⁹ Just as Raba said: If one engaged laborers to cut dykes, and rain fell and rendered it [the land] waterlogged [making work impossible], if he inspected it the previous evening,

1. Since the divorce takes effect immediately the agent accepts it.
2. And thus himself appointing him an agent to take the divorce to his wife.
3. Lit., 'uprooted'.
4. By claiming that he was an agent for acceptance when in fact he was merely authorized to bring her the divorce, he showed unwillingness to take all that trouble, and so ipso facto cancelled his own authority. Therefore, even if the husband's assertion meant that he relied upon his wife, and the agent, moreover, subsequently changed his mind and did deliver it, the delivery is invalid,

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since he himself had destroyed his authority. But in the hypothetical reverse case posited by R. Ashi, the agent's statement that he was empowered only to bring it to the wife, when in fact he was authorized to accept it, did not annul his powers; if he was willing to go so far as to deliver it, he was certainly prepared for the lesser service of accepting it on the wife's behalf.

5. I.e., the Mishnah means that the deceit was between the employer and the laborers, one side having retracted from the agreement, and this too is called 'deceiving'.
6. I.e., though the laborers can claim for the loss of the day's work, and the ass-drivers likewise, a man is always prepared to accept somewhat less than a full day's wages if he is permitted to be idle that day, and it is only to that lesser sum that they are entitled.
7. In the first clause the reference is to time workers: here, to workers who contracted for the whole task, e.g., to plow a field for a fixed remuneration.
8. I.e., if the half done is now worth six *denarii*, labor costs having advanced, so that the employer must pay six *denarii* for the other half, he must nevertheless give them the *sela'* (four *denarii*) for their half, although he thereby loses on the whole: for this Tanna rejects the view of our Mishnah that he who breaks the agreement is at a disadvantage, as explained on p. 437. n. 8.
9. v. *infra* 77a.
10. R. Dosa agreeing with the Tanna of our Mishnah.
11. I.e., he may even pay fresh workers for the remainder much more than the first were to receive for the whole, and recoup himself from the first batch.
12. Hence he must pay far above the normal.
13. In any case the term 'deceiving' is employed in this Baraitha to denote 'retracting' and so likewise in our Mishnah.
14. In connection with the above: 'if the ass-drivers went and found no grain, etc.'
15. As explained on p. 441, n. 6; cf. also p. 398, n. 2.
16. I.e., when the Tanna recited the Baraitha and said 'he must pay in full', he went no further, whereupon Rab observed that his uncle's view differed.
17. I.e., the Tanna had added, 'but travelling with a load, etc.', and yet Rab observed that his uncle differed.
18. It was their misfortune that the field proved to be a marsh.
19. Rashi: if the laborer inspected the field the previous evening, he has no claim now, since when he undertook to plow it, he saw the

condition of the field. Maim: If the land owner inspected it the previous evening, found it fit, and engaged workers, but overnight heavy rains turned it into a swamp, the laborers have no redress, since it was not the employer's fault.

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the loss is the workers; if not, the loss is the employer's, and he must pay them as unemployed workers.¹

Raba also said: If one engaged laborers for irrigation, and there fell rain [rendering it unnecessary], the loss is theirs.² But if the river overflowed,³ the loss is the employer's,⁴ and he must pay them as unemployed laborers.

Rab also said: If one engaged laborers for irrigation, and the river [whence the water was drawn] failed at midday; if such failure is unusual, the loss is theirs;⁵ if usual: if [the laborers] are of that town [and so would know about it] the loss is theirs; if not, the loss is the employer's.⁶

Raba also said: If one engaged laborers for a piece of work, and they completed it in the middle of the day;⁷ if he has some [other] work easier than the first, he can give it to them, or even if of equal difficulty, he can charge them [with it]; but if it is more difficult, he cannot order them to do it, and must pay them in full. But why? Let him pay them as unemployed workers! — Raba referred to the workers⁸ of Mahuza, who, if they do not work, feel faint.⁹

The Master said: 'The portion done is assessed for them. E.g., if it is worth six *denarii*, he must pay them a *sela'*.¹⁰ The Rabbis hold that the workers [always] have the advantage.

'Or they can complete the work and receive two *sela's*.' Is this not obvious? — This is necessary only when labor costs advanced, and the workers retracted. Thereupon the employer went and persuaded them [to return]. I might think that they can say to

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him, 'When we allowed ourselves to be persuaded, it was on the understanding that you would increase our remuneration.' Therefore we are informed that he [the employer] can answer them, 'It was on the understanding that I should take particular pains over your food and drink.'¹¹

'If it is worth a *sela*', he must pay them a *sela*.' Is this not obvious? — This is necessary only if labor was cheap originally [when he hired them], whilst he engaged them for a *zuz* above [the usual cost], but subsequently¹² labor appreciated and stood at more than a *zuz*; I might think that they can plead. 'You promised us a *zuz* above [the usual price]; give us a *zuz* more [than was stipulated, since that is now the usual wage].' We are therefore told that he [the employer] may answer them, 'When did I promise you an extra *zuz*, only when you did not agree;¹³ but now you have agreed.'¹⁴

'R. Dosa said: That which still remains to be done is assessed [thus]: if it be worth six *denarii*, he pays them a *shekel*.' In his opinion, the laborer is at a disadvantage.¹⁵

'Or they can complete their work and receive two *sela*'s.' Is this not obvious? — This is necessary only when labor costs diminished, and the employer retracted; whereupon the laborers went and persuaded him. I might think, he can say to them, '[I re-engaged you] on the understanding that you allow a rebate on your wages': therefore we are taught that they can answer him, 'It was on the understanding that we perform our work particularly well.'

'If a *sela*', he must pay them a *sela*.' Is this not obvious? — R. Huna. the son of R. Nathan, said: It is necessary only in a case where they [the laborers] contracted for a *zuz* below [the usual wage] in the first place, and subsequently labor costs fell. I might think that [the employer can plead.] 'You agreed with me for a *zuz* less [than usual], hence I will give you a *zuz* less;¹⁶ so we are taught that they can reply. 'We agreed upon a *zuz*

less only when you would not agree [to pay the full price]; but now you have agreed.'

Rab said: The *halachah* is as R. Dosa. But did Rab really rule thus? Did not Rab say: A worker can retract even in the middle of the day? And should you answer, R. Dosa draws a distinction between time work and piece work,¹⁷ [I can rejoin,] Did he really admit a distinction? Has it not been taught: If one engages a laborer, and in the middle of the day he [the laborer] learns that he has suffered a bereavement,¹⁸ or is smitten with fever: then if he is a time worker,

1. If the laborer had not inspected the land beforehand, he can plead. 'You know the nature of your soil and that work is impossible upon it after a heavy rain, and so should have informed me in time to find other work'; therefore the employer must bear the loss. If the laborer had seen it he should have known himself, therefore the loss is his. (So one interpretation of Asheri.) It may also refer to the employer's inspection, as in the previous note. (The weight of authority is in favor of referring the inspection to the employer himself. V. H.M. CCCXXX, 1 and [H], a.l.)
2. Since rain is bound to obviate the need of irrigation, it is an implied condition that the employer may dispense with their services on account thereof.
3. Lit., 'came'.
4. Because the worker cannot know that the field is so situated, by means of canals leading thereto, that the river's overflow irrigates it.
5. The employer not being responsible for an unforeseen event.
6. It is a general principle that if something happens which might be foreseen by both employer and employee, the latter bears the loss of time. H.M. CCCXXXIV, 1
7. Having been engaged for the whole day.
8. Jast.: public laborers: Maim.: field diggers: Rashi: navvies accustomed to continual portering. [Mahoza. where Raba had his school, was an important loading centre on the Tigris near Ktesiffon. V. Obermeyer. *op. cit.* p. 173.]
9. Idleness is a trial to them; therefore they are entitled to full pay.
10. v. p. 442, n. 2.
11. But not pay you more.
12. I.e., by the time they had done half the work.
13. To work for less than a *sela*'.
14. To receive it. I cannot pay more, as that is my maximum.

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15. v. p. 437. n. 8.
16. Than the present price, hence, a *zuz* below the agreed figure.
17. If a laborer engages himself by the day or week, he can retract and lose nothing; but if he contracts to do a particular piece, he is thereby at a disadvantage; for the reason of the first (stated *supra* 10a, q.v.) does not apply to a contractor, since not being tied he is his own master.
18. Lit., 'one had died unto him', viz., one of the relatives for whom a week of mourning must be observed, during which all labor is forbidden.

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he must pay him his wages;¹ if a contract worker, he must pay him his contract price. Now, with whom does this agree? If with the Rabbis, why particularly if he learns that he has suffered a bereavement or is smitten with fever and so unfortunately compelled [to break the agreement]? Even if he is not compelled, surely the Rabbis maintain that the laborer has the advantage! Hence it must agree with R. Dosa, thus proving that he allows no distinction between time work and contract work! — Said R. Nahman b. Isaac: Here the reference is to a thing of irretrievable loss, and therefore it agrees with all.²

We learnt: HE WHO ALTERS [HIS CONTRACT] IS AT A DISADVANTAGE, AND HE WHO RETRACTS IS AT A DISADVANTAGE. Now, it is well [to state]. HE WHO ALTERS [HIS CONTRACT] IS AT A DISADVANTAGE, as thereby R. Judah's opinion is given as a general view;³ but what is added by, HE WHO RETRACTS IS AT A DISADVANTAGE?⁴ Surely [its purpose is] to extend the law to a [time] worker, and in accordance with R. Dosa?⁵ — But R. Dosa refers to both cases [alike], whereas Rab agrees with him in one and disagrees in the other.

Alternatively, HE WHO RETRACTS IS AT A DISADVANTAGE [is stated] for this purpose. Viz., It has been taught: He who retracts — how is that? If A sold a field to B

for a thousand *zuz*, and B paid a deposit of two hundred *zuz*, if the vendor retracts, the purchaser has the advantage; if he desires, he can demand, 'Either return me my money or give me land to the value thereof.' And from what part [of the estate] must he satisfy his claim? From the best. But if the purchaser retracts, the vendor has the advantage; if he desires, he can say to him, 'Here is your money.' Alternatively, he can say, 'Here is land for your money.' And what [part of the field] may he offer him? The worst.⁶ R. Simeon b. Gamaliel said: They are instructed [so to act as] to make it impossible [for either] to withdraw. How so? He [the vendor] must draw up a deed, stating, 'I [so-and-so] have sold such and such a field to so-and-so for a thousand *zuz*, upon which he has paid me two hundred *zuz*, and now I am his creditor for eight hundred *zuz*.' Thus he [the vendee] acquires the title thereto, and must repay him the rest, even after many years.⁷

The Master said: 'And from what part [of the estate] must he satisfy his claim? From the best.' Now, this was assumed to mean, 'from the best part of his estate.'⁸ But let him [the buyer] be even as an ordinary creditor! And we learnt: A creditor is entitled to medium quality!⁹ Moreover, here is the land for which he paid money! — R. Nahman b. Isaac said: [It means,] From the best therein [sc. the field bought] and¹⁰ the worst therein. R. Aha, the son of R. Ika. said: It may even mean the best part of his estate; yet the average person, when buying a field for a thousand *zuz*, must sell off his other property cheaply.¹¹ and hence he is as one who has sustained damage.¹² And we learnt: For damages¹³ we assess [and collect] the best [of the offender's estate].

'R. Simeon b. Gamaliel said: They are instructed [so to act as] to make it impossible [for either] to withdraw. How so? He [the vendor] must draw up a deed, stating, "I [so-and-so] have sold such and such a field to so-and-so for a thousand *zuz*, etc.'" Hence, it is only because he writes thus;¹⁴ but if not, he [the purchaser] does not acquire it. But has it

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not been taught: If a man gives a deposit to his neighbor and stipulates, 'If I retract, this deposit be forfeited to you.' and the other stipulates, 'If I retract, I will double you your deposit.' the conditions are effective: this is R. Jose's view, R. Jose [ruling here] in accordance with his general opinion that an *asmakta* is valid. R. Judah said: It is sufficient that he [the purchaser] shall gain possession [of the object sold] in proportion to his deposit. Said R. Simeon b. Gamaliel: This holds good only if he stipulates, 'Let my deposit effect possession'; but if he sells him a field for a thousand *zuz*, of which he pays him five hundred, he acquires [it all], and must repay him the balance even after many years?¹⁵ — There is no difficulty: The former refers to a case where he [the vendor] repeatedly dunned¹⁶ [the buyer] for his money;¹⁷ the latter, where he did not repeatedly demand his money. For Raba said: If one sold an article to his neighbor, and repeatedly demanded payment, it does not become his [the purchaser's];¹⁸ but if not, he [the buyer] acquires it.¹⁹

Raba also said: If one lent a hundred *zuz* to his neighbor, who repaid him a *zuz* at a time, it is [valid] repayment, but he may bear resentment against him, for he can complain, 'You have destroyed it for me.'²⁰

A man once sold an ass²¹ to his neighbor, and one *zuz* [of the purchase price] being left [unpaid], he [the vendor] made repeated calls for it. Now, R. Ashi sat and cogitated thereon: What [is the law] in such a case? Does he [the purchaser] acquire it or not?²² Said R. Mordecai to R. Ashi: Thus did Abimi of Hagronia say in Rab's name: One *zuz* is as [many] *zuz*, and he does not acquire it. R. Aha, the son of R. Joseph, protested to R. Ashi: But we have stated in Raba's name that he does acquire it! — He replied: You must interpret your teaching [as referring] to one who sells his field

1. I.e., pro rata, according to the time worked, but without making any further deduction on account of his breaking the agreement. For since he is unable to continue, he is not

- penalized and put at a disadvantage, as are others.
2. All agree that the laborer is in this case at a disadvantage, unless he is unavoidably prevented from adhering to his bargain.
 3. Lit., 'The Tanna of the Mishnah states anonymously the view of R. Judah,' indicating that he agrees with it, teaching it as the general opinion. For the reference v. *infra* 78b.
 4. Since that is implied in the whole Mishnah. It is axiomatic that if a Mishnah states a general principle after the detailed case in which it is embodied, its purpose is extension.
 5. For the first clause of the Mishnah would appear to refer to a contract worker; therefore the general principle is added to show that the same holds good of a time worker too. And that can agree with none but R. Dosa, since the Rabbis maintain that the advantage is on the side of the laborers. Thus it is proved that R. Dosa draws no distinction between a time worker and a contractor.
 6. The reasons are discussed below.
 7. The point is that the other 800 *zuz* are described on this bond not as the balance due but as an ordinary debt, and therefore does not affect the ownership of the field, which passes to the buyer on payment of money.
 8. I.e., not particularly of the field sold, but the best of any land that the vendor might own.
 9. If the debtor does not repay, the creditor can exact payment only from his medium quality fields, not from the best. And even that is a special privilege.
 10. Referring to the second case where the buyer retracts.
 11. Very few people possessed such large sums in actual cash; hence the purchaser would have to sell off much of his own estate to raise it, and, as is natural under the circumstances, below its value.
 12. If the vendor subsequently retracts, the purchaser has sold his own estate cheaply for no purpose.
 13. Lit., 'those who suffer damage.'
 14. I.e., describing the balance as an ordinary debt.
 15. V. *supra* 48b. This shows that the transaction is binding though the balance was not arranged as an ordinary debt.
 16. Lit., 'was going in and out.'
 17. Lit., 'comes in and out for money'. This proves that he sold his field through financial pressure, and therefore, unless he explicitly arranged for the balance to be treated as an ordinary loan, he can cancel the sale if full payment is delayed.

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18. [Even if there was *meshikah* (v. [Glos.](#)); so according to the majority of authorities. Cf. Tosaf. and H.M., CXC. 11.]
19. And the purchase money is regarded as an ordinary debt.
20. A hundred *zuz* in a lump sum can be put to business use; one *zuz* at a time is spent as received, with no visible or tangible advantage.
21. The text is [H], which may mean 'ass' or 'wine', and Rashi translates 'ass'. The reason is that in Rashi's opinion, this assumption, viz. that the vendor's repeated demand for money proves that he sold the article only because he was hard pressed, applies only to land or such articles which are not normally sold, such as an ass which is kept for work on the land; but in the case of wine, which is a normal article of sale, it proves nothing, and hence the consequences drawn from it do not hold good (Maharam). [Alternatively: In the case of wine there would be no reason for cancelling the whole sale for the sake of the single *zuz*, the buyer surely being entitled to retain wine for the amount he had paid up; Maharsha, [H].]
22. Since the balance is so small.

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because of its poor quality.¹

Now if a man wished to sell [a small field] for a hundred *zuz*, but finding [no purchaser for so small a field in spite of much seeking] he sold [a larger one] for two hundred [*zuz*] and made repeated calls for his money, it is obvious that he [the purchaser] does not acquire it.² But what if he wished to sell for a hundred, did not find [a purchaser], though had he taken pains he could have found one; but he took no trouble and sold a field for two hundred, and now he makes repeated calls for his money? Is he as one who sells a field because of its poor quality, or not?³ — This problem remains unsolved.

IF HE HIRES AN ASS-DRIVER OR A WAGGONER ... HE MAY HIRE [LABOURERS] AGAINST THEM, OR DECEIVE THEM. How far may he hire [laborers] against them? — R. Nahman said: Up to their wages.⁴ Raba raised an objection to R. Nahman: Even to forty or fifty *zuz*.⁵ — He replied: That was taught only if the

bundle [of the workers, tools, etc.] had come into his possession.⁶

MISHNAH. IF ONE HIRES AN ASS TO DRIVE IT ON THE MOUNTAIN [TOP]. BUT DRIVES IT ON THE PLAIN, OR TO DRIVE IT ON THE PLAIN BUT DRIVES IT ON THE MOUNTAIN. EVEN IF BOTH ARE TEN MILS,⁷ AND IT PERISHES, HE IS LIABLE [FOR DAMAGES]. IF HE HIRES AN ASS TO DRIVE IT ON THE MOUNTAIN [TOP], BUT DRIVES IT ON THE PLAIN, IF IT SLIPS [AND SUSTAINS INJURIES], HE IS EXEMPT;⁸ BUT IF IT IS [INJURIOUSLY] AFFECTED BY THE HEAT, HE IS LIABLE.⁹ [IF HE HIRES IT] TO DRIVE ON THE PLAIN, BUT DRIVES IT ON THE MOUNTAIN, IF IT SLIPS, HE IS LIABLE; IF AFFECTED BY THE HEAT, HE IS NOT; YET IF IT IS ON ACCOUNT OF THE ASCENT,¹⁰ HE IS LIABLE. IF ONE HIRES AN ASS, AND IT IS STRUCK BY LIGHTNING,¹¹ OR SEIZED AS A [ROYAL] LEVY:¹² HE [THE OWNER] CAN SAY TO HIM, 'BEHOLD, HERE IS YOUR [HIRED] PROPERTY BEFORE YOU.'¹³ BUT IF IT PERISHES OR IS INJURED, HE [THE OWNER] MUST SUPPLY HIM WITH A SUBSTITUTE.

GEMARA. Why is no distinction drawn in the first clause [between the causes of death], whilst it is in the second? — The School of R. Jannai said: In the first clause it means that it died on account of the air, and so we say, The mountain air killed it, [or] the air of the plain killed it.¹⁴ R. Jose b. Hanina said: It means, e.g., that it died through fatigue.¹⁵ Rabbah said: It means that it was bitten by a serpent.¹⁶ R. Hiyya b. Abba said in R. Johanan's name: This [the first clause] agrees with R. Meir, who ruled: Whoever disregards the owner's stipulation

1. Then we may assume that he willingly sold it, and his repeated demands for payment are due not to financial need, but to fear that the purchaser might retract.
2. For it is certain that he sold only under pressure, though a hundred would have sufficed him, and now he presses for money to buy a smaller field with the surplus.
3. Since he took but little trouble to find a purchaser for a small field, it may well be that

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- he was not altogether displeased with selling the larger one.
4. If the first laborers had done part of the work, but received no wages yet, he may offer the whole sum agreed upon to fresh workers, and pay the first nothing.
 5. V. p. 442. n. 5.
 6. Only if actually in possession of property belonging to the workers may he engage fresh ones at their expense up to the value thereof, even if it exceeds the original amount; but not otherwise.
 7. A *mil* = 2000 cubits.
 8. Because there is less likelihood of slipping on the plain than on the mountain top, therefore he has minimized the risk.
 9. Because it is warmer on the plain than on the mountain top.
 10. The ascent to the top of the mountain heating and affecting it.
 11. This is the literal meaning of [H]; but it is discussed in the Gemara (78b), and other meanings are suggested.
 12. [H], [G], forced labor, to which man or beast were liable.
 13. I.e., he is not bound to supply another in its stead.
 14. I.e., the climate of either of these places did not suit it.
 15. Thus, if it was driven on the mountain instead of on the plain, the owner can plead that the ascent had overtaxed its strength. Contrariwise, if driven through the plain instead of on the mountain, it can be urged that the bracing air of the mountain, which is lacking on the plain, would have revived it.
 16. And the owner can plead, 'Had you kept to the place agreed upon, that fate would not have met it.'

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is treated as a robber.¹ Which [ruling of] R. Meir [shows this opinion]? Shall we say, R. Meir's [view] in respect to a dyer? For we learnt: If one gives wool to a dyer to be dyed red, but he dyed it black, or to dye it black and he dyed it red, R. Meir said: He must pay him for his wool. R. Judah said: If its increased value exceeds the cost [of dyeing], he [the wool owner] must pay him the cost: if the cost [of dyeing] exceeds the increase in value, he must pay him for the increase.² But how do you deduce this? perhaps there it is different, for he gained possession thereof by the change [wrought by his] act!³ But it is R.

Meir's ruling on Purim⁴ collections. For it has been taught: The Purim collections must be distributed for purim;⁵ local collections belong to the town,⁶ and no scrutiny is made in the matter,⁷ but calves are bought therewith [in abundance], slaughtered, and eaten, and the surplus goes to the charity fund.⁸ R. Eliezer said: The Purim collections must be utilized for Purim [only],⁹ and the poor may not buy [even] shoe-straps therewith, unless it was stipulated in the presence of the members of the community [that such shall be permitted]: this is the ruling of R. Jacob, stated on R. Meir's authority; but R. Simeon b. Gamaliel is lenient [in the matter].¹⁰ But perhaps there too, the reason is that he [the donor] gave it only [that it be used] for Purim and not for any other purpose?¹¹ But it is this dictum of R. Meir. For it has been taught: R. Simeon b. Eleazar said on R. Meir's authority: If one gives a *denar* to a poor man to buy a shirt, he may not buy a cloak therewith; to buy a cloak, he must not buy a shirt, because he disregards the donor's desire.¹² But perhaps there it is different, because he may fall under suspicion. For people may say. 'So-and so promised to buy a shirt for that poor man, and has not bought it;' or, 'so-and-so promised to buy a cloak for that poor man, and has not bought it!' — If so, it should state, 'because he may be suspected': why state 'because he disregards the donor's desire?' This proves that it is [essentially] because he makes a change, and he who disregards the owner's desire is called a robber.

IF ONE HIRES AN ASS, AND IT IS STRUCK BY LIGHTNING [WE-HIBRIKAH]. What is meant by we-hibrikah? — Here [in Babylon] it is translated, *nehorita*.¹³ Raba said: paralysis of the feet.¹⁴ A man once said, '[I saw] vermin in the royal garments.' Said they to him, 'In which: in linen¹⁵ or in wool¹⁶ garments?' Some say: He replied. 'In linen garments;' whereupon he was executed.¹⁷ Others maintain: He replied. 'In wool garments;' so he was set free.

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OR SEIZED AS A [ROYAL] LEVY, HE CAN SAY TO HIM, 'BEHOLD, HERE IS YOUR PROPERTY BEFORE YOU.' Rab said: This was taught only in respect of a levy that is returned;¹⁸ but if it is a nonreturnable levy, he [the owner] must provide him with [another] ass [in its stead].¹⁹ Samuel said: Whether it is a returnable levy or not, if it is taken on the route of its journey, he [the owner] can say to him, 'Behold, here is yours before you;' but if it is not taken on its route, he is bound to supply him [with another] ass in its stead.²⁰

An objection is raised: If one hires an ass, and it is struck by lightning or turns rabid, he [the owner] can say to him, 'There is yours before you.'²¹ If it perished or was seized as a levy, he must supply him with [another] ass.²² Now, on Rab's view, it is well, and there is no difficulty: there [in the Mishnah] the reference is to a levy that is returned; here [in the Baraitha], to one that is not. But on Samuel's view, is there not a difficulty? And should you answer, On Samuel's view too there is no difficulty: there [in the Mishnah] it means that it was seized on the route of its journey, whilst here [in the Baraitha] that it was not; yet surely, since the second clause states, R. Simeon b. Eleazar said: If it was taken on the route of its journey, he [the owner] can say to him, 'Behold here is yours before you.' but if not, he must supply him with [another] ass—does it not follow that according to the first Tanna there is no difference? — Samuel can answer you: Is there not R. Simeon b. Eleazar who agrees with me? Then my ruling is based on his. Alternatively, the whole [Baraitha] is based on R. Simeon b. Eleazar, but its text is defective, and was thus taught: If one hires an ass, and it is struck by lightning, or becomes rabid, he [the owner] can say unto him, 'Behold, here is yours before you.' If it perished, or was seized as a levy, he must supply him with [another] ass. This holds good [only] if it was not seized on the route of its journey; but if it was, he can say to him, 'Behold, here is yours before you.'

1. Who is responsible for whatever happens; hence no distinction is drawn: whereas the second clause agrees with the Rabbis.
2. B.K. 100b. And it is assumed that R. Meir's ruling is because he regards the dyer as a robber, since he disobeyed the owner's instructions, and therefore he must pay for the wool.
3. V. B.K. *loc. cit.*; an opinion is there stated that if one steals an article and makes some change in it, it becomes his, in that he must pay for it but cannot be compelled to return the article itself. So here too, having changed the wool from white to black or red, it becomes the dyer's, who must therefore pay for the wool. But in the Mishnah no change is wrought in the ass itself before death; how do we know that here too R. Meir regards the mere change of locality as a theft, to render him responsible for whatever happens?
4. The minor festival on the fourteenth of Adar, instituted in memory of Haman's downfall and the rescinding of the decree of destruction against the Jews. Est. IX, 21, 26.
5. It was customary to make collections for distribution to the poor for Purim. These must be entirely devoted to this purpose, and even if the collection is very large none of it may be diverted to any other charity.
6. As before: collections for local relief may not be diverted, even if they exceed the need.
7. Whether the poor really need it all.
8. I.e., calves must be bought with the entire sum, and that which cannot be eaten by the poor on Purim is resold, the money going to the general charity fund.
9. [Some texts omit 'but calves ... (only)'. Cf. text, *infra* 106b.]
10. It is assumed that the reason of R. Meir's stringency is that the poor, by disregarding the donor's wish, become robbers, and therefore all such diversions are forbidden.
11. Consequently, when the poor man wishes to divert it to some other use, it is not a case of robbery, but simply that it is not his for that purpose, and is deemed never to have come into his possession.
12. The reasoning is as above. But the same refutation cannot be given as there, for in that case, why should R. Meir state two laws which are both based on exactly the same principle? Maharsha [H]
13. Affection of the eye-sight occasioned by lightning ([H]). prob. Gutta Serena (Jast.).
14. Caused by vermin.
15. Lit., 'silver covering' i.e., white.
16. Lit., 'gold covering', i.e., woolen garments dyed golden.

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17. Because these worms do not attack linen garments; therefore it was said merely to disgrace the king.
18. Hence the owner can say, 'It is your misfortune that it was seized, and you must wait until it is returned.'
19. For it is just as though it had perished.
20. When an animal was seized as a levy, it was driven along until another was overtaken, when the first was returned (even in the case of nonreturnable seizure, which means nonreturnable unless replaced by another). Hence, if driven in the direction for which it was hired, the owner can say, 'Go along with it, until another replaces it.' But otherwise he must replace it himself, as he cannot expect the hirer to go out of his way until it is returned (Rashi). Tosaf.: If the levy is made haphazardly, whatever is met with on the road being taken (i.e., if it is taken as it goes along), the owner can say, 'Your misfortune is responsible, for had I kept it at home, it would not have been seized.' But if there is systematic searching in people's houses and fields, so that it cannot be regarded as the ill-luck of the hirer, the owner must replace it.
21. Because it is still fit to bear loads.
22. This ruling contradicts the Mishnah.

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This is the view of R. Simeon b. Eleazar; for he used to maintain: If it was taken on the route of its journey, he can say to him, 'Here is yours before you;' if not, he is bound to replace it. But can you possibly assign it [all] to R. Simeon b. Eleazar? Surely, the first clause states, 'If one hires an ass, and it is struck by lightning or turns rabid, he [the owner] can say to him, "Here is yours before you:"' whereas R. Simeon b. Eleazar ruled: If one hires an ass to ride upon it, and it is struck by lightning or turns rabid, he [the owner] must furnish him with another! — Said Rabbah son of R. Huna: If for riding, the case is different.¹ R. papa said: [And to carry] glassware is the same as for riding.²

Rabbah son of R. Huna said in Rab's name: If one hires an ass for riding and it perishes midway, he must pay him his hire for half the journey, and can only bear resentment against him.³ How so? If another can be obtained for hire, what cause is there for

resentment? If not, is he then bound to render him his hire?⁴ — In truth, it means that another is not obtainable [here] for hiring, [yet he is bound to pay for half the journey,] because he [the owner] can say to him, 'Had you desired to go as far as this [where it died], would you not have had to pay its hire?' Now, what are the circumstances? If he simply promised him an ass, without specifying which, then surely he is bound to replace it;⁵ whilst if he promised him this ass: if its value [sc. of the carcass] is sufficient to buy another, let him buy one.⁶ — This [ruling] holds good only when its value is insufficient to purchase [another]. Yet if its value is sufficient for hiring, let him hire another!⁷ — Rab follows his view [expressed elsewhere], for Rab said: The principal must not be destroyed.⁸ For it has been stated: If a man hires an ass and it perishes midway — Rab said: If its value [sc. of the carcass] is sufficient to buy [another], he must buy one; [if only] to hire, he [who engaged it] may not hire. But Samuel said: Even if only to hire, he may do so. Wherein do they differ? — Rab maintained: The principal may not be destroyed; Samuel maintained: The principal may be destroyed.

An objection is raised: If the tree withered or was broken down, both are forbidden to use it. What then shall be done? Land must be bought therewith, and he takes the usufruct.⁹ Now here, immediately on the advent of the Jubilee year, the land reverts to its [first] owner,¹⁰ and thus the principal is destroyed!¹¹ — Here the reference is to a sixty years' purchase. For R. Hisda said in R. Kattina's name: Whence do we learn that if one sells his field for sixty years, it does not return [to the first owner] in the year of Jubilee? From the verse, The land shall not be sold in perpetuity.¹² [showing that it refers to a sale] which, in the absence of the law of Jubilee,¹³ would be forever; hence, when the law of Jubilee supervenes, it is not in perpetuity; thus excluding this [sale. viz., for sixty years], which, even in the absence of the law of Jubilee, is not for ever.¹⁴ But after all, on the expiration of the sixty years the land returns to its [first] owner, and thus [the debtor's]

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principal is destroyed! — But here the reference is to the time when the law of Jubilee is not in force. Reason too supports this. For should you assume that it refers to the time when the law of Jubilee is in force, and that we destroy the principal, let him [the creditor] cut up the wood and take it!¹⁵ — As for that, it is no difficulty: the period of mortgage might expire before the Jubilee, or he [the debtor] might obtain money and redeem it four or five years before the Jubilee.¹⁶

Our Rabbis taught: If one hires a ship, and it sinks in mid-journey; R. Nathan said: If he has paid [the hire], he cannot take [it back]; but if not, he need not pay it [now]. How so? Shall we say [that the agreement was for] this particular ship and an unspecified [cargo of] wine [as freight],¹⁷ then [even] if he has already paid, why cannot he claim it back? Let him say, 'Provide me with that ship, and I will bring the wine.'¹⁸ But if it refers to an unspecified ship and a particular cargo of wine, even if he has not yet paid, why must he not pay now?

1. A blind or rabid animal is fit to carry burdens, but not to be ridden upon.
2. Owing to its fragile nature it must be carried smoothly; but an ass so affected will jolt it violently and break it.
3. For having given him a feeble ass; but he has no legal redress.
4. Surely not, seeing that he probably suffers loss through not reaching his destination.
5. As stated above.
6. Since he hired him this particular ass, it is pledged for the journey, and therefore, if with the value of the carcass one can buy another, even such a poor one that it is fit only to complete the journey, the purchase should be made.
7. Since, as stated above, in the case of the animal's death another must be provided; and when a particular animal was hired, whatever can be procured for its carcass is part of the original.
8. I.e., when an animal is hired for a certain task, e.g., to take a man on a journey, one cannot demand that the whole capital value of the animal shall be lost in order to fulfill the engagement. Hence, when the Mishnah states that if it died another must be provided in its

place, it means that more money must be added to that realized by the carcass and another bought, so that the value of the carcass ultimately remains with the owner. But he is not bound to hire an animal for the money realized by the carcass for the completion of the task, the whole principal thus being lost to the owner.

9. The reference is to a mortgage. If a tree was mortgaged, it being agreed that the creditor should enjoy its usufruct for a number of years, after which it would revert to the debtor without any further payment, and then it withered, ceasing to yield, or was overthrown by a storm, neither the creditor nor the debtor may use up the wood thereof, because each thereby wholly destroys the other's interest therein. Therefore the wood must be sold and land bought with the proceeds, of which the creditor takes the usufruct in accordance with the original agreement.
10. Lev. XXV, 13, 23.
11. Nothing whatever being left of the tree by the time it has to revert to the debtor, in case Jubilee precedes it.
12. Ibid. 23.
13. I.e., if it is for no specified period.
14. Hence Jubilee does not affect it, and when the mortgage expires, it reverts to the debtor, and his principal is not destroyed.
15. For the years of usufruct still due to him. Why then trouble to buy a field?
16. So that, even if Jubilee is in force and the principal may be destroyed, it is still preferable to buy a field.
17. I.e., the ship-owner engaged to provide this particular ship to carry any cargo of wine a certain distance.
18. Since you undertook to carry any cargo of wine in this particular ship, I can bring another, the first having sunk, but you must furnish the same ship for the entire journey: as you cannot, you must return the hire.

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Let him [the ship-owner] say, 'Bring me that wine, and I will provide a ship!' — Said R. Papa: It is possible only in the case of 'This ship' and 'This wine'.¹ But in the case of an unspecified ship and unspecified wine, they must divide.²

Our Rabbis taught: If one hires a ship and unloads it in mid-route, he must pay him for half the journey, and he [the owner] has nothing but resentment against him. What

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are the circumstances? Shall we say, that he can find someone to whom to hire it? Why bear resentment?³ Whilst if he can find no one to whom to hire it, he must surely pay him the whole hiring-fee! — In truth, it means that he can find someone to whom to hire it; and the reason that he has cause for resentment is because of the trampling of the ship.⁴ If so, it is a just complaint, and he is entitled to financial compensation! — But what is meant by 'he unloaded it' is that he unloaded [more of] his cargo within it.⁵ Then what ground has he for complaint? — Because his intentions were thwarted;⁶ or on account of the additional cordage necessary.⁷

Our Rabbis taught: If one hires an ass for riding, the hirer may put upon it his clothing,⁸ water bottle, and provisions for that journey; beyond that, the ass-driver⁹ can prevent him.¹⁰ The ass-owner can place upon it the fodder, straw and provisions for one day; but beyond that, the hirer can prevent him.¹¹ How is it meant? If [food] can be purchased, let the ass-driver too prevent him;¹² whilst [if provisions] are not obtainable [on the road], the hirer too should not be able to prevent him! — R. Papa answered: This arises when it is indeed possible to procure it, after some trouble, from stage to stage. Now, for the ass-driver it is a normal matter to take trouble and purchase [his stores at various places],¹³ but not for the hirer.

Our Rabbis taught: If one hires an ass for a man to ride upon it, It may not be ridden by a woman; if for a woman, it may be ridden by a man; and a woman [includes] both large and small, and even if pregnant or one giving suck.¹⁴ Seeing that you permit a woman giving suck,¹⁵ is it necessary to state a pregnant woman? — R. Papa said: It means, even a pregnant woman who is at the same time feeding [another infant]. Abaye said: This proves that the weight of a fish depends on the size of its belly.¹⁶ What does this matter? — In respect of buying and selling.¹⁷

1. So that neither can fulfill his contract; therefore the plaintiff is at a disadvantage.
2. Only half the fee is payable, whether it has been delivered or not, since each is theoretically in a position to fulfill his part of the agreement.
3. Since he loses nothing.
4. I.e., the damage done by trampling upon it in loading and unloading.
5. Rashi: he loaded it with a great cargo, i.e., though he is bound to pay the ship-owner extra, the agreement being based on the freightage, yet the latter has cause for resentment, in that the journey occupies a longer time than he expected. Tosaf. rejects the interpretation and substitutes: he unloaded it from himself, and reloaded it (upon another) within the ship. i.e., in the middle of the journey he sold the cargo to another; the ship-owner has cause for complaint, because he may find the second awkward to deal with. This interpretation is accepted by Asheri a.l. and in H.M. CCCXI, 6.
6. V. preceding note. Either his intentions to return quickly (Rashi). or to have this man particularly as the hirer.
7. For the extra load (which the second may wish to add, according to Tosaf., or quite simply, on Rashi's interpretation). The ship-owner having failed to provide himself with additional cordage, may have to pay a higher price for the cordage on his voyage than in the ship's home port, and therefore he has cause for resentment.
8. *Var. lec.*: his pillow for sleeping.
9. The owner.
10. He can object to a greater burden being placed upon the ass, seeing that it was hired only for riding, but these being necessities are included therein.
11. It appears that the ass-driver had to provide the ass's food for the journey. The ass-driver can therefore place upon it the food for one day only. But the latter cannot insist on loading it at the outset with all the necessary provisions, for such a heavy load might retard the rate of progress.
12. Sc. the hirer, from loading it with the whole of the provisions required for the journey.
13. That being part of his work.
14. I.e., if an ass is hired for a woman, any woman may ride upon it.
15. Which means with the child she is feeding (Rashi).
16. Since it is mentioned that a pregnant woman is heavier than another.
17. If one buys a fish by weight, he should first have the belly removed.

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MISHNAH. IF A MAN HIRES A COW FOR PLOWING ON THE MOUNTAIN AND PLOWS [THEREWITH] ON THE PLAIN, IF THE COULTER BROKE, HE IS NOT LIABLE; FOR PLOWING ON THE PLAIN, BUT PLOWS ON THE MOUNTAIN, IF THE COULTER BROKE, HE IS LIABLE.¹ [IF HE HIRES IT] TO THRESH PULSE, BUT THRESHES GRAIN, HE IS NOT LIABLE;² BUT IF TO THRESH PULSE AND HE THRESHES GRAIN, HE IS LIABLE, BECAUSE PULSE IS SLIPPERY.

GEMARA. But if he did not change [the conditions of the contract], who must pay?³ — R. Papa said: He who handles the share; R. Shisha the son of R. Idi said: He who handles the coulter; and the law is that he who handles the coulter must pay.⁴ But if the place was known to abound in stony clods, both are responsible.⁵

R. Johanan said: If one sold a cow to his neighbor and informed him, 'This cow is a butter, a biter, a habitual kicker, and prone to break down [under a load],' and it possessed one of these defects, which he inserted amongst the other blemishes [of which it was free], it is a sale in error.⁶ [But if the vendor said.] 'It has this defect,' [which it actually had] 'and another too,' [not specifying which,] it is not a sale in error.⁷

It has been taught likewise: If one sold a maidservant to his neighbor and informed him, 'This maidservant is an idiot, an epileptic, and a dullard;' and she possessed one of these defects, which he inserted amongst the others [which she did not have]; it is a sale in error. [But if the vendor said, 'She has] this defect' [which she actually possessed], 'and another too' [not specifying which], it is not a sale in error. Said R. Aha the son of Raba to R. Ashi: What if she had all these defects? — R. Mordecai observed to R. Ashi: Thus do we say in Raba's name: If she had all these defects, it is not a sale in error.⁸

MISHNAH. IF A MAN HIRES AN ASS FOR BRINGING [A CERTAIN QUANTITY OF] WHEAT, AND HE BRINGS WITH IT [AN EQUAL WEIGHT OF] BARLEY INSTEAD, HE IS RESPONSIBLE.² [FOR CARRYING] CORN, AND HE BRINGS WITH IT STRAW, HE IS LIABLE [FOR DAMAGE]. BECAUSE BULK IS [AS GREAT] A STRAIN AS WEIGHT;¹⁰ TO BRING A *LETHECH*¹¹ OF WHEAT, AND HE BRINGS WITH IT A *LETHECH* OF BARLEY, HE IS EXEMPT.¹² BUT IF HE INCREASES THE WEIGHT, HE IS LIABLE. BY HOW MUCH MUST HE INCREASE IT IN ORDER TO BE LIABLE? SYMMACHUS SAID ON R. MEIR'S AUTHORITY: BY A SEAH IN THE CASE OF A CAMEL, AND THREE *KABS* IN THE CASE OF AN ASS.

GEMARA. It has been stated: Abaye said: We learnt, IS [AS GREAT] A STRAIN AS WEIGHT; Raba said: We learnt, IS A STRAIN [WHEN ADDED TO] WEIGHT. [Thus:] 'Abaye said: We learnt, IS [AS GREAT] A STRAIN AS WEIGHT:' bulk is equal to weight; therefore if he added three *kabs* [the bulk being equal], he is liable. 'Raba said: We learnt, IS A STRAIN [WHEN ADDED TO] WEIGHT: i.e., the weight being equal, the [greater] bulk is an additional strain.¹³ We learnt: TO BRING A *LETHECH* OF WHEAT, AND HE BRINGS A *LETHECH* OF BARLEY, HE IS EXEMPT. BUT IF HE INCREASES THE WEIGHT, HE IS LIABLE. Surely that means, by three *kabs*?¹⁴ — No. It means by a *se'ah*.¹⁵ But thereon it is stated, BY HOW MUCH MUST HE INCREASE IT, IN ORDER TO BE LIABLE? — SYMMACHUS SAID ON R. MEIR'S AUTHORITY: A *SE'AH* IN THE CASE OF A CAMEL, AND THREE *KABS* IN THE CASE OF AN ASS! — It is thus meant: But if he did not alter [the terms of hiring]. I.e., [he engaged to] bring wheat, and brought wheat; barley, and brought barley: BY HOW MUCH MUST HE INCREASE IT [SC. THE WHEAT], IN ORDER TO BE LIABLE? — SYMMACHUS SAID ON R. MEIR'S AUTHORITY: BY A *SE'AH* IN THE CASE OF A CAMEL, AND THREE *KABS* IN THE CASE OF AN ASS.

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Come and hear: [It has been taught: If he hired an ass] to bring a *lethech* of wheat, and he brought

1. Because mountain soil is rockier and harder. — The implements were supplied by the owner of the cow.
2. If the animal slipped and was injured.
3. Two laborers were needed for the plowing; one who used the goad to direct the animal, and one who forced the coulter into the earth. These workers were furnished by the owner. Now, the Talmud asks, if the agreement was not broken, so that the hirer is free from liability, which of these two workers is liable?
4. For even if the other had directed the plow badly, yet had not the coulter been forced too deeply into the soil, it would not have broken.
5. For then the slightest deviation from the right course endangers the plow.
6. Which the purchaser can cancel. For the vendor, in enumerating a string of defects, which the buyer himself sees are absent, wishes him to assume that the one it actually has is also absent.
7. For since he actually mentioned the defect by name, and no other specifically, the buyer should have examined the animal.
8. For the buyer cannot plead that he thought that the vendor was enumerating many fictitious defects in order to deceive him about a real one.
9. If the ass breaks down or is injured by the load. Barley is lighter than wheat, therefore an equal weight of barley is bulkier, and that imposes a greater strain on the ass.
10. Therefore a greater bulk imposes a greater strain.
11. Half a *kor*.
12. The bulk being the same, and the weight less.
13. [Where however the bulk is equal, an additional weight of three *kabs* of barley involves no liability.]
14. Though even there, the total weight is less. This refutes Raba.
15. Whereby the weights are equalized.

Baba Mezi'a 80b

sixteen [se'ahs] of barley,¹ he is liable. This implies, [if he merely added] three *kabs*, he is exempt!² — Abaye interpreted it [as referring] to leveled measures [of corn].³

Our Rabbis taught: A *kab* [is a culpable overload] for a porter:⁴ an *artaba*⁵ for a

canoe;⁶ a *kor* for a ship; and three *kors* for a large *liburna*.⁷

The Master said: 'A *kab* [is a culpable overload] for a porter.' But if it is too heavy for him, is he not an intelligent being? Let him throw it down! — Said Abaye: It means that it [the weight] struck him down immediately.⁸ Raba said: You may even say that it did not strike him down immediately, but this is taught only with regard to extra pay.⁹ R. Ashi said: He might have thought that he had been seized with weakness.¹⁰

'A *kor* for a ship, and three *kors* for a large *liburna*'. R. Papa said: From this it follows that the average ship takes a load of thirty *kors*.¹¹ What practical difference does it make? — In respect of buying and selling.¹²

MISHNAH. ALL ARTISANS ARE REGARDED AS PAID BAILEES;¹³ BUT IF THEY DECLARE,¹⁴ 'TAKE YOUR PROPERTY AND THEN BRING US MONEY, THEY RANK AS UNPAID BAILEES.¹⁵ [IF A MAN SAID TO ANOTHER] 'KEEP THIS ARTICLE [FOR ME], AND I WILL KEEP [ANOTHER] FOR YOU,' HE RANKS AS A PAID BAILEE. [IF HE REQUESTED,] 'KEEP [THIS] FOR ME,' AND HE REPLIED, 'PUT IT DOWN BEFORE ME,' HE IS AN UNPAID BAILEE. IF A MAN LENDS ANOTHER ON A PLEDGE,¹⁶ HE RANKS AS A PAID TRUSTEE. R. JUDAH SAID: IF HE LENDS HIM MONEY [ON A PLEDGE], HE IS AN UNPAID TRUSTEE; IF PROVISIONS, HE IS A PAID BAILEE. ABBA SAUL SAID: ONE MAY HIRE OUT A PLEDGE TAKEN FROM A POOR MAN, FIXING A HIRING FEE AND PROGRESSIVELY DIMINISHING THE DEBT, BECAUSE IT IS LIKE RETURNING A LOST ARTICLE.¹⁷

GEMARA. Must we say that our Mishnah does not accord with R. Meir? For it has been taught: One who hires [e.g., an animal], how does he pay [if it comes to harm]? R. Meir said: As an unpaid trustee; R. Judah said: As a paid trustee.¹⁸ — You may assume [it to agree] even with R. Meir: in return for that benefit, that he [the employer] forsakes everyone else and engages him, he becomes a

BABA METZIAH – 58b-90b

paid bailee in respect thereof. If so, the same applies to a hirer: in return for that benefit, in that he forsakes everyone else and hires [it] to him, he becomes a paid trustee in respect thereof! But [say thus:] You may assume [it to agree] even with R. Meir: in return for that benefit, that he pays him somewhat more [than his due], he becomes a paid bailee in respect thereof.¹⁹ If so, the same applies to a hirer; may one not be referring to a case where he gives him slightly better value?²⁰ But [say thus]: You may assume [it to agree] even with R. Meir: in return for that benefit, that he holds it against his remuneration and is not forced to go seeking for money, he ranks as a paid bailee in respect thereof. Alternatively, it is as Rabbah b. Abbuha reversed [the Baraita] and learnt: How does a hirer pay? R. Meir said: As a paid bailee; R. Judah said: As an unpaid bailee.²¹

BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY.' THEY RANK AS UNPAID BAILEES. We learnt elsewhere: If the borrower instructed him [sc. the lender] to send [the animal], and he sent it, and it died [on the road, before reaching him], he is liable for it. The same holds good when he returns it.²² Rafram b. Papa said in R. Hisda's name: This was stated only if he returned it within the period for which he borrowed it; but if after, he is not liable.²³

R. Nahman b. Papa raised an objection: BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY,' THEY RANK AS UNPAID BAILEES:

1. I.e., an additional *se'ah*.
2. This contradicts Abaye.
3. [Instead of a load of 15 *se'ahs* of wheat liberally measured, he brought one consisting of barley counted by leveled measures, in which case there is no liability unless the addition was a *se'ah* (Rashi); others: reduced in weight by being worm-eaten.]
4. Lit., 'the shoulder', I.e., if a man is engaged to carry a certain burden, which is increased by a *kab*, and he breaks down, his employer is liable.

5. Persian measure. [Rashi: a *lethech*.]
6. A small boat.
7. [G]; a light, fast-sailing vessel (Jast.).
8. As soon as he took it up, and before realizing that it was too heavy for him, fell under it.
9. If the load exceeds the weight agreed upon by a *kab*, he is entitled to additional remuneration.
10. I.e., actually it means that he broke down under the additional weight, yet, though an intelligent being, he did not throw it away, thinking that the fault was in his own weakness, and being unaware that the weight was greater than stipulated.
11. Because the overload is assessed at a thirtieth of the legitimate freight.
12. If one sells a ship, without specifying its capacity, it must be at least thirty *kors*, and otherwise the sale is invalid.
13. I.e., contractors who accept material for manufacture, e.g., a carpenter who receives wood for making up into a table, rank as a paid trustee thereof, in that, if it is stolen, they are held responsible.
14. After the work is completed.
15. Who are responsible only for negligence, but not for theft.
16. Which the lender takes into his own keeping.
17. The grounds for the various rulings of this Mishnah are discussed in the Gemara.
18. R. Meir maintains: since he pays for the benefit he receives, he is taking care of it gratuitously; whilst in R. Judah's view, since it comes into his hands for his benefit, he is a paid trustee, notwithstanding that he pays for that benefit. Superficially, the same reasoning applies to an artisan: the object comes into his keeping for his own benefit, viz., that he may earn money thereby; but at the same time, he gives his labor for that benefit.
19. Rashi: it is impossible to assess exactly in the case of a contractor the value of the actual labor involved, and therefore he is assumed to be slightly overpaid. Tosaf., observes that this answer might have been refuted by a reference to those who do not overpay, but that it is refuted in another way.
20. I.e., the dispute between R. Meir and R. Judah does not differentiate between normal and better value, e.g., if the owner accepts less than the usual hire; but there too R. Meir should say: In return for the benefit received by the remission of part of the hiring fee he becomes a paid bailee.
21. The insistent attempts to prove that the Mishnah does agree with R. Meir, even though, as in the last reply, it is only at the cost of assuming that it does not agree with R. Judah, are due to the fact that our Mishnah

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was taught anonymously, and it is a general rule that an anonymous Mishnah must agree with R. Meir.

22. *Infra* 98b. A gratuitous borrower is liable for every mishap. Now, if he explicitly instructs the lender to send it to him, he is responsible for it immediately the lender entrusts it to a person for delivery, and therefore if it perishes on the road, he must make it good. Likewise, if the borrower entrusts it to his agent for return, without receiving explicit instructions to that effect from the lender, he remains responsible for it until it is actually returned.
23. For when that period has expired, he ceases to bear the responsibilities of a borrower.

Baba Mezi'a 81a

surely this implies, [if they inform him.] 'I have completed it,' they rank as paid bailees.¹ — No. [Deduce thus:] But if they say, 'Bring money and then take your property,' they are paid bailees.² But what if they declare, 'I have completed it.'³ [do] they rank as unpaid bailees? If so, instead of teaching. **BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY,' THEY RANK AS UNPAID BAILEES;** let it teach the case of 'I have completed it',⁴ from which 'take your property follows *a fortiori!*⁵ — It is particularly necessary to state the case of 'Take your property,' for I might think that he is not even an unpaid bailee;⁶ hence we are told [that he is].

Others say, R. Nahman b. Papa said: We too have learnt likewise: **BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY'. THEY RANK AS UNPAID BAILEES.** Surely the same holds good if he says, 'I have completed it'!⁷ — No. The case of 'Take your property' is different.

Huna Mar, the son of Meremar, [sitting] before Rabina, opposed two Mishnahs to each other and reconciled them. We learnt, **BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY,' THEY RANK AS UNPAID BAILEES,** and [presumably], the same holds

good if he informs him, 'I have finished it.' But the following contradicts it: If the borrower instructs him [Sc. the lender] to send [the animal], and he does so, and it dies [on the road before reaching him], he is responsible for it. The same holds good when he returns it! — And he reconciled them by the dictum of Rafram b. Papa in R. Hisda's name: This was stated only if he returned it within the period of the loan; but if after, he is not liable.

The scholars propounded: [Does it mean,] He is not liable as a borrower, yet liable as a paid bailee; or perhaps, he is not even a paid bailee? — Said Amemar: Logically it means that he is exempt from the liabilities of a borrower, but is responsible as a paid bailee; for since he has benefited, he must give benefit in return.⁸

It has been taught in accordance with Amemar: If one takes goods from a tradesman [on approval] to send them [as a gift] to his father-in-law, and stipulates, 'If they are accepted, I will pay you their value, but if not, I will pay you its goodwill benefit';⁹ if they are accidentally damaged on the outward journey, he is liable;¹⁰ but exempt if on the return journey, because he is regarded as a paid bailee.¹¹

A man once sold an ass to his neighbor. Said the latter, 'I will take it to that place, if it is sold, it is well; if not, I will return it to you.' He went, but it was not sold, and on his way back it was accidentally injured. On his going before R. Nahman, he held him liable. Thereupon Raba raised an objection to R. Nahman: If they are damaged on the outward journey, he is liable; but exempt if on the return journey, because he is regarded as a paid bailee! — He answered: The return journey of this person is an outward journey. Why so? — It is common-sense. For if he found a purchaser on his return, would he not sell it?

'KEEP [THIS ARTICLE] FOR ME, AND I WILL KEEP [ANOTHER] FOR YOU.' HE RANKS AS A PAID BAILEE. But why so? Is

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it not a trusteeship wherein the owner [is pledged to the service of the bailee]?¹² — R. Papa said: It means that he proposed to him, 'KEEP [THIS ARTICLE] FOR ME to-day, AND I WILL KEEP [ANOTHER] FOR YOU to-morrow.'¹³

Our Rabbis taught: [If A proposes to B,] 'Keep [this article] for me and I will keep [an article] for you'; 'lend me, and I will lend you'; 'keep [this article] for me, and I will lend you [another]'; 'lend me, and I will keep [an article] for you' — in all these cases they rank as paid trustees. But why so? Is it not a trusteeship wherein the owner [is pledged to the service of the bailee]? — Said R. Papa: it means that he proposed to him, 'Keep [this article] for me to-day, and I will keep [an article] for you to-morrow.'

There was a company of perfume sellers¹⁴ of whom each day a [different] one baked for all. One day they said to one of them, 'Go and bake for us.' 'Then guard my robe,' he rejoined. Before his return it was stolen through their negligence; so they went before R. Papa, who held them responsible. Said the Rabbis to R. Papa: But why? Is it not a trusteeship wherein the owner [is pledged to the service of the bailee]? Thereupon he was ashamed. Subsequently it was discovered that just then he [the owner] had been drinking beer.¹⁵ Now, on the view that he [sc. the bailee] is not liable for negligence when the owner [is pledged to the service of the bailee], it is well: on that account he was ashamed. But on the view that he is,¹⁶ why was he ashamed? — But [it happened thus:] That day was not his [for baking], yet they requested him 'Go bake for us,' to which he rejoined, 'In return for my baking for you guard my robe.'¹⁷

1. Though the owner knows that it is ready for removal, the artisan remains as responsible as before. Then by analogy, in the case of a borrower, even when the period of the loan expires he remains just as responsible as within the period.
2. Because they benefit by holding the article until the money is paid.

3. Without stating that they hold it against payment.
4. Viz., that even then he ranks as an unpaid bailee.
5. If he ranks as an unpaid bailee even when he merely informs him that he has completed it, without stating that he relinquishes his hold upon it, surely the same holds good when he explicitly informs the owner that he can take it!
6. For 'Take your property' may imply that he refuses all further responsibility — an unpaid bailee is liable for negligence.
7. V. *supra* p. 464 and notes.
8. And hold himself responsible until it reaches the owner.
9. I.e., for the benefit I derive from my father-in-law's knowledge that I desired to make him a present.
10. Having undertaken to pay for them in case they are accepted, they are accounted in the meantime his property.
11. [Since he has no longer any intention of buying them, the goods cannot be accounted any more his property, and his liability can arise only in consequence of the goodwill he enjoyed, which makes him rank as a paid bailee, even though the tradesman had actually received payment for this benefit. How much more should this be the case with a gratuitous borrower.]
12. V. *infra* 94a; so here too: whilst the bailee has the article in his care, the owner is, under the conditions of trusteeship agreed upon, in the service of the bailee.
13. So that the trusteeship and the owner's reciprocal service are not contemporaneous.
14. Lit., 'dealers in aloe'.
15. I.e., he had not yet commenced baking, so was not in their service. Thus R. Papa's verdict was just, after all.
16. V. *infra* 95a.
17. Hence they became paid trustees.

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Before he returned, it was stolen,¹ and they went before R. Papa, who held them responsible.² The Rabbis protested to R. Papa: Why so? Is it not a trusteeship wherein the owners [are pledged to the service of the bailee]? So he was ashamed. But subsequently it was discovered that just then he had been drinking beer.

Two men were travelling together on a road, one [of whom] was tall, and the other short. The tall one was riding an ass, and had a

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[linen] sheet, whilst the short one was wearing a [woolen] cloak, and walked on foot. On coming to a river, he took his cloak, placed it upon the ass, and took the other man's linen and covered himself therewith.³ Then the water swept the sheet away: so they came before Raba, who ruled him [the short man] liable. But the Rabbis protested to Raba: Why so? Is it not a case of borrowing wherein the owner [is pledged to service]?⁴ So he was ashamed, subsequently it was learnt that he had taken it [the linen sheet] and put [his own on the ass] without his knowledge.⁵

A man hired an ass to his neighbor and said to him, 'See that you do not go by way of Nehar Pekod,⁶ where there is water,² but by the way of Naresh,⁸ where there is none.' But he did go by way of Nehar Pekod, and the ass died. When he returned, he pleaded. 'True, I took the route of the Nehar Pekod, but there was no water.'⁹ Said Rabbah to him [the owner]: Why should he have lied? Had he wished, he could have said, 'I went by way of Naresh.' But Abaye observed: We do not reason, 'What is the purpose of lying,' if there are witnesses [to the contrary].¹⁰

[IF HE REQUESTS,] 'KEEP [THIS] FOR ME,' AND HE REPLIES, 'PUT IT DOWN BEFORE ME.' HE IS AN UNPAID BAILEE. R. Huna said: If he replies, 'Put it down before you,' he is neither an unpaid nor a paid bailee.¹¹

The scholars propounded: What if he simply said, 'Put it down'? — Come and hear: [IF HE REQUESTS,] 'KEEP [THIS] FOR ME' AND HE REPLIES, 'PUT IT DOWN BEFORE ME,' HE IS AN UNPAID BAILEE. From which it follows that if he does not particularize at all there is no obligation at all. On the contrary, since R. Huna said: If he replied, 'Put it down before you' — it is [only] then that he is neither an unpaid nor a paid bailee; it follows that if he does not particularize he is a paid bailee. But no conclusions are to be drawn from this.

Shall we say that this is disputed by Tannaim? [For we learnt:] If he brought

them in with [the owner's] permission, the courtyard owner is liable. Rabbi said: In all these cases he is not liable unless he explicitly undertook to guard.¹² But how does this follow? Perhaps the Rabbis rule [that he becomes a bailee] only there, in the case of a courtyard, which is a guarded place. so that when he [the owner] said to him, 'Bring it in', he meant, 'Bring it in, and I will take care of it for you'; but here, in a market place, which is unguarded, he may have meant, 'Put it down, take a seat, and guard it. Contrariwise, perhaps Rabbi rules [that he does not become a bailee] only there, in the case of a [private] courtyard, to enter wherein permission is necessary, so that when he gave him permission to enter, he meant, '[Come in,] sit down, and guard it.' But here, he must have meant, 'Put it down and I will guard it;' for should you think, he meant, 'Put it down, take a seat, and guard it' — does he require his permission to put it down?

IF A MAN LENDS ANOTHER ON A PLEDGE, HE RANKS AS A PAID TRUSTEE. Shall we say that our Mishnah does not agree with R. Eliezer? For it has been taught: If one lends his neighbor [money] against a pledge and the pledge is lost, he must swear [that it was not due to his negligence], and then be repaid.¹³ this is R. Eliezer's opinion. R. Akiba ruled: He [the debtor] can say to him: 'Did you lend me against aught but the pledge? the pledge being lost, your money [too] is lost.' But if he lends him a thousand *zuz* against a note and a pledge is deposited for it, all agree that if the pledge is lost, the money is lost!¹⁴ — You may say that it agrees even with R. Eliezer, yet there is no difficulty: in the latter case he took the pledge when the loan was made;¹⁵ in the former, he did not take the pledge at the time of the loan.¹⁶ But in both cases,

1. Not through their negligence.
2. Because a paid trustee is responsible for theft even if not due to negligence.
3. Because wool is more absorbent than linen, therefore much heavier when saturated.
4. For whilst the short man had the sheet, the tall man was pledged to guard his cloak.

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5. In which case he is certainly liable.
6. [West of Mahuza, identical with Nehar Malka, situated on the canal of the same name on the west bank of the Tigris. Obermeyer. op cit., pp. 273. 275.]
7. [The canal might overflow its banks, with dangerous consequences for the ass; Obermeyer. p. 275.]
8. Identical with Nahras or Nahr-sar, on the canal of the same name, on the East bank of the Euphrates. Obermeyer. p. 307.
9. It was summer, and the river bed was dried up.
10. For it is well known that that road is never free of water.
11. Because that is simply a refusal to take care of it.
12. V. B.K. 47b. If a potter brought his pots into a stranger's courtyard, and the latter's ox trampled upon and broke them, or if a man brought his ox or provisions into another's court, and an ox belonging to the latter killed it or consumed them, — the Rabbis rule, if the courtyard owner had given him permission to enter, it is regarded as though he had undertaken to guard them, and therefore he is responsible. Rabbi, however, maintained that he must explicitly undertake to guard it; otherwise he bears no liability. Hence, by analogy, in the case under discussion, in the view of the Rabbis, when he says 'Put it down', he becomes an unpaid bailee, but not in the view of Rabbi.
13. Lit., 'take his money'.
14. Shebu. 43b. A paid bailee is responsible for loss, but not an unpaid bailee, who is liable only for negligence. Now, R. Eliezer maintains that when money is lent on a pledge without a written bond, it is not meant as a security for the money in case the debtor defaults, but merely as a proof of loan; but should the debtor fail, some other property might be seized by the creditor. Consequently the creditor is merely a bailee, and since R. Eliezer does not hold him responsible for loss, he obviously regards him as an unpaid bailee, and thus disagrees with the Mishnah. R. Akiba, on the other hand, holds that the pledge is a security for the money; hence, if that is lost, the money is lost too. If, however, a bond is indited, it cannot be asserted that the pledge was intended merely as proof, therefore all agree that if lost, the money is lost too.
15. Then R. Eliezer regards it as merely a proof of loan.
16. But afterwards, payment falling due and the debtor being unable to repay, the creditor obtained a court order to take a pledge. That pledge is certainly a security for the money,

and the benefit of being thereby certain of repayment renders the creditor a paid bailee.

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IF A MAN LENDS ANOTHER ON A PLEDGE is taught!¹ — But [say thus:] There is no difficulty: in the latter case, he lent him money; in the former [sc. our Mishnah], provisions.² But since the following clause states, R. JUDAH SAID: IF HE LENDS HIM MONEY ON A PLEDGE, HE IS AN UNPAID TRUSTEE; IF PROVISIONS, HE IS A PAID BAILEE; that proves that the first Tanna admits no distinction! — The whole [Mishnah] is according to R. Judah, but it is defective, and should read thus: IF A MAN LENDS ANOTHER ON A PLEDGE, HE RANKS AS A PAID TRUSTEE; this holds good only if he lends him provisions; but if money, he is an unpaid trustee. For R. JUDAH SAID: IF HE LENDS HIM MONEY ON A PLEDGE, HE IS AN UNPAID TRUSTEE; IF PROVISIONS, HE IS A PAID BAILEE. But if so, does not the Mishnah disagree with R. Akiba?³ Hence it is perfectly clear that our Mishnah does not agree with R. Eliezer.⁴

Shall we say [that the dispute arises] when the pledge is not worth the money lent, and that they differ in regard to Samuel's dictum? For Samuel said: If a man lends his neighbor a thousand *zuz*, and the latter deposits the handle of a saw against it, If the saw handle is lost, the thousand *zuz* is lost.⁵ — [No!] When the pledge is worth less than the loan, all reject Samuel's ruling.⁶ But here [the dispute arises] only if it is worth the loan, and they differ with respect to R. Isaac's dictum. For R. Isaac said: Whence do we know that the creditor acquires a title to the pledge?⁷ From the verse, [*In any case thou shalt deliver him the pledge again when the sun goeth down...*] and it shall be righteousness unto thee:⁸ if he has no title thereto, whence is his 'righteousness'?⁹ Hence it follows that the creditor acquires a title to the pledge.¹⁰ But is this reasonable? Verily, R. Isaac's dictum refers to a pledge, not taken when the loan

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was made;¹¹ but did he say it with reference to a pledge taken at the time of the loan? — Hence where the pledge was not taken when the loan was made, all agree with R. Isaac. But here the reference is to a pledge taken at the time of the loan, and they differ as to the guardian of lost property. For it has been stated: He who is in charge of lost property — Rabbah said: He ranks as an unpaid bailee; R. Joseph maintained: As a paid bailee.¹² Shall we say that R. Joseph's view is disputed by Tannaim? — No. With respect to one who guards lost property, all agree with R. Joseph. But here

1. Which implies that it was given at the time of the loan.
2. Since provisions deteriorate, the creditor derives a benefit from lending them, as he will have fresh provisions returned, and consequently he ranks as a paid bailee.
3. Since R. Akiba maintains that if the pledge is lost the money too is lost, he treats him as a paid bailee even in the case of money. Whereas it is a general principle that an anonymous Mishnah is R. Meir's, and taught on the basis of R. Akiba's view; V. Sanh. 86a.
4. I.e., the distinction between money and provisions cannot be maintained, the text of the Mishnah being correct, and therefore it definitely does not agree with R. Eliezer.
5. Shebu. 43b. Thus, R. Akiba agrees with it; whilst R. Eliezer maintains, since the pledge is not worth the loan, it must have been meant merely as evidence of the loan. But if the pledge is worth the loan, all agree that it is a security, and therefore, if lost, the loan too is lost.
6. According to R. Eliezer he bears no responsibility at all, according to R. Akiba his responsibility is limited to the value of the pledge.
7. That whilst it is in his possession it is his, and hence he is responsible for all accidents.
8. Deut. XXIV, 13.
9. There is no particular righteousness in returning what does not belong to one.
10. R. Eliezer disagrees. R. Akiba agrees with this.
11. V. *infra* 113a, where the verse is interpreted as relating to such a case; the pledge then is obviously a surety for the money.
12. V. *supra* 29a. R. Akiba, reasoning on the same lines as R. Joseph, regards the creditor as a paid bailee, since it is a positive duty to assist a fellow-man with a loan (cf. Lev. XXV, 35),

whilst R. Eliezer regards him as an unpaid bailee.

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they differ where the creditor needs the pledge;¹ one Master [sc. R. Akiba] maintaining that he fulfills a religious precept in making the loan, and therefore ranks as a paid bailee; whereas the other Master [sc. R. Eliezer] holds that he fulfils no religious precept thereby, since he desires his own benefit; therefore he is an unpaid bailee.²

ABBA SAUL SAID: ONE MAY HIRE OUT THE PLEDGE OF A POOR MAN, FIXING A PRICE AND PROGRESSIVELY DIMINISHING THE DEBT. R. Hanan b. Ammi said in Samuel's name: The *halachah* is as Abba Saul. But even Abba Saul ruled thus only in respect of a hoe, mattock, and axe, since their hiring fee is large whilst their depreciation is small.

MISHNAH. IF A MAN [A BAILEE] MOVED A BARREL FROM ONE PLACE TO ANOTHER AND BROKE IT, WHETHER HE IS A PAID OR AN UNPAID BAILEE, HE MUST SWEAR.³ R. ELIEZER SAID: [I TOO HAVE LEARNT THAT] BOTH MUST SWEAR, YET I AM ASTONISHED THAT BOTH CAN SWEAR.⁴

GEMARA. Our Rabbis taught: If a man moved a barrel for his neighbour⁵ from one place to another and [in doing so] broke it, whether a paid or an unpaid bailee, he must swear; this is R. Meir's view. R. Judah ruled: An unpaid bailee must swear; whereas a paid trustee is responsible.⁶

R. ELIEZER SAID: [I TOO HAVE LEARNT THAT] BOTH MUST SWEAR, YET I AM ASTONISHED THAT BOTH CAN SWEAR. Shall we say that in R. Meir's opinion one who stumbles [and thereby does damage] is not regarded as [culpably] negligent?⁷ But it has been taught: If his pitcher was broken, and he did not remove it; or if his camel fell down, and he did not raise it up — R. Meir holds him liable for any damage they may cause; whilst the Sages rule: He is exempt by

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laws of man, but liable by the laws of Heaven;⁸ and it is an established fact that they differ on the question whether stumbling amounts to negligence!⁹ — Said R. Eleazar: Separate them! The two [Baraitas] are not both by the same teacher.¹⁰ And R. Judah comes to teach that an unpaid bailee must swear, whilst a paid bailee must make it [sc. the damage] good, each in accordance with his own peculiar law.¹¹ Whereupon R. Eliezer observes: Verily, I have a tradition in accordance with R. Meir; nevertheless I am astonished that both should swear. As for an unpaid bailee, it is well; he swears that he was guilty of no negligence. But why should a paid bailee swear? Even if not negligent, he is still bound to pay!¹² And even with respect to an unpaid bailee it [the ruling] is correct [only] if [the accident happened] on sloping ground; but if not on sloping ground, can he possibly swear that he was not negligent!¹³

1. For use of which he remits a portion of the debt.
2. Nor does his use of it make him a paid bailee, since he makes an allowance on the debt in return.
3. That it was due to negligence.
4. To be freed from responsibility. The grounds for his astonishment are discussed below,
5. [MS.M. omits 'for his neighbor'.]
6. Even if it was not caused by his negligence.
7. For if the barrel was broken in the course of being moved, at the very least it is as though it were damaged through his stumbling; and since R. Meir rules that he must swear that he had not been negligent, it follows that stumbling is not negligence.
8. V. B.K. 29a.
9. R. Meir maintains that it does; consequently, if his pitcher broke — due to his stumbling or any other similar cause — he is culpably negligent. and therefore liable for damages. Thus this contradicts his ruling in the Mishnah!
10. Lit., 'he who taught this one did not teach the other.' They are irreconcilable and reflect two opposing views on R. Meir's opinion.
11. On the assumption of the first Baraita that R. Meir does not regard stumbling as negligence. R. Judah agrees with R. Meir. Consequently the unpaid bailee must swear that there was no negligence; but the paid bailee is responsible for damage caused by stumbling even though it is not accounted as negligence;

hence he does not agree with R. Meir that both bailees must swear.

12. As explained in n. 2.

13. For stumbling on level ground is certainly negligence.

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And even on sloping ground, it is reasonable [that the bailee swears] where no evidence is possible;¹ but where evidence is possible, let him adduce evidence and [only] then be free from liability! For it has been taught: Issi b. Judah said: [If a man deliver unto his neighbor an ass ... to keep; and it die, or be hurt, or driven away,] no man seeing it: Then shall an oath of the Lord be between them both;² hence it follows, if there be a spectator, he must bring evidence and then be free.³

But R. Hiyya b. Abba said in R. Johanan's name: This oath is a Rabbinical institution. For should you not rule thus, no man would move a barrel for his neighbour⁴ from one place to another.⁵ What does he swear?⁶ — Raba said: 'I swear that I broke it unintentionally.' And R. Judah comes to teach that an unpaid bailee must swear, whilst a paid bailee must make it good, each in accordance with his own peculiar law.⁷ Whereupon R. Eliezer observes: Verily, I have a tradition in accordance With R. Meir; nevertheless, I am astonished that both should swear. As for an unpaid bailee, it is well: he swears that he was guilty of no negligence. But why should a paid bailee swear? Even if not negligent, he is still bound to pay! And even with respect to an unpaid bailee, it [sc. the ruling] is correct [if the accident happened] on sloping ground; but if not on sloping ground, can he possibly swear that he was not negligent! And even on sloping ground, it is reasonable [that the bailee swears] where no evidence is possible; but where it is, let him adduce evidence and [only] then be freed from liability! For it has been taught: Issi b. Judah said: *[If a man deliver unto his neighbor an ass ... to keep; and it die, or be hurt, or driven away,] no man seeing it: Then shall an oath of the Lord be*

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between them both;⁸ hence it follows, if there be a spectator, he must bring evidence and then be free.

A man was once moving a barrel of wine in the manor of Mahuza,⁹ and broke it on a projection¹⁰ of Mahuza: so he came before Raba. Said he to him: The manor of Mahuza is a frequented place: go and bring evidence;¹¹ then you are free from liability. Thereupon R. Joseph, his son, said to him: In accordance with whom [is your verdict]? With Issi?¹² — Yes, said he, in accordance with Issi; and we agree with him.

A man instructed his neighbor. 'Go and buy me four hundred barrels of wine.' So he went and bought [them] for him; subsequently, however, he came before him and said, 'I bought you the four hundred barrels of wine, but they turned sour.' So he came before Raba. 'When four hundred barrels of wine turn sour,' said he to him, 'the facts should be widely known.¹³ Go and bring proof that originally, when bought, the wine was sound, then will you be free from liability.' R. Joseph, his son, observed to him: In accordance with whom [is your verdict]? With Issi? — Yes, said he, in accordance with Issi; and we agree with him.

R. Hiyya b. Joseph instituted a measure in Sikara.¹⁴ Viz., those who carry burdens on a yoke, and they break, must pay half. Why? Because it [the burden] is too much for one, yet too little for two:¹⁵ therefore it lies midway between accident and negligence.¹⁶ Those who carry on a pole must pay all.¹⁷

Some porters [negligently] broke a barrel of wine belonging to Rabbah son of R. Huna.¹⁸ Thereupon he seized their garments; so they went and complained to Rab.¹⁹ 'Return them their garments,' he ordered. 'Is that the law?' he enquired. 'Even so,' he rejoined: '*That thou mayest walk in the way of good men.*'²⁰ Their garments having been returned, they observed. 'We are poor men, have worked all day, and are in need: are we to get nothing?' 'Go and pay them,' he ordered. 'Is that the

law?' he asked. 'Even so,' was his reply: '*and keep the path of the righteous.*'²¹

CHAPTER VII

MISHNAH. ONE WHO ENGAGES LABOURERS AND DEMANDS THAT THEY COMMENCE EARLY OR WORK LATE — WHERE LOCAL USAGE IS NOT TO COMMENCE EARLY OR WORK LATE HE MAY NOT COMPEL THEM. WHERE IT IS THE PRACTICE TO SUPPLY FOOD [TO ONE'S LABOURERS], HE MUST SUPPLY THEM THEREWITH; TO PROVIDE A RELISH, HE MUST PROVIDE IT. EVERYTHING DEPENDS ON LOCAL CUSTOM. IT ONCE HAPPENED THAT R. JOHANAN B. MATHIA SAID TO HIS SON, 'GO OUT AND ENGAGE LABOURERS.' HE WENT AND AGREED TO SUPPLY THEM WITH FOOD. BUT ON HIS RETURNING TO HIS FATHER, THE LATTER SAID, MY SON, SHOULD YOU EVEN PREPARE FOR THEM A BANQUET LIKE SOLOMON'S WHEN IN HIS GLORY,²² YOU CANNOT FULFIL YOUR UNDERTAKING, FOR THEY ARE CHILDREN OF ABRAHAM, ISAAC AND JACOB. BUT, BEFORE THEY START WORK, GO OUT AND TELL THEM, "[I ENGAGE YOU] ON CONDITION THAT YOU HAVE NO CLAIM UPON ME OTHER THAN BREAD AND PULSE." R. SIMEON B. GAMALIEL SAID: IT WAS UNNECESSARY [TO STIPULATE THUS]; EVERYTHING DEPENDS ON LOCAL CUSTOM.

GEMARA. Is it not obvious? — It is necessary [to teach it] only when he [the employer] pays them a higher wage [than usual]: I might think that he can plead, 'I pay you a higher wage in order that you may start earlier and work for me until nightfall;' we are therefore taught that they can reply, 'The higher remuneration is [only] for better work [but not longer hours].'

Resh Lakish said:

1. I.e., if it was an unfrequented place.
2. Ex. XXII, 9f.
3. But an oath is insufficient.
4. [MS.M. omits 'for his neighbor'.]

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5. R. Hiyya does not answer the foregoing difficulties, but reverts to the alleged contradiction in R. Meir's views, and harmonizes them. Thus: Both Baraithas have the same author, and, as appears from the second, stumbling is certainly accounted as negligence. Nevertheless, R. Meir holds that in this case the Rabbis freed him from liability, as a measure necessary for the common good. Hence he need only take an oath.
6. He cannot swear that he was guiltless of negligence, since on the present hypothesis stumbling itself is negligence.
7. This passage and the following have already been given above. There it was all R. Eliezer's explanation of the Baraitha and the Mishnah; here it is R. Hiyya's. But on R. Hiyya's version, the sentence just given does not bear quite the same interpretation as before (q.v.) Thus: R. Judah disagrees with R. Meir, and holds that stumbling is not negligence but midway between negligence and an accident, and thus analogous to theft and loss, for which an unpaid bailee is not responsible, whereas a paid bailee is. Therefore the paid bailee must make good the damage, whilst the unpaid bailee swears that he was not otherwise negligent and is thereby freed from liability. Hence, there is no particular Rabbinical measure in this case, but each is dealt with in accordance with his own law.
8. Ibid.
9. V. B.B. (Sonc. ed.) p. 60, n. 4.
10. E.g., a molding, or perhaps a balcony or a bay window projecting from the wall (Jast. s.v. [H] and [H]).
11. Some texts add 'That there was no culpable negligence'.
12. That in a frequented locality an oath is not accepted.
13. I.e., where you bought them, where you stored them, when they turned sour, etc.
14. Near Mahoza.
15. Consequently, one person would carry it.
16. Lit., 'it is near to accident and near to negligence.'
17. Rashi explains that it was a pole made for a two-man burden. Therefore, when one carries it alone, it is culpable negligence, for which he bears full responsibility.
18. [So according to Alfasi; cur. edd.: 'b. Bar Hanan,' MS.M.: 'b. Bar Hanah.' v. next note.]
19. [Other texts: 'Raba', according to which preference is to be given to reading: Rabbah. b. R. Hanan, v. D.S.]
20. Prov. II, 20.
21. Ibid. Actually they were responsible, but Rab told him that in such a case one should not insist on the letter of the law.

22. Lit., 'in his time'.

Baba Mezi'a 83b

A laborer's entry [to town] is in his own time, and his going forth [to the fields] is in his employer's;¹ as it is written, *The sun ariseth, they [sc. the animals] gather themselves together, and lay them down in their dens. Man goeth forth unto his work and to his labor until the evening.*² But let us see what is the usage? — This refers to a new town. Then let us see whence they come? — It refers to a conglomeration.³ Alternatively, it means that he said to them, 'You are engaged to me as laborers [whose conditions of work are set forth] in the Bible.'⁴

R. Zera lectured — others say. R. Joseph learnt: *What is meant by, Thou makest darkness, and it is night: wherein all the beasts of the forest do creep forth?*⁵ *Thou makest darkness, and it is night* — this refers to this world, which is comparable to night; *wherein all the beasts of the forest do creep forth* — to the wicked therein, who are like the beasts of the forest. *The sun ariseth* — for the righteous;⁶ *the wicked are gathered in* — for Gehenna; *and lay them down in their habitations* — not a single righteous man lacks a habitation as befits his honor. *Man goeth forth unto his work* — i.e., the righteous go forth to receive their reward;⁷ *and to his labor until the evening* — as one who has worked fully until the very evening.⁸

R. Eleazar, son of R. Simeon, once met an officer of the [Roman] Government who had been sent to arrest thieves,⁹ 'How can you detect them?' he said. 'Are they not compared to wild beasts, of whom it is written, *Therein [in the darkness] all the beasts of the forest creep forth?*'¹⁰ (Others say, he referred him to the verse, *He lieth in wait secretly as a lion in his den.*)¹¹ 'Maybe,' [he continued,] 'you take the innocent and allow the guilty to escape?' The officer answered, 'What shall I do? It is the King's command.' Said the Rabbi, 'Let me tell you what to do. Go into a tavern at the fourth hour of the day.'¹² If you see a man

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dozing with a cup of wine in his hand, ask what he is. If he is a learned man, [you may assume that] he has risen early to pursue his studies; if he is a day laborer he must have been up early to do his work; if his work is of the kind that is done at night, he might have been rolling thin metal.¹³ If he is none of these, he is a thief; arrest him.' The report [of this conversation] was brought to the Court, and the order was given: 'Let the reader of the letter become the messenger.'¹⁴ R. Eleazar, son of R. Simeon, was accordingly sent for, and he proceeded to arrest the thieves. Thereupon R. Joshua, son of Karhah, sent word to him, 'Vinegar, son of wine!¹⁵ How long will you deliver up the people of our God for slaughter!' Back came the reply: 'I weed out thorns from the vineyard.' Whereupon R. Joshua retorted: 'Let the owner of the vineyard himself [God] come and weed out the thorns.'

One day a fuller met him, and dubbed him: 'Vinegar, son of wine.' Said the Rabbi to himself, 'Since he is so insolent, he is certainly a culprit.' So he gave the order to his attendant: 'Arrest him! Arrest him!' When his anger cooled, he went after him in order to secure his release, but did not succeed. Thereupon he applied to him, [the fuller] the verse: Whoso keepeth his mouth and his tongue, keepeth his soul from troubles.¹⁶ Then they hanged him, and he [R. Eleazar son of R. Simeon] stood under the gallows and wept. Said they [his disciples] to him: 'Master, do not grieve; for he and his son seduced a betrothed maiden on the Day of Atonement.' [On hearing this,] he laid his hand upon his heart¹⁷ and exclaimed: 'Rejoice, my heart! If matters on which thou [sc. the heart] art doubtful are thus,¹⁸ how much more so those on which thou art certain! I am well assured that neither worms nor decay will have power over thee.' Yet in spite of this, his conscience disquieted him. Thereupon he was given a sleeping draught, taken into a marble chamber,¹⁹ and had his abdomen opened, and basketsful of fat removed from him and placed in the sun during Tammuz and Ab,²⁰ and yet it did not

putrefy.²¹ But no fat putrefies!²² — [True,] no fat putrefies; nevertheless, if it contains red streaks,²³ it does. But here, though it contained red streaks, it did not. Thereupon he applied to himself the verse, *My flesh too shall dwell in safety.*²⁴

A similar thing²⁵ befell R. Ishmael son of R. Jose.

1. The working day on the field extended from sunrise until the stars appear. The laborer returns home in his own time, i.e., after the stars appear, but goes to work in the time of the employer, starting from home at sunrise. [Tosaf. reverses the explanation.]
2. Ps. CIV, 22f. This is interpreted: Man goeth forth when the sun ariseth — hence in his employer's time — and is bound to his labor until the evening — returning home in his own time.
3. I.e., a town made up of inhabitants from various other places, and so lacking uniformity in this matter.
4. In that case local custom is overridden.
5. Ibid. 20.
6. In the Hereafter.
7. [H], the word used in the text, often means not 'work', but its reward: Cf. Lev. XIX, 13: *The wages (H) of him that is hired, etc.*
8. I.e., until his death.
9. [(a) Freebooters (latrones) who overran Judea during the war between the Emperor Severus and his rival Pescennius Niger (193-4 C.E.) (Graetz, *Geschichte der Juden*, IV, p. 207); or (b) ordinary robbers (Krauss. *MGWJ*, 1894. p. 151).]
10. Ps. CIV, 20.
11. Ps. X, 9.
12. 10 a.m., the usual breakfast hour.
13. Without using a hammer, so that he did not attract attention.
14. Let him who gave the advice carry it out.
15. Degenerate son of a righteous father.
16. Prov. XXI, 23.
17. Lit., 'his inwards'.
18. Seen to be just. He was doubtful whether the man had really merited hanging. But now he saw that he was, for the seduction of a betrothed maiden is punished by stoning, and all who are stoned are hung.
19. An operating theatre(?)
20. The summer months, corresponding to about June and July.
21. This was taken as a sign that he had acted rightly and would be proof against decay.
22. Rashi: unless flesh adheres to it.
23. Which are a fleshy substance.

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24. Ps. XVI, 9.

25. Viz., that he became an informer to the State.

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[One day] Elijah met him and remonstrated with him: 'How long will you deliver the people of our God to execution!' — 'What can I do', he replied, 'it is the royal decree.' 'Your father fled to Asia,¹ he retorted, 'do you flee to Laodicea!'

When R. Ishmael son of R. Jose and R. Eleazar son of R. Simeon met, one could pass through with a yoke of oxen under them and not touch them.² Said a certain [Roman] matron to them, 'Your children are not yours!' They replied, 'Theirs [sc. our wives] is greater than ours.' '[But this proves my allegation] all the more!' [She observed]. Some say, they answered thus: 'For as a man is, so is his strength.'³ Others say, they answered her thus: 'Love suppresses the flesh.' But why should they have answered her at all; is it not written, Answer not a fool according to his folly?⁴ — To permit no stigma upon their children.

R. Johanan said: The waist of R. Ishmael son of R. Jose was as a bottle of nine *kabs* capacity. R. papa said: R. Johanan's waist was as a bottle containing five *kabs*; others say, three *kabs*. That of R. papa himself was as [large as] the wicker-work baskets of Harpania.⁵

R. Johanan said: I am the only one remaining of Jerusalem's men of outstanding beauty. He who desires to see R. Johanan's beauty, let him take a silver goblet as it emerges from the crucible,⁶ fill it with the seeds of red pomegranate, encircle its brim with a chaplet of red roses, and set it between the sun and the shade: its lustrous glow is akin to R. Johanan's beauty.

But that is not so; for did not a Master say: R. Kahana's beauty is a reflection of R. Abbahu's; R. Abbahu's is a reflection of our Father Jacob's; our Father Jacob's was a reflection of Adam's; whereas R. Johanan is

omitted! — R. Johanan is different, because he lacked a beard.⁷

R. Johanan used to go and sit at the gates of the mikweh.⁸ 'When the daughters of Israel ascend from the bath', said he, 'let them look upon⁹ me, that they may bear sons as beautiful and as learned as I.' Said the Rabbis to him: 'Do you not fear an evil eye?' — 'I am of the seed of Joseph', he replied, 'against whom an evil eye is powerless.' For it is written, Joseph is a fruitful bough, even a fruitful bough by a well:¹⁰ whereon R. Abbahu observed: Render not [by a well] but, 'above the power of the eye.'¹¹ R. Jose son of R. Hanina deduced it from the following: and let them multiply abundantly like fish in the midst of the earth:¹² just as fish in the seas are covered by water and the eye has no power over them, so also are the seed of Joseph — the eye has no power over them.

One day R. Johanan was bathing in the Jordan, when Resh Lakish saw him and leapt into the Jordan after him. Said he [R. Johanan] to him, 'Your strength should be for the Torah.'¹³ — 'Your beauty,' he replied, 'should be for women.' 'If you will repent,' said he, 'I will give you my sister [in marriage], who is more beautiful than I.' He undertook [to repent]; then he wished to return and collect his weapons, but could not.¹⁴ Subsequently, [R. Johanan] taught him Bible and Mishnah, and made him into a great man. Now, one day there was a dispute in the schoolhouse [with respect to the following. Viz.,] a sword, knife, dagger, spear, hand-saw and a scythe — at what stage [of their manufacture] can they become unclean? When their manufacture is finished.¹⁵ And when is their manufacture finished? — R. Johanan ruled: When they are tempered in a furnace. Resh Lakish maintained: When they have been furbished in water. Said he to him: 'A robber understands his trade.'¹⁶ Said he to him, 'And wherewith have you benefited me: there [as a robber] I was called Master, and here I am called Master.'¹⁷ 'By bringing you under the wings of the *Shechinah*,' he retorted. R. Johanan therefore felt himself

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deeply hurt,¹⁸ [as a result of which] Resh Lakish fell ill. His sister [sc. R. Johanan's, the wife of Resh Lakish] came and wept before him: 'Forgive him¹⁹ for the sake of my son,' she pleaded. He replied: '*Leave thy fatherless children. I will preserve them alive.*'²⁰ 'For the sake of my widowhood then!' 'And let thy widows trust in me,'²¹ he assured her. Resh Lakish died, and R. Johanan was plunged into deep grief. Said the Rabbis, 'Who shall go to ease his mind? Let R. Eleazar b. Pedath go, whose disquisitions are very subtle.' So he went and sat before him; and on every dictum uttered by R. Johanan he observed: 'There is a Baraitha which Supports you.' 'Are you as the son of Lakisha?'²² he complained: 'when I stated a law, the son of Lakisha used to raise twenty-four objections, to which I gave twenty-four answers, which consequently led to a fuller comprehension of the law; whilst you say, "A Baraitha has been taught which supports you:" do I not know myself that my dicta are right?' Thus he went on rending his garments and weeping, 'Where are you, O son of Lakisha, where are you, O son of Lakisha;' and he cried thus until his mind was turned. Thereupon the Rabbis prayed for him, and he died.

1. Jose b. Halafta fled to Asia Minor in consequence of his having been ordained by Judah b. Baba (Sanh. 14a) in defiance of the Hadrianic edict.
2. Their waists were so large that as they stood waist to waist there was room for a yoke of oxen to pass beneath them!
3. Judges VIII, 21.
4. Prov. XXVI, 4.
5. [A rich agricultural town in the Mesene district S. of Babylon, famous for its manufacture of baskets made of fibers of palm leaves. V. Obermeyer, *op. cit.* p. 200. This humorous and exaggerated description of the figures of these Rabbis has been stated to prevent any stigma being attached to the offspring of people of large contour, Tosaf.]
6. I.e., immediately it leaves the silversmith's hands, whilst it is still glowing with heat.
7. Lit., 'facial glory'.
8. V. [Glos.](#)
9. Lit., 'meet'.
10. Gen. XLIX, 22.
11. [H], a play on [H].
12. Ibid. XLVIII, 16.

13. I.e., devoted to study.
14. His mere decision to turn to the study of the Torah had so weakened him that he lacked the strength to don his heavy equipment.
15. Before that they are not complete articles or utensils, and only such can become unclean.
16. This was quoted only proverbially, though in later times it was taken literally, and Resh Lakish was held to have been a robber. Actually, he had been a circus attendant, to which his necessitous circumstances had reduced him, and these weapons were used in the course of that calling. (Graetz, *Geschichte*, IV, 238, n. 6). Weiss, *Dor*, III, p. 83, n. 2, understands the phrase literally, but translates [H] as 'thief-catcher.' If that be correct, Resh Lakish at one time helped the Roman government, just as R. Eleazar b. R. Simeon and R. Ishmael b. R. Jose had done
17. Heb. [H] is equally applicable to a captain of a gang and a Rabbi (Rashi).
18. By the remark of Resh Lakish that he had not benefited him.
19. Lit., 'do'.
20. Jer. XLIX, 11.
21. Ibid.
22. The full name of Resh Lakish was R. Simeon b. Lakish. Weiss, *Dor*, II, 71 deduces from the use of Lakisha here that Lakish was not a patronym but the name of a town, [H] meaning 'a citizen of,' i.e., R. Simeon, a townsman of Lakish. But Bacher, *Ag. der Pal. Am. I*, 340, 1 defends Lakish as a patronym.

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[Reverting to the story of R. Eleazar son of R. Simeon] yet even so,¹ R. Eleazar son of R. Simeon's fears were not allayed,² and so he undertook a penance. Every evening they spread sixty sheets for him, and every morning sixty basins of blood and discharge were removed from under him. In the mornings his wife prepared him sixty kinds of pap,³ which he ate, and then recovered. Yet his wife did not permit him to go to the schoolhouse, lest the Rabbis discomfort him. Every evening he would exhort them,⁴ 'Come, my brethren and familiars!' whilst every morning he exclaimed, 'Depart, because ye disturb my studies!' One day his wife, hearing him, cried out, 'You yourself bring them upon you; you have [already] squandered the money of my father's house!'⁵ So she left him⁶ and returned to her paternal home.⁷

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Then there came sixty seamen who presented him with sixty slaves, bearing sixty purses.⁸ They too prepared sixty kinds of pap for him, which he ate. One day she [his wife] said to her daughter, 'Go and see how your father is faring now.' She went, [and on her arrival] her father said to her, 'Go, tell your mother that our [wealth] is greater than theirs' [sc. of his father-in-law's house]. He then applied to himself the verse, *She is like the merchant's ships; she bringeth her food from afar.*⁹ He ate, drank, and recovered, and went to the schoolhouse. Sixty specimens of blood were brought before him, and he declared them all clean. But the Rabbis criticized him, saying, 'Is it possible that there was not [at least] one about which there was some doubt!' He retorted, 'If it be as I [said], let them all be males; if not, let there be one female amongst them.'¹⁰ They were all males, and were named 'Eleazar', after him.

It has been taught: Rabbi said: How much procreation did this wicked [state] prevent in Israel.¹¹

On his death-bed he said to his wife, 'I know that the Rabbis are angry with me, and will not properly attend to me. Let me lie in an upper chamber,¹² and do you not be afraid of me.' R. Samuel b. Nahmani said: R. Jonathan's mother told me that she was informed by the wife of R. Eleazar son of R. Simeon: 'I kept him lying in that upper chamber not less than eighteen nor more than twenty-two years. Whenever I ascended there, I examined his hair, and [even] if a single hair had fallen out, the blood would well forth. One day, I saw a worm issue from his ear, whereat I was much grieved, but he appeared to me in my dream and told me that it was nothing. ["This has happened," said he,] "because I once heard a scholar insulted and did not protest, as I should have done." Whenever two people came before him [in a lawsuit], they stood near the door, each stated his case, and then a voice issued from that upper chamber, proclaiming, "So-and-so, you are liable; so-and-so, you are free.'" Now, one day his wife was quarrelling with a neighbor,

when the latter reviled [her, saying,] 'Let her be like her husband, who was not worthy of burial!' Said the Rabbis: 'When things have gone thus far,¹³ it is certainly not meet.'¹⁴ Others say: R. Simeon b. Yohai appeared to them in a dream, and complained: 'I have a pigeon amongst you which you refuse to bring to me.' Then the Rabbis went to attend to him [for burial], but the townspeople of Akabaria¹⁵ did not let them; because during all the years R. Eleazar son of R. Simeon slept in his upper chamber no evil beast came to their town. But one day — it was the eve of the Day of Atonement, when they were busily occupied, the Rabbis sent [word] to the townspeople of Biri,¹⁶ and they brought up his bier, and carried it to his father's vault, which they found encircled by a serpent. Said they to it, 'O snake, O snake, open thy mouth, and let the son enter to his father.' Thereupon it opened [its mouth] for them. Then Rabbi sent [messengers] to propose [marriage] to his wife. She sent back: 'Shall a utensil, in which holy food has been used, be used for profane purposes!' There [sc. in Palestine] the proverb runs: Where the master hung up his weapons, there the shepherd hung up his wallet. He sent back word, 'Granted that he outstripped me in learning, was he [also] my superior in good deeds?' She returned, 'Yet at least he outstripped you in learning, though I did not know it. But I do know [that he exceeded you] in [virtuous] practice, since he submitted himself to mortification.'

'In learning'. To what is the reference? — When Rabban Simeon b. Gamaliel and R. Joshua b. Karhah sat on benches, R. Eleazar son of R. Simeon and Rabbi sat in front of them on the ground,¹⁷ raising objections and answering them. Said they, 'We drink their water [i.e., benefit from their learning], yet they sit upon the ground; let seats be placed for them!' Thus were they promoted. But R. Simeon b. Gamaliel protested: 'I have a pigeon amongst you, and ye wish to destroy it!'¹⁸ So Rabbi was put down. Thereupon R. Joshua b. Karhah said: 'Shall he, who has a father, live, whilst he who has no father¹⁹ die!' So R. Eleazar son of R. Simeon too was put

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down, whereat he felt hurt saying, 'Ye have made him equal to me!'²⁰ Now, until that day, whenever Rabbi made a statement, R. Eleazar son of R. Simeon supported him. But from then onward, when Rabbi said, 'I have an objection,' R. Eleazar son of R. Simeon retorted, 'If you have such and such an objection, this is your answer; now have you encompassed us with loads of answers in which there is no substance.'²¹ Rabbi, being thus humiliated, went and complained to his father. 'Let it not grieve you,' he answered, 'for he is a lion, and the son of a lion, whereas you are a lion, the son of a fox.'²² To this Rabbi alluded when he said, Three were humble; viz., my father,

1. Notwithstanding that his fat did not putrefy; v. *supra* 83b.
2. Lit., 'his mind was not at rest', that he had not ensnared innocent men too.
3. Made of figs (Rashi).
4. His pains and sores personified.
5. By illness.
6. Lit., 'rebelled'.
7. The Heb. expression means her father's house after his death.
8. These seamen had encountered a violent storm at sea, and had prayed to be delivered for the sake of R. Eleazar son of R. Simeon. This gift then was a thanksgiving offering to him (Tosaf.).
9. Prov. XXXI, 14. 'she' is referred to the Torah; for the sake of his learning, in the merit of which the seamen had been delivered, his 'food' — i.e. wealth — had been brought to him from afar.
10. I.e., the children of those women whose blood he had declared clean.
11. R. Eleazar son of R. Simeon having been appointed by the state to track down malefactors, could not come to the school, where, by his wide knowledge of what is clean or unclean he would have permitted many women to their husbands.
12. Instead of being buried.
13. I.e., that people know that he is dead yet unburied.
14. It dishonors him.
15. Josephus (Wars, II, XX, 6) mentions that he fortified a place of that name in Upper Galilee; it was probably identical with Akhbura, a town to the south of Safed. Neubauer p. 226f.
16. A neighboring town. [Either Bira, S.E., or Kfar Bir'im, N.W. of Gush Halab; Klein, Neue Beitrage, p. 39.]

17. This was the usual way of study, the master sitting on a seat, the disciples on the ground.
18. He feared that his son's promotion — he was Rabbi's father — would excite the evil eye and react to his injury.
19. R. Simeon b. Yohai, the father of R. Eleazar son of R. Simeon, was dead.
20. Whilst he thought himself higher. — This proves the point that he was a greater scholar than Rabbi; v. also further.
21. I.e., R. Eleazar anticipated all his objections and answered them by showing that there was no reality in the proposed difficulties and consequently in the answer given, and thus he accused Rabbi of being the cause of many answers which are quite unimportant.
22. He has a greater scholastic ancestry than you, R. Simeon b. Yohai, his father, having been more learned than I.

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the Bene Bathyra, and Jonathan, the son of Saul. 'R. Simeon b. Gamaliel,¹ as has been said, 'The Bene Bathyra,' as a Master said: They placed him at the head and appointed him Nasi² over them.³ 'Jonathan, the son of Saul,' for he said to David, And thou shalt be king over Israel, and I shall be next unto thee.⁴ But how does this prove it: perhaps Jonathan the son of Saul [spoke thus] because he saw that the people were flocking to David? The Bene Bathyra too, because they saw that Hillel was their superior [in learning]? But R. Simeon b. Gamaliel was certainly very modest.⁵

Rabbi observed: Suffering is precious.⁶ Thereupon he undertook [to suffer likewise] for thirteen years, six through stones in the kidneys⁷ and seven through scurvy: others reverse it. Rabbi's house-steward was wealthier than King Shapur.⁸ When he placed fodder for the beasts, their cries could be heard for three miles, and he aimed at casting it [before them] just then when Rabbi entered his privy closet, yet even so, his voice [lifted in pain] was louder than theirs, and was heard [even] by sea-farers. Nevertheless, the sufferings of R. Eleazar son of R. Simeon were superior [in virtue] to those of Rabbi. For whereas those of R. Eleazar son of R. Simeon came to him through love, and

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departed in love,² those of Rabbi came to him through a certain incident, and departed likewise.

'They came to him through a certain incident.' What is it? — A calf was being taken to the slaughter, when it broke away, hid his head under Rabbi's skirts, and lowed [in terror]. 'Go', said he, 'for this wast thou created.' Thereupon they said [in Heaven], 'Since he has no pity, let us bring suffering upon him.'

'And departed likewise.' How so? — One day Rabbi's maidservant was sweeping the house; [seeing] some young weasels lying there, she made to sweep them away. 'Let them be,' said he to her; 'It is written, and his tender mercies are over all his works.'¹⁰ Said they [in Heaven], 'Since he is compassionate, let us be compassionate to him.'

During all the years that R. Eleazar suffered, no man died prematurely. During all those of Rabbi the world needed no rain;¹¹ for Rabbah son of R. Shilah said: The day of rain is as hard [to bear]¹² as the day of judgment. And Amemar said: But that it is necessary to the world, the Rabbis would have prayed that it might cease to be. Nevertheless,¹³ when a radish was pulled out of its bed, there remained a cavity full of water.

Rabbi chanced to visit the town of R. Eleazar son of R. Simeon.¹⁴ 'Did that righteous man leave a son?' he inquired. 'Yes,' they replied; 'and every harlot whose hire is two [zuz], hires him for eight.'¹⁵ So he had him brought [before him], ordained him a Rabbi,¹⁶ and entrusted him to R. Simeon b. Issi b. Lakonia, his mother's brother [to be educated]. Every day he would say, 'I am going to my town; to which he [his instructor] replied, 'They have made you a Sage, spread over you a gold trimmed cloak [at the ceremony of ordination] and designated you "Rabbi", and yet you say, I am going back to my town!' Said he, 'I swear that this [my desire] has been abandoned.' When he became a great [scholar], he went and sat in Rabbi's academy. On hearing his voice, he [Rabbi]

observed: 'This voice is similar to that of R. Eleazar son of R. Simeon.' 'He is his son,' they [his disciples] told him. Thereupon he applied to him the verse, *The fruit of the righteous is a tree of life; and he that winneth souls is wise.*¹⁷ [Thus:] '*The fruit of the righteous is a tree of life*' — this refers to R. Jose, the son of R. Eleazar, the son of R. Simeon;¹⁸ '*And he that winneth souls is wise*' — to R. Simeon b. Issi b. Lakonia. When he died, he was carried to his father's burial vault, which was encompassed by a snake. 'O snake, O snake,' they adjured it, 'open thy mouth and let the son enter to his father;' but it would not uncoil for them. Now, the people thought that one was greater than the other,¹⁹ but there issued a Heavenly Voice, proclaiming: 'It is not because one is greater than the other, but because one underwent the suffering of the cave, and the other did not.'²⁰

Rabbi chanced to visit the town of R. Tarfon. Said he to them: 'Has that righteous man, who used to swear by the life of his children,²¹ left a son?' They replied: 'He has left no son, but a daughter's son remains, and every harlot who is hired for two [zuz] hires him for eight.' So he had him brought before him and said to him: 'Should you repent, I will give you my daughter.' He repented. Some say, he married her [Rabbi's daughter] and divorced her; others, that he did not marry her at all, lest it be said that his repentance was on her account. And why did he [Rabbi] take such [extreme] measures? — Because, [as] Rab Judah said in Rab's name — others Say, R. Hiyya b. Abba said in R. Johanan's name — others say, R. Samuel b. Nahmani said in R. Jonathan's name: He who teaches Torah to his neighbor's son will be privileged to sit in the Heavenly Academy, for it is written, *If thou [sc. Jeremiah] wilt cause [Israel] to repent, then will I bring thee again, and thou shalt stand before me.*²² And he who teaches Torah to the son of an 'am ha-arez,²³ even if the Holy One, blessed be He, makes a decree, He annuls it for his sake, as it is written, *and if thou shalt take forth the precious from the vile, thou shalt be as my mouth.*²⁴

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R. Parnak said in R. Johanan's name: He who is himself a scholar, and his son is a scholar, and his son's son too, the Torah will nevermore cease from his seed, as it is written, *As for me, this is my covenant with them, saith the Lord; My spirit is upon thee, and my words which I have put in thy mouth, shall not depart out of thy mouth, nor out of the mouth of thy seed, nor out of the mouth of thy seed's seed, saith the Lord, from henceforth and for ever.*²⁵ What is meant by 'saith the Lord'? — The Holy one, blessed be He, said, I am surety for thee in this matter. What is the meaning of 'from henceforth and forever'? — R. Jeremiah said: From henceforth [i.e., after three generations] the Torah seeks its home.²⁶

R. Joseph fasted forty fasts,²⁷ when he was made to read [in his dream], 'They shall not depart out of thy mouth.' He fasted another forty, and was made to read, 'They shall not depart out of thy mouth, nor out of the mouth of thy seed.' He fasted another forty, and was made to read, 'They shall not depart out of thy mouth, nor out of the mouth of thy seed, nor out of the mouth of thy seed's seed.' Henceforth, said he, I have no need [to fast]; the Torah seeks its home.

When R. Zera emigrated to Palestine, he fasted a hundred fasts to forget the Babylonian Gemara, that it should not trouble him.²⁸ He also fasted a hundred times that R. Eleazar might not die in his lifetime, so that the communal cares²⁹ should not fall upon him. And yet another hundred, that the fire of Gehenna might be powerless against him. Every thirty days he used to examine himself [to see if he were fireproof]. He would heat the oven, ascend, and sit therein, but the fire had no power against him. One day, however, the Rabbis cast an [envious] eye upon him, and his legs were singed, whereafter he was called, 'Short and leg-singed.'³⁰

Rab Judah said in Rab's name: What is meant by, *Who is the wise man, that may understand this? and who is he to whom the mouth of the Lord hath spoken, that he may*

*declare it, why the land perisheth?*³¹ This question³²

1. The father of Rabbi.
2. The Patriarch, head of Palestinian Jewry.
3. The story is given in full in Pes. 66a. On one occasion the eve of Passover fell on the Sabbath, and none knew whether the Paschal sacrifice might be offered or not. Thereupon Hillel proved by argument and tradition that it was permissible, upon which the Bene Bathyra, the then heads of Palestinian Jewry, voluntarily resigned their leadership in his favor.
4. I Sam. XXIII, 17.
5. I.e., though the action of the other two might be explained away as not due to humility, that of R. Simeon b. Gamaliel could not.
6. Because he saw that as a reward for the suffering to which R. Eleazar son of R. Simeon had submitted his body remained intact, defying decomposition and decay for many years.
7. Or, in the bladder, Jast.
8. V. p. 408, n. 5.
9. V. *supra* 84a bottom: he summoned his sufferings, loving them as a means of ennoblement and likewise dismissed them, that he might be free to study.
10. Ps. CXLV, 9.
11. Everything growing without rain.
12. Owing to the inconvenience and discomfort to which people are put.
13. Though no rain fell.
14. After his death.
15. On account of his beauty.
16. That the honor and the title might turn him to the Torah.
17. Prov. XI, 30.
18. I.e., a line of righteous men.
19. I.e., the father was greater than the son, who was therefore unworthy to be buried with him.
20. R. Simeon b. Yohai and his son Eleazar were hidden in a cave from the Roman authorities for thirteen years, Shab. 33b.
21. [He frequently used the oath 'May I bury my children' — e.g. Oh. XVI, 1]
22. Jer. XV, 19.
23. V. [Glos.](#)
24. *Ibid.*
25. Isa. LIX, 21: thus, once the Torah has been in thy own mouth, thy seed's, and thy seed's seed — i.e., three generations — it shall not depart for ever.
26. I.e., it becomes hereditary in that family.
27. That the Torah should always remain with him.
28. The Palestinian method of study was far simpler than the Babylonian, and R. Zera was

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anxious that his keen dialectic method acquired in Babylon should not interfere with the clearer course adopted in Palestine. Cf. Sanh. (Sonc. ed.) p. 138, n. 11. [On the term 'Gemara' v. *supra* p. 206, n. 6. Kaplan, *op. cit.*, pp. 258ff., on the basis of his definition, explains that Gemara texts as recorded by different schools frequently presented variations in substance, style and phraseology to the confusion of the student, and it was for freedom from this handicap that R. Zera prayed when he decided to join the school in Palestine.]

29. [Of Tiberias, where R. Zera was a communal leader and finally became the head of the School.]
30. He was of short stature.
31. Jer. IX, 11.
32. Lit., 'thing'.

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was put by the Sages, but they could not answer it; by the prophets, but they [too] could not answer it, until the Holy One, blessed be He, Himself resolved as it is written, *And the Lord said, Because they have forsaken my law which I set before them.*¹ Rab Judah said in Rab's name: [That means] that they did not first utter a benediction over the Torah [before studying it].²

R. Hama said: What is meant by, Wisdom resteth in the heart of him that hath understanding; but that which is in the midst of fools is made known?³ 'Wisdom resteth in the heart of him that hath understanding' — this refers to a scholar, the son of a scholar; 'but that which is in the midst of fools is made known' — to a scholar, the son of an 'am ha-arez.⁴ Said 'Ulla: Thus it is proverbial, One stone in a pitcher cries out 'rattle, rattle.'⁵

R. Jeremiah questioned R. Zera: What is meant by, The small and great are there [sc. the next world]; and the servant is free from his master?⁶ Do we then not know that 'the small and great are there'? — But [it means that] he who humbles himself for the sake of the Torah in this world is magnified in the next; and he who makes himself a servant to the [study of the] Torah in this world becomes free in the next.

Resh Lakish was marking the burial vaults of the Rabbis.⁷ But when he came to the grave of R. Hiyya, it was hidden from him,⁸ whereat he experienced a sense of humiliation. 'Sovereign of the Universe!' he exclaimed, 'did I not debate on the Torah as he did?' Thereupon a Heavenly Voice cried out in reply: 'You did indeed debate on the Torah as he did, but did not spread the Torah as he did.' Whenever R. Hanina and R. Hiyya were in a dispute, R. Hanina said to R. Hiyya: 'Would you dispute with me? If, Heaven forefend! the Torah were forgotten in Israel, I would restore it by my argumentative powers.' To which R. Hiyya rejoined: 'Would you dispute with me, who achieved that the Torah should not be forgotten in Israel? What did I do? I went and sowed flax, made nets [from the flax cords], trapped deers, whose flesh I gave to orphans, and prepared scrolls [from their skins], upon which I wrote the five books [of Moses]. Then I went to a town [which contained no teachers] and taught the five books to five children, and the six orders [of the Talmud] to six children⁹ And I bade them: "Until I return, teach each other the Pentateuch and the Mishnah;" and thus I preserved the Torah from being forgotten in Israel.'¹⁰ This is what Rabbi [meant when he] said, 'How great are the works of Hiyya!' Said R. Ishmael son of R. Jose to him, '[Are they] even [greater] than yours?' 'Yes,' he replied, 'And even than my father's.' 'Heaven forefend!' he rejoined, 'Let not such a thing be [heard] in Israel!'

R. Zera said: Last night R. Jose son of R. Hanina appeared to me [in a dream], and I asked him, 'Near whom art thou seated [in the Heavenly Academy]?' — 'Near R. Johanan.' 'And R. Johanan near whom?' — 'R. Jannai.' 'And R. Jannai?' — 'Near R. Hanina.' 'And R. Hanina?' — 'Near R. Hiyya.' Said I to him, 'And is not R. Johanan [worthy of a seat] near R. Hiyya?' — He replied, 'In the region of fiery sparks and flaming tongues, who will let the smith's son enter?'¹¹

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R. Habiba said: R. Habiba b. Surmakia told me: I saw one of the Rabbis whom Elijah used to frequent, whose eyes were clear in the morning, but in the evening they looked as though burnt in fire. I questioned him, 'What is the meaning of this?' And he answered me [thus]: 'I requested Elijah to show me the [departed] Rabbis as they ascend to the Heavenly Academy. He replied: "Thou canst look upon all, excepting the carriage of R. Hiyya: upon it thou shalt not look." "What is their sign?"¹² "All are accompanied by angels when they ascend and descend, excepting R. Hiyya's carriage, who ascends and descends of his own accord."¹³ But unable to control my desire, I gazed upon it, whereat two fiery streams issued forth, smote and blinded me in one eye. The following day I went and prostrated myself upon his grave, crying out, "It is thy Baraitha that I study!"¹⁴ and I was healed.'¹⁵

Elijah used to frequent Rabbi's academy. One day — it was New Moon — he was waiting for him, but he failed to come. Said he to him [the next day]: 'Why didst thou delay?' — He replied: '[I had to wait] until I awoke Abraham, washed his hands, and he prayed and I put him to rest again; likewise to Isaac and Jacob.' 'But why not awake them together?' — 'I feared that they would wax strong in prayer¹⁶ and bring the Messiah before his time.' 'And is their like to be found in this world?' he asked. — 'There is R. Hiyya and his sons', he replied. Thereupon Rabbi proclaimed a fast, and R. Hiyya and his sons were bidden to descend [to the reading desk].¹⁷ As he [R. Hiyya] exclaimed, 'He causeth the wind to blow', a wind blew; he proceeded, 'he causeth the rain to descend', whereat the rain descended. When he was about to say, 'He quickeneth the dead',¹⁸ the universe trembled, [and] in Heaven it was asked, 'Who hath revealed our secret to the world?'¹⁹ 'Elijah', they replied. Elijah was therefore brought and smitten with sixty flaming lashes; so he went, disguised himself as a fiery bear, entered amongst and scattered them.

Samuel Yarhina'ah²⁰ was Rabbi's physician. Now, Rabbi having contracted an eye disease, Samuel offered to bathe it with a lotion, but he said, 'I cannot bear it.' 'Then I will apply an ointment to it,' he said. 'This too I cannot bear,' he objected. So he placed a phial of chemicals under his pillow, and he was healed.²¹ Rabbi was most anxious²² to ordain him, but the opportunity was lacking.²³ Let it not grieve thee, he said; I have seen the Book of Adam,²⁴ in which is written, 'Samuel Yarhina'ah

1. Ibid. 12.
2. The Ran in Ned. 81a explains that it is assumed that the Torah was studied; for otherwise, the question would easily have been answered by the Sages and Prophets. Yet it was studied not for its own sake but only for the preferment it might give. This is expressed by saying that they recited no benediction before studying it, i.e., it was not in itself dear to them. The selfish motive could be known to none but God.
3. Prov. XIV, 33.
4. V. Glos. His scholarship then stands out, and 'is made known'.
5. But when the Pitcher is filled with stones they have no room for rattling. So also, one scholar in a family of fools achieves fame, whilst a whole family of scholars are taken for granted.
6. Job III, 19.
7. That priests should not go there and become defiled, thus transgressing the law through the instrumentality of righteous men.
8. He could not find its exact spot.
9. The Talmud is divided into six 'orders', viz.: Seeds, Festivals, Women, Damages, Sacred Objects and Purity.
10. Scholars dispute whether Rabbi wrote down the Mishnah after compiling it. It is perhaps noteworthy in this connection that, whereas in this story it is stated that R. Hiyya wrote the five books of Moses, nothing is said about his writing the Mishnah for his pupils. [Though possibly these activities of R. Hiyya cover a period before the final compilation of the Mishnah by Rabbi.]
11. R. Johanan's cognomen was Bar Nappaha, lit., 'the smith's son'.
12. By which I may distinguish between the carriages of the other Rabbis and R. Hiyya's.
13. His merit being so great, he is not in need of the angel's assistance.
14. There were several sets of Baraithas — laws not included by Rabbi in his compilation of the Mishnah — the most important and authentic

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- of which were those by R. Hiyya and R. Oshaia.
15. Yet the redness of the burning was still perceptible.
 16. If they prayed simultaneously.
 17. In the synagogue of Talmudic times the reading-desk was on a lower level than the rest of the building. On fast days, according to the Midrash Tanhuma on [H], three men led the congregation in prayer, instead of one, as usual.
 18. V. P. B. p. 44.
 19. That R. Hiyya's prayers are so efficacious.
 20. [H], the Lunar Expert or Astronomer. The word is an epithet of Samuel, the Babylonian Amora, on account of his great astronomical skill, v. R.H. 20b.
 21. The vapor being sufficiently powerful to penetrate to the eye, though not applied directly.
 22. Lit., 'grieved'.
 23. Possibly he could not assemble the Ordination Board.
 24. [Cf. Gen. V, 1. This is not to be confused with the Apocryphal Book of Adam known in many versions (v. J. E. I, 179f), but a book which God showed to Adam containing the genealogy of the whole human race, and which is the Jewish form of the view prevalent among Babylonians (v. Ginszberg, Legends, VI, p. 82), though this does not mean to imply that there was no Jewish version of the Book of Adam current in the days of Rabbi. Funk, Monumenta, I, p. 324, however, on the basis of Babylonian parallels, where the stars are described as the 'writing of Heaven', renders the statement of Rabbi simply to mean, 'I have seen it written in the stars'.]

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shall be called "Sage", but not "Rabbi", and Rabbi's healing shall come through him. Rabbi and R. Nathan conclude the Mishnah, R. Ashi and Rabina¹ conclude [authentic] teaching,² and a sign thereof is the verse, *Until I went to the sanctuary of God; then understood I their end.*³

R. Kahana said: R. Hama, the son of the daughter of Hassa,⁴ related to me [that] Rabbah b. Nahmani died through persecution,⁵ information having been laid against him to the State. Said they [the informers]: There is an Israelite who keeps back twelve thousand Israelites from the

payment of the royal poll-tax one month in summer and one in winter.⁶ Thereupon a royal officer was sent for him, but did not find him. He [Rabbah] then fled from Pumbeditha to Akra, from Akra to Agama,⁷ from Agama to Sahin, from Sahin to Zarifa, from Zarifa to 'Ena Damim,⁸ and thence back to Pumbeditha. In Pumbeditha he found him; for the royal officer chanced to visit the same inn where Rabbah [was hiding]. Now, they placed a tray before him [the royal officer], gave him two glasses of liquor, and then removed the tray;⁹ whereupon his face was turned backward [by demons]. 'What shall we do with him?' said they [the inn attendants] to him [Rabbah]; 'he is a royal officer.' 'Offer him the tray again,' he replied, 'and let him drink another goblet; then remove the tray, and he will recover.' They did so, and he recovered. 'I know,' said he, 'that the man whom I require is here;' he searched for and found him. He then said, 'I will depart from here; if I am slain, I will not disclose [his whereabouts]; but if tortured, I will.' He was then brought before him, and he led him into a chamber and locked the door upon him [to keep him there as a prisoner]. But he [Rabbah] prayed, whereupon the wall fell down, and he fled to Agama; there he sat upon the trunk of a [fallen] palm and studied. Now, they were disputing in the Heavenly Academy thus: If the bright spot preceded the white hair, he is unclean; if the reverse, he is clean.¹⁰ If [the order is] in doubt — the Holy One, blessed be He, ruled, He is clean; whilst the entire Heavenly Academy maintained, He is unclean.¹¹ Who shall decide¹² it? said they. — Rabbah b. Nahmani; for he said, I am pre-eminent¹³ in the laws of leprosy and tents.¹⁴ A messenger was sent for him, but the Angel of Death could not approach him, because he¹⁵ did not interrupt his studies [even for a moment]. In the meantime, a wind blew and caused a rustling in the bushes, when he imagined it to be a troop of soldiers. 'Let me die,' he exclaimed, 'rather than be delivered into the hands of the State. As he was dying, he exclaimed, 'Clean, clean!'¹⁶ when a Heavenly Voice cried out, 'Happy art thou, O

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Rabbah b. Nahmani, whose body is pure and whose soul had departed in purity!' A missive fell from Heaven in Pumbeditha, [upon which was written,] 'Rabbah b. Nahmani has been summoned¹⁷ by the Heavenly Academy. So Abaye and Raba and all the scholars went forth to attend on him [at his burial], but they did not know his whereabouts. They went to Agama and saw birds stationed there and overshadowing it [to give protection]. 'This', said they, 'proves that he is there. They bewailed him for three days and three nights; but there fell a missive from Heaven, 'He who [will now] hold aloof [from the lamentations] shall be under a ban.' So they bewailed him for seven days, and then there fell a missive from Heaven, 'Return in peace to your homes.' On the day that he died a hurricane lifted an Arab who was riding a camel, and transported him from one bank of the River Papa¹⁸ to the other. 'What does this portend?' he exclaimed. — 'Rabbah b. Nahmani has died,' he was told. 'Sovereign of the Universe!' he cried out. 'The whole world is Thine, and Rabbah b. Nahmani too is Thine. Thou art [the Friend] of Rabbah, and Rabbah is Thine; why dost Thou destroy the world on his account!' Thereupon the storm subsided.

R. Simeon b. Halaftha was a fat man.¹⁹ One day, feeling hot, he climbed up, sat on a mountain boulder, and said to his daughter, 'Daughter, fan me with a fan, and I will give you bundles of spikenard.' Just then, however, a breeze arose, whereat he observed, 'How many bundles of spikenard [do I owe] to the Master of the [breeze]?'

EVERYTHING DEPENDS ON LOCAL CUSTOM. What does EVERYTHING add?²⁰ — The case where it is customary to break bread²¹ and drink a small measure [of liquor];²² if he [the employer] demanded of them, 'Come early, that I may bring it to you,'²³ they can answer, 'You have no power [to demand this].'

IT ONCE HAPPENED THAT R. JOHANAN B. MATHIA SAID TO HIS SON, 'GO OUT AND ENGAGE', etc. A story [is quoted]

contradicting [the stated law]²⁴ — The text is defective, and should read thus: But if he stipulates to provide them with food,

1. [According to Sherira Gaon, Letter, p. 95, (ed. Lewin) the reference is to Rabina II, son of R. Huna.]
2. Rashi: Before Rabbi, the Mishnah was in no systematic order, each Tanna teaching in which order he desired. Rabbi compiled and arranged these teachings in a systematized order, admitting those which he considered authentic and rejecting others. This compilation formed the basic code of Jewish law (though Weiss, Dor. II, p. 183, maintains that he never intended it to be authoritative); subsequently scholars might define and explain it, and deduce new laws from it, but not dispute with it. In the course of time the discussions on the Mishnah grew to very large dimensions, and it was the work of Rabina and R. Ashi to compile the huge mass of accumulated material and give it an orderly arrangement. This is expressed by saying that they were at the end of authentic teaching (hora'ah), i.e., they edited the Talmud. [The signification of the term hora'ah is obscure and has been variously explained: (a) transmission of the oral Law; (b) the insertion by scholars of halachic matter in the Talmud; (c) the right to change the Talmud whether in substance or form; (d) legislative activity, v. Kaplan, *op. cit.*, pp. 34 and 289ff.]
3. Ps. LXXIII, 17; [H] ('sanctuary') bears a slight resemblance to [H] (Ashi), and [H] ('understood') to [H] (Rabina): thus R. Ashi and Rabina are 'their end', sc. of the Talmud.
4. *Var. lec.*: Hama.
5. [Sherira, letter, P. 87: 'persecution of the Law'.]
6. They used to flock to the academy in Nisan and Tishri, the months of popular lectures, and in consequence the tax-collectors could not obtain their taxes for these months. So Rashi. [The Karasa (poll-tax) appears to have been payable monthly, and the absence of so many tax-payers during these two months in the year (according to Sherira, Adar and Elul, litter, p. 87) was responsible for a drop in the monthly royal revenue. There was, however, no question of evading the tax, as the arrears could in any case be collected with subsequent payments. Obermeyer, *op. cit.*, p. 237. For another explanation connecting it with the exemption of scholars from taxes, (cf. B.B. 8a) v. J. Kaplan. Horeb (New York 1934), I.; 1, pp. 42ff. 1.]
7. There is only an [H] (Akra di Agama) mentioned elsewhere in the Talmud (v. B.B.

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(Sonc. ed.) p. 529, n. 11), and Neubauer p. 368, n. 2, suggests that the same should be read here too.

8. [All these places appear to be in the neighborhood of Pumbeditha. 'Ena Damim is probably to be identified with the village Dimima on the canal Nahr 'Isa on the Euphrates; Sahin and Zarifa cannot be exactly located. Obermeyer, *loc. cit.* n. 3.]
9. To drink an even number of glasses would excite the ill-will of certain demons; he had thus been unintentionally placed in danger.
10. V. Lev. XIII, 1-3. As stated here, the bright spot must appear first, and then the white hair.
11. It is a daring fancy to picture the Almighty disputing with the Heavenly Academy on one of His own laws, but is in keeping with the spirit of Talmudic inquiry that the Law once having been given, it is for man to interpret it. Cf. *supra* 59b.
12. Lit., 'prove it'.
13. Lit., 'unique'.
14. I.e., uncleanness caused by the dead.
15. Lit., 'his mouth'.
16. As though the subject of the Heavenly controversy had already been communicated to him.
17. Lit., 'sought for'.
18. [The canal passing through Pumbeditha. Obermeyer, *op. cit.*, p. 237.]
19. Because the beginning of this narrative portion (*aggadah*) deals with R. Eleazar b. Simeon, who was very fat, a story is related about another fat man (Rashi).
20. When a particular law is followed by a general proposition in this form, it is axiomatic that its purpose is to extend the law to a case that does not obviously follow from the first.
21. [Lit., 'to wrap the bread', to break a piece of bread and place some relish in between. For a discussion of the phrase, v. Krauss, T.A. III, 51.]
22. [H] = 1 *log*.
23. That the workmen should eat and drink before their day starts.
24. After stating that everything depends on local custom, the Tanna narrates a story which contradicts this, for custom certainly fixed the limits of the meals.

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he thereby increases [his obligations] to them.¹ And IT ONCE HAPPENED LIKEWISE THAT R. JOHANAN B. MATHIA SAID TO HIS SON, 'GO OUT AND ENGAGE LABOURERS.' HE WENT,

AND AGREED TO SUPPLY THEM WITH FOOD. BUT WHEN HE RETURNED TO HIS FATHER, HE SAID TO HIM, 'MY SON, SHOULD YOU EVEN PREPARE A BANQUET FOR THEM LIKE SOLOMON'S, WHEN IN HIS GLORY, YOU CANNOT FULFIL YOUR DUTY, FOR THEY ARE THE CHILDREN OF ABRAHAM, ISAAC AND JACOB.'

Shall we say that the meals of Abraham, the Patriarch, were superior to those of Solomon; but is it not written, *And Solomon's provisions for one day were thirty measures of fine flour and three score measures of meal. Ten fat oxen, and twenty oxen out of the pastures, and an hundred sheep, besides harts, and roebucks, and fallowdeer, and fatted fowl*:² whereon Gorion b. Astion said in Rab's name: These were for the cook's dough;³ and R. Isaac said: These [animals] were but for the [mincemeat] puddings. Moreover, said R. Isaac, Solomon had a thousand wives, and each prepared this quantity in her own house. Why? Each reasoned, 'He may dine in my house to-day.' Whereas of Abraham it is said, *And Abraham ran unto the herd, and fetched a calf tender and good*:⁴ whereon Rab observed: 'A calf,' means one; 'tender' — two; and 'good' — three.⁵ — There the three calves were for three men, whereas here [the provisions enumerated] were for all Israel and Judah, as it is written, *Judah and Israel were many, as the sand which is by the sea in multitude*.⁶

What is meant by 'fatted fowl'? — Rab said: [Fowls] fed against their will. Samuel said: [Fowls] naturally fat. R. Johanan said: Oxen which had never toiled⁷ were brought from the pastures, and likewise fowls [that had never toiled]⁸ from their dungheaps.⁹

R. Johanan said: The best of cattle is the ox; the best of birds is the fowl. Amemar said: A fattened black hen¹⁰ which moves about the vats, and which cannot step over a stick.¹¹

And Abraham ran unto the herd and fetched a calf, tender and good. Rab said: 'A calf,' means one; 'tender' — two; and 'good' — three. But perhaps it [all means] one, as

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people say, a tender and good [calf]? — If so, Scripture should have written, [a calf] tender, good; why 'and' good? This proves that it is for exegesis.¹² Then perhaps it means two?¹³ — Since 'good' is for exegesis, 'tender' [too] is for the same purpose. Rabbah b. 'Ulla — others say, R. Hoshaiia — and others again Say, R. Nathan son of R. Hoshaiia objected: And he gave unto a young man; and he hastened to dress it?¹⁴ — He gave each to one young man. [But is it not written] And he took butter and milk, and the calf which he had dressed, and set it before them?¹⁵ — [This means,] each, as soon as it was ready, was brought before them. But why three? Would not one have sufficed? — R. Hanan b. Raba said: In order to offer them three tongues with mustard.¹⁶

R. Tanhum b. Hanilai said: One should never break away from custom. For behold, Moses ascended on High and ate no bread, whereas the Ministering Angels descended below and ate bread.¹⁷ 'And ate' — can you really think so! — But say, appeared to eat and drink.

Rab Judah said in Rab's name: Everything which Abraham personally did for the Ministering Angels, the Holy One, blessed be He, did in person for his sons; and whatever Abraham did through a messenger,¹⁸ the Holy One, blessed be He, did for his sons through a messenger. [Thus:] And Abraham ran unto the herd — And there went forth a wind from the Lord;¹⁹ and he took butter, and milk¹⁵ — Behold, I will rain bread from heaven for you;²⁰ and he stood by them under the tree — Behold, I will stand before thee there upon the rock, etc.;²¹ And Abraham went with them to bring them on the way²² — And the Lord went before them by day;²³ Let a little water, I pray you, be fetched²⁴ — and thou shalt smite the rock, and there shall come water out of it, that the people may drink.²⁵ But he is thus in conflict with R. Hama son of R. Hanina. For R. Hama son of R. Hanina said, and the School of Ishmael taught likewise: As a reward for three things [done by Abraham] they [his descendants] obtained three things. Thus: As a reward for,

[and he took] butter and milk, they received the manna; as a reward for, And he stood by them, they received the pillar of cloud;²⁶ as a reward for, Let a little water, I pray you, be fetched, they were granted Miriam's well.²⁷

*Let a little water, I pray you, be fetched, and wash your feet:*²⁸ R. Jannai son of R. Ishmael said: They [the travelers] protested to him [Abraham], 'Dost thou suspect us of being Arabs, who worship the dust on their feet? Ishmael has already issued from thee.'²⁹

*And the Lord appeared unto him in the plains of Mamre: and he sat in the tent door in the heat of the day.*³⁰ What is meant by 'in the heat of the day'? — R. Hama son of R. Hanina said: It was the third day from Abraham's circumcision,³¹ and the Holy One, blessed be He, came to enquire after Abraham's health; [moreover,] he drew the sun out of its sheath,³² so that the righteous man [sc. Abraham] should not be troubled with wayfarers. He sent Eliezer out [to seek travelers], but he found none. Said he, 'I do not believe thee'. (Hence they say there — sc. in Palestine — slaves are not to be believed.) So he himself went out, and saw the Holy One, blessed be He, standing at the door; thus it is written, *Pass not away, I pray thee, from thy servant.*³³ But on seeing him tying and untying [the bandages of his circumcision], He said, 'It is not well that I stand here'; hence it is written, *And he lifted up his eyes and looked, and lo, three men stood by him, and when he saw them, he ran to meet them:*³⁴ at first they came and stood over him, but when they saw him in pain, they said, 'It is not seemly to stand here.'³⁵

Who were the three men? — Michael, Gabriel, and Raphael. Michael came to bring the tidings to Sarah [of Isaac's birth]; Raphael, to heal Abraham;³⁶ and Gabriel, to overturn Sodom.³⁷ But is it not written, *And there came the two angels to Sodom at even?*³⁸ — Michael accompanied him to rescue Lot. [The Writ] supports this too, for it is written, *And he overthrew those cities,*³⁹ not, and they overthrew: this proves it.

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Why is it written in the case of Abraham, *[And they said,] So do, as thou hast said;*⁴⁰ whereas of Lot it is written,

1. I.e., where local usage is to give food, no stipulation need be made. Hence, if it was, it can only mean that he was to give them more than usual.
2. I Kings V, 2f.
3. Cooks used to place dough above the pot, to absorb the steam and vapor.
4. Gen. XVIII, 7.
5. I.e., each adjective denotes another. Hence the two passages prove that Solomon's meals were infinitely larger than Abraham's.
6. I Kings IV, 20.
7. The idleness made them extra fat.
8. I.e., had no brood.
9. R. Johanan treats the adj. 'fatted' as referring to all the animals enumerated.
10. Be Botni; so Rashi. Jast. conjectures this to be a geographical term.
11. Through fatness. This is Amemar's explanation of 'fatted fowl'.
12. I.e., implying another.
13. Since the first adjective has no copulative.
14. Gen. XVIII, 7; thus the singular is used.
15. Ibid. 8; thus there was only one young man.
16. This was esteemed as a great delicacy.
17. Thus conforming to, 'When in Rome, do as Rome does'.
18. Lit., 'a servant'.
19. Num. XI, 31.
20. Ex. XVI, 4.
21. Ibid. XVII, 6.
22. Gen. XVIII, 16.
23. Ex. XIII, 21.
24. Gen. XVIII, 4; this implies an order to a servant.
25. Ex. XVII, 6.
26. [H], lit., 'the standing (column) of cloud.'
27. Miriam's well corresponds to the verse quoted above: and thou shalt smite the rock, etc. The dispute is in respect of 'and he stood by them': according to Rab, his reward was the promise contained in 'behold, I will stand before thee there by the rock'; whereas in R. Hama b. R. Hanina's opinion, it was the 'pillar of cloud'. [This is an illustration of the principle 'measure for measure', which is God's guiding rule for reward and punishment.]
28. Gen. XVIII, 4;
29. I.e., thine own son does so.
30. Gen. XVIII, 1.
31. When one is particularly weak. Cf. Gen. XXXIV, 25.
32. I.e., He made it pour forth all its heat.
33. Gen. XVIII, 3. He called himself 'thy servant', because he was speaking to God.

34. Ibid. 2.

35. So they removed to a distance; hence it is first said that they 'stood by him', and then that 'he ran to meet them'.

36. Heb. [H] means 'healer of God'.

37. Gabriel means 'strength of God'.

38. Gen. XIX, 1.

39. Ibid. 25.

40. Ibid. XVIII, 5: they immediately accepted the invitation.

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*And he pressed upon them greatly?*¹ — R. Eleazar said: This teaches that one may show unwillingness to an inferior person,² but not to a great man.

It is written, *And I will fetch a morsel of bread;*³ but it is also written, *And Abraham ran unto the herd;*⁴ Said R. Eleazar: This teaches that righteous men promise little and perform much; whereas the wicked promise much and do not perform even little. Whence do we know [the latter half]? — From Ephron. At first it is written, *The land is worth four hundred shekels of silver;*⁵ but subsequently, *And Abraham hearkened unto Ephron; and Abraham weighed to Ephron the silver, which he had named in the audience of the sons of Heth, four hundred shekels of silver, current money with the merchant;*⁶ indicating that he refused to accept anything but *centenaria*,⁷ for there is a place where *shekels* are called *centenaria*.⁸

Scripture writes, [*ordinary*] *meal*, and [it is then written], *fine meal!*⁹ — Said R. Isaac: This shows that a woman looks with a more grudging eye upon guests than a man.¹⁰

It is written, *Knead it, and make cakes upon the hearth;*¹¹ but it is also written, *And he took butter and milk, and the calf;*¹² yet he brought no bread before them! — Ephraim Maksha'ah,¹³ a disciple of R. Meir, said in his teacher's name: Our Patriarch Abraham ate *hullin*¹⁴ only when undefiled,¹⁵ and that day our mother Sarah had her menstrual period.¹⁶

*And they said unto him, Where is Sarah thy wife? And he said, Behold, She is in the tent;*¹⁷

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this is to inform us that she was modest.¹⁸ Rab Judah said in Rab's name: The Ministering Angels knew that our mother Sarah was in the tent, but why [bring out the fact that she was] in her tent? In order to make her beloved to her husband.¹⁹ R. Jose son of R. Hanina said: In order to send her the wine-cup of Benediction.²⁰

It has been taught on the authority of R. Jose: Why are the letters *ejw* in *elajw* dotted?²¹ The Torah thereby taught etiquette, that a man must enquire of his hostess [about his host].²² But did not Samuel say: One must not inquire at all after a woman's well-being?²³ — [When enquiry is made] through her husband, it is different [and permitted].

*After I have waxed old, I have had youth.*²⁴ R. Hisda said: After the flesh is worn and the wrinkles have multiplied, the flesh was rejuvenated, the wrinkles were smoothed out, and beauty returned to its place.

It is written, *And my lord is old;*²⁵ but it is also written, [*And the Lord said unto Abraham, Wherefore did Sarah laugh, saying, Shall I of a surety bear a child,] seeing that I am old?*²⁶ the Holy One, blessed be He, not putting the question in her words! — The School of Ishmael taught: Peace is a precious thing, for even the Holy One, blessed be He, made a variation for its sake, as it is written, *Therefore Sarah laughed within herself, saying, After I am waxed old, shall I have pleasure, my Lord being old also;* whereas it is further written, *And the Lord said unto Abraham etc...seeing that I am old.*²⁷

*And she said, Who would have said unto Abraham, that Sarah should have given children suck?*²⁸ How many children then did Sarah suckle?²⁹ — R. Levi said: On the day that Abraham weaned his son Isaac, he made a great banquet, and all the peoples of the world derided him, saying, 'Have you seen that old man and woman, who brought a foundling from the street, and now claim him as their son! And what is more, they make a great banquet to establish their claim!' What did our father Abraham do? — He went and

invited all the great men of the age, and our mother Sarah invited their wives. Each one brought her child with her, but not the wet-nurse, and a miracle happened unto our mother Sarah, her breasts opened like two fountains, and she suckled them all. Yet they still scoffed, saying, 'Granted that Sarah could give birth at the age of ninety, could Abraham beget [child] at the age of a hundred?' Immediately the lineaments of Isaac's visage changed and became like Abraham's, whereupon they all cried out, Abraham begat Isaac.³⁰

Until Abraham there was no old age;³¹ whoever wished to speak to Abraham would speak to Isaac, and the reverse.³² Thereupon he prayed, and old age came into existence, as it is written, *And Abraham was old and well-stricken in age.*³³ Until Jacob there was no illness:³⁴ then Jacob came and prayed, and illness came into being, as it is written, *And one told Joseph, Behold, thy father is sick.*³⁵ Until Elisha no sick man ever recovered, but Elijah came and prayed, and he recovered, for it is written, *Now Elisha was fallen sick of his sickness whereof he died,*³⁶ thus proving that he had been sick on previous occasions too,³⁷ [but had recovered].

Our Rabbis taught: On three occasions did Elisha fall sick: once when he repulsed Gehazi with both hands;³⁸ a second time when he incited bears against children;³⁹ and a third with the sickness whereof he died, as it is written, *Now Elisha was fallen sick of his sickness whereof he died.*³⁶

BUT, BEFORE THEY BEGIN WORK, GO OUT AND TELL THEM, '[I ENGAGE YOU] ON CONDITION THAT YOU HAVE NO OTHER CLAIM UPON ME BUT BREAD AND PULSE', etc.

R. Aha, the son of R. Joseph, said to R. Hisda: Did we learn, 'Bread [made] of pulse,' or 'bread and pulse'? — He replied: In very truth, a *waw* ['and'] is necessary⁴⁰ as large as a rudder on the Libruth.⁴¹

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R. SIMEON B. GAMALIEL SAID: IT WAS UNNECESSARY [TO STIPULATE THUS]: EVERYTHING DEPENDS ON LOCAL CUSTOM. What does EVERYTHING add?⁴²
— It adds that which has been taught: If one engages a laborer, and stipulates, '[I will pay you] as one or two townspeople [are paid],' he must remunerate him with the lowest wage [paid]: this is R. Joshua's view. But the Sages say: An average must be struck.⁴³

MISHNAH. NOW, THE FOLLOWING [LABOURERS] MAY EAT [OF THAT UPON WHICH THEY ARE EMPLOYED] ACCORDING TO SCRIPTURAL LAW: HE WHO IS ENGAGED UPON THAT WHICH IS ATTACHED TO THE SOIL WHEN ITS LABOUR IS FINISHED,⁴⁴ AND UPON THAT WHICH IS DETACHED FROM THE SOIL BEFORE ITS LABOUR IS COMPLETED,⁴⁵ PROVIDING THAT IT IS SOMETHING THAT GROWS FROM THE EARTH. BUT THE FOLLOWING MAY NOT EAT: HE WHO IS ENGAGED UPON THAT WHICH IS ATTACHED TO THE SOIL

1. Ibid. XIX, 3.
2. In declining his invitation.
3. Ibid. XVIII, 5.
4. Ibid. 7 — very much more than he offered.
5. Ibid. XXIII, 15.
6. Ibid. 16.
7. *Centenarius* = 100 *manehs*; a *maneh* = 100 *zuz* = 25 *shekels*.
8. Hence he gave him 400 *centenaria*, instead of ordinary *shekels* as he demanded at first: this is deduced from the phrase 'current money with the merchant', implying that it was recognized everywhere as a *shekel*.
9. Ibid. XVIII, 6: *And Abraham hastened into the tent unto Sarah, and said, Make ready quickly three measures of [H]*; the two words being apparently mutually exclusive.
10. [Thus Abraham had to give her clear and specific instructions to provide fine meal; v. Meklenburg, J.Z. [H] a.l.]
11. Ibid.
12. Ibid. 8.
13. Probably the disputant. [Or perhaps name of a place; v. Klein, *MGWJ*, 1920, P. 192.]
14. V. [Glos.](#)
15. I.e., he treated *hullin* as consecrated food, which may not be eaten when defiled.
16. And so defiled the bread she had baked. As she was already old, the phenomenon was an

earnest of the rejuvenation which was to make the birth of Isaac possible.

17. Ibid. 9.
18. And therefore kept herself secluded.
19. By impressing him with her modesty.
20. [The wine-cup over which the Grace after meals is recited and which is partaken by all the guests. V. Ber. 51a.]
21. And they said unto him, [H], is written [H]; [H] means, 'where is he?'
22. Thus they asked Sarah, Where is he (sc. Abraham)' just as they asked him about her (Tosaf.). [Rashi interprets: that a man should enquire (of the host) about the hostess. On dotted letters, v. Sanh. (Sonc. ed.) p. 285, n. 3.]
23. According to Tosaf.'s interpretation of the preceding dictum, this question cannot refer to it, but to the literal meaning of the verse, that they enquired after Sarah.
24. Ibid. 12.
25. Ibid. 12.
26. Ibid. 13.
27. [I.e., God did not report that part of her statement which referred to Abraham's old age, [H], a.l.]
28. Ibid. XXI, 7.
29. Seeing that she had only one.
30. Ibid. XXV, 19.
31. I.e., old age did not mark a Person.
32. Because they looked exactly alike.
33. Gen. XXIV, 1. He is the first mentioned to have been ill.
34. One lived his allotted years in full health and then died suddenly.
35. Ibid. XLVIII, 1; v. preceding note.
36. II Kings XIII, 14.
37. Lit., 'with a different sickness'.
38. V. Sanh. 107b.
39. V. II Kings II, 23f.
40. I.e., bread and beans.
41. Libruth, a river or canal, unidentified. [For various attempts to explain the phrase. v. Perles, J. *Beitrag z. rab. Sprach u. Alter.*, 1893, p. 6.]
42. V. p. 496, n. 3.
43. And R. Simeon b. Gamaliel's principle teaches the view of the Sages.
44. I.e., when it is removed from the soil.
45. I.e., before it reaches the stage of being liable to tithes or the 'separation of dough'.

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BEFORE ITS LABOUR IS COMPLETED, UPON THAT WHICH IS DETACHED FROM THE SOIL AFTER ITS LABOUR IS COMPLETED,¹ AND UPON THAT WHICH DOES NOT GROW FROM THE SOIL.²

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GEMARA. Whence do we know these things? — It is written, When thou comest into thy neighbor's vineyard, then thou mayest eat.³ We have found [this law to be true of] a vineyard: whence do we know it of all [other] things? We infer [them] from the vineyard: just as the vineyard is peculiar in that it [sc. its products] grow from the earth, and at the completion of its labour⁴ the laborer may eat thereof; so everything which grows from the soil, the laborer may eat thereof at the completion of its work. [But, might it not be argued:] As for a vineyard, [the worker's privilege may be due to the fact] that it is liable to [the law of] gleanings, [which other cereals are not]? — We, deduce it⁵ from the standing corn. But how do we know it of standing corn itself? — Because it is written, When thou comest into the kamath [standing corn] of thy neighbor, then thou mayest pluck the ears with thine hand.⁶ But [may you not argue:] as for standing corn, that is because it is liable to *hallah*?⁷ (And how do you know that this kamah means [only] such standing crops as are liable to *hallah*: perhaps Scripture means all standing crops?⁸ — That is derived from the use of kamah in two places. Here it is written, When thou comest into the kamath [standing corn of] thy neighbor; whilst elsewhere it is written, from such time as thou beginnest to put the sickle to the kamah [corn]:⁹ just as there, a kamah which is liable to *hallah* is meant, so here too.) [Hence, repeating the difficulty] one may refute [the analogy drawn from standing corn]: as for standing corn, that is because it is liable to *hallah*! — Then let the vineyard prove it. As for a vineyards that is because it is liable to [the law of] gleanings! — Let the standing corn prove it. And thus the argument revolves: the peculiarity of one is not that of the other, and vice versa. The feature common to both is, they grow from the soil, and the worker may [thus] eat of them when their labor is being finished; so also, everything which grows from the soil, when at the completion of its labor, the worker may eat of it. [No, this does not follow, as it might be argued that] their common

feature is that both are used in connection with the altar;¹⁰ and so olives will be inferred too, since they also are thus used?¹¹ (But are olives inferred through [partaking of] a common feature? They themselves are designated kerem,¹² as it is written, And he burnt up both the shocks and the standing corn, and also the olive kerem.¹³ — R. Papa said: It is designated olive kerem, but not simply kerem.) But still, the difficulty remains!¹⁴ — Samuel answered: Scripture saith, and a sickle [thou shalt not move unto thy neighbor's standing corn], which [i.e., the 'and'] extends the law to everything which requires a sickle. But this word 'sickle' is needed [to intimate that] when the sickle [is used] you may eat, but not otherwise!¹⁵ — That follows from, but thou shalt not put any in thy vessel.¹⁶ Now, this [deduction] is satisfactory in respect of that which requires the sickle, but what of that which does not?¹⁷ — But, said R. Isaac, the Writ says, kamah,¹⁸ to extend the law to everything which stands upright [from the soil].¹⁹ But have you not employed the analogy of kamah, written twice, to show that it means [only] such standing crops as are liable to *hallah*?²⁰ — That was only before the word 'sickle' was adduced: now, however, that 'sickle' has been quoted, everything which needs a sickle is embraced, even if not liable to *hallah*; hence, what is the purpose of kamah? To include everything which stands upright.

But now that we infer [these laws] from 'sickle' and kamah, what is the need of, 'When thou comest into thy neighbor's vineyard'?²¹ — To teach its [detailed] laws, replied Raba. As it has been taught: *When thou comest* — 'coming' is mentioned here; and elsewhere too it is said, [Thou shalt not oppress a hired servant ... At this day thou shalt give him his hire,] neither shall the sun come down upon it:²² just as there Scripture refers to an employee, so here too. 'Into thy neighbor's vineyard', but not into a heathen's vineyard.²³ Now, on the view that the robbery of a heathen is forbidden, it is well: but if it be held permitted — does an *employee* need [a verse to grant him permission]?²⁴ — He

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interprets '*into thy neighbor's vineyard*', as excluding a vineyard of *hekdesh*.²⁵

'*Then thou mayest eat*', but not suck out [the juice]; '*grapes*', but not grapes and something else;²⁶ '*as thine own person*', as the person of the employers, so the person of the employee: just as thou thyself²⁷ mayest eat [thereof] and art exempt [from tithes], so the employee too may eat and is exempt.²⁸ '*To thy satisfaction*': but not gluttonously; '*but thou shalt not put any in thy vessel*': [only] when thou canst put it into thine employer's baskets, thou mayest eat, but not otherwise.²⁹

R. Jannai said: *Tebel*³⁰ is not liable to tithes

1. In the sense stated in n. 2.
2. E.g., one who milks cows or makes cheeses may not partake of the milk or cheese.
3. Deut. XXIII, 25. Further on it is explained that the verse refers to a laborer.
4. I.e., when the grapes are vintaged.
5. That the law applies to other products too.
6. Ibid. 26.
7. V. [Glos.](#)
8. E.g., crops of beans, which are not liable to *hallah*.
9. Ibid. XVI, 9. The reference is to the '*omer*' of barley brought on the second day of Passover. cf. Lev. XXIII, 10: barley is liable to *hallah*.
10. Wine for libations and meal for meal offerings.
11. Most of the meal offerings were mingled with oil.
12. The word translated '*vineyard*' in Deut. XXIII, 25.
13. Judg. XV, 5.
14. That the common feature is that they are employed in connection with the altar.
15. I.e., when the cereals are ready to be cut off with the sickle.
16. Deut. XXIII, 25. This shows that the reference is to those which can be put in a vessel. sc. removed from the soil.
17. E.g., the harvesting of dates. How do we know that the laborer may eat of them?
18. Lit., '*standing*', E.V.: standing corn.
19. I.e., all crops.
20. V. *supra*.
21. For the vineyard too may be deduced thus.
22. Ibid. XXIV, 14, 15.
23. The text has [H], Cuthean, but under the influence of the censorship this word was frequently substituted for Gentile. The deduction is, only in an Israelite's vineyard is the laborer enjoined, *but thou shalt not put any in thy vessel*, but not in a Gentile's.
24. The robbery of a heathen, even if permitted, is only so in theory, but in fact it is forbidden as constituting a '*hillul hashem*', profanation of the Divine Name. But the consensus of opinion is that it is Biblically forbidden too, i.e., even in theory; v. H.M. 348, 2, and commentaries a.l.; Yad, Genebah, 1, 2; 6, 8; v. however, n. 9.
25. V. [Glos.](#) The laborer is not permitted to pluck and eat grapes from a vineyard belonging to the sanctuary. [The interpretation of the passage follows Rashi, who was driven to adopt it, having regard to the text he had before him. The difficulty of this interpretation is, however, evident. It not only involves a difference in the explanation of the same deduction as applying to a heathen (v. n. 7) and as applying to *hekdesh*, but it runs counter to the passage in Sanh. (v. Sonc. ed. pp. 388f), which makes it clear that robbery of a heathen was never condoned, but always regarded as an offence, though it was non-actionable. Moreover, the condemnation of taking usury from a heathen (*supra* 70b) should be sufficient to dispel all doubt as to the Rabbinic attitude on the matter. A solution to the Problem is supplied by the variant (v. D.S. a.l.): '*Now on the view that the robbery of a heathen is forbidden, it is well; but if it is held to be permitted, what can be said?*' The argument would accordingly run as follows: '*If it is held that the robbery of a heathen is forbidden (to be kept) and is then on all fours with that of an Israelite, it is understood that the Law has permitted the employee to pluck and eat the grapes only in an Israelite's vineyard, but not if the vineyard belonged to a heathen; but if the robbery of a heathen is permitted, i.e., to be kept, is it possible that the Law, whilst allowing a delinquent to enjoy the property stolen from a heathen, should forbid the employee to pluck the grapes from the employer's vineyard?*']
26. I.e., the laborer must not make a meal of bread and grapes.
27. To whom the grapes belong.
28. Until the grapes have been turned into wine and conducted into the pit, whither the expressed juice runs, their owner may eat of them without tithing. Should he, however, sell them before that, they are immediately subject to tithes, which must be rendered by the purchaser before eating. Now, I might think that since the employee eats them in part remuneration for his labor, they are as bought with his labor, and therefore may not be eaten without tithing. Therefore this word [H] (lit., '*as thy own soul*,' '*person*') intimates that he is on the same footing in this respect as the owner.

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29. V. *supra* p. 505, n. 9.

30. V. [Glos.](#)

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until it sees the front of the house,¹ for it is written, I have brought away the hallowed things out of mine house.² R. Johanan said: Even a courtyard establishes liability to tithes, for it is written, that they may eat at thy gates and be filled.³ But according to R. Johanan, is it not written, out of mine house? — He can answer you: [It teaches that] the court yard must be similar to the house [in order to impose liability]: just as a house is guarded, so also must the courtyard be guarded.⁴ But R. Jannai! Is it not written, 'in thy gates'? — That is required [to show] that it must be brought into [the house] through the gates, but not over the roof or through [back] enclosures, when no liability is established.

R. Hanina of Be-Hozae⁵ raised an objection: As thine own person: as the person of the employer, so the person of the employee; just as thou thyself mayest eat [thereof] and art exempt [from tithes], so also the employee may eat, and is exempt. This thus implies that a purchaser is liable:⁶ and does it not mean even in the field?⁷ — R. Papa said: This refers to a fig tree growing in a garden, but with its branches inclining to the court-yard,⁸ or, to the house, on the view that [it must see the front of] the house. If so, even the [first] owner should be liable!⁹ — The owner's eyes are upon the [whole] fig-tree, whereas the buyer has eyes only for his purchase.¹⁰ But is a purchaser at all liable by Biblical law? Has it not been taught: Why were the bazaars of Beth Hini¹¹ destroyed? Because they based their actions upon Scripture.¹² They used to say,

1. I.e., unless it is taken into the house through the front door, not through the roof or backyard.
2. Ibid. XXVI, 13: the deduction presumably is thus: as it is openly brought out of the house through the front, so it must have been taken in, in order to become 'hallowed', i.e., tithed.

3. Ibid. 22: 'they' refers to the Levite, etc., who eat the tithes 'at thy gates', which implies that the crops had not entered the house but remained at 'thy gate', i.e., in the courtyard.
4. But if free and open to all, it establishes no liability.
5. [The Modern Khuzistan, province S. W. Persia, Obermeyer, *op. cit.* pp. 204ff.]
6. V. P. 507, n. 3.
7. For just as the employee eats it on the field, by implication, if a purchaser desires to eat thereof on the field, he is liable, though it has not yet seen the front of the house or the courtyard.
8. So that immediately the fruit is plucked it sees the front thereof.
9. For immediately it is plucked it fulfills the conditions of liability by seeing the front of the house or court.
10. I.e., the owner does not regard a single branch; therefore, since the whole tree does not face the house, he is exempt. But the purchaser is interested only in his purchase; hence, if the branch from which his figs are gathered faces the house or courtyard, he is liable.
11. Bethania, a place near Jerusalem; Jast. [The parallel passage in J. *Pe'ah* I, has the bazaars of Beth Hanan, v. Sanh. (Sonc. ed.) p. 267, n. 4. These were stores set up on the Mount of Olives for the supply of pigeons and other commodities required for sacrifices, and owned by the powerful priestly family, to whom they proved a source of wealth. They were destroyed three years before the fall of Jerusalem; v. Derenbourg, *Essai*, p. 468, and Buchler, *Priester und Cultus*, p. 189.]
12. Disregarding Rabbinical law.

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*Thou shalt truly tithe ... And thou shalt eat, [implies] but not if thou sellest it; the increase of thy seed, but not if it is purchased!*¹ — But [the liability of a purchaser] is only by Rabbinic law, and the verse² is a mere support. Then what is the purpose of, '*as thine own person*'?³ — As has been taught: '*As thine own person*': just as if thou muzzlest thine own [mouth], thou art guiltless, so also, if thou muzzlest [the mouth of] thy laborer, thou art free [from transgression].⁴

Mar Zutra raised an objection: What is their harvesting time for [liability to] tithes? In the case of cucumbers and gourds, when they are

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blossomed.⁵ And R. Assi interpreted this: As soon as their blossoms are shed. Now, does that not mean, as soon as their blossoms are shed even in the field?⁶ — No, only in the house. If so, instead of saying, 'as soon as', etc., he [the Tanna] should state [they are not liable] 'until their blossoms are shed'.⁷ Had he stated 'until, etc.', I would think that it means until the shedding of their blossom is complete; therefore we are taught, by stating 'as soon as', etc., that it means as soon as the shedding commences.

Mar Zutra, the son of R. Nahman, raised an objection: Its harvesting time in respect of tithes, in that the prohibition of *tebel* is transgressed,⁸ is when its work is finished. And what is the finishing of its work? When it is brought in. Now, surely, 'when it is brought in' means, even in the field?⁹ — No; when it is brought into the house, that is the completion of its work. Alternatively, R. Jannai's dictum¹⁰ refers only to olives and grapes, which are not gathered into a threshing floor;¹¹ but in the case of wheat and barley, the threshing floor is distinctly stated.¹²

We now know that man [may eat when employed upon] what is attached to the soil, and an ox of what is detached;¹³ whence do we know that man may eat of what is detached?¹⁴ — It follows a *minori*, from an ox: if an ox, which does not eat of what is attached,¹⁵ may nevertheless eat of what is detached; then a man, who may eat of what is attached,¹⁶ may surely eat of what is detached! As for an ox, [it may be argued] that [sc. the privilege mentioned] is because you are forbidden to muzzle him; can you assume the same of man, whom you are not forbidden to muzzle?¹⁷ (But then let the muzzling of man be interdicted, *a fortiori*, from an ox: if you must not muzzle an ox, whose life you are not bidden to preserve, then man, whose life you are bidden to preserve,¹⁸ you must surely not muzzle him! — Scripture teacheth, 'As thine own person', so is the person of the laborer: just as 'thine own person', if you muzzle [yourself], you are free [from penalty], so also, if you muzzle the

laborer, you are free.) Then [the question remains], whence do we know that man [may eat when engaged upon] what is attached? — Scripture saith, '[When thou comest into] the standing corn ... [but thou shalt not move a sickle unto thy neighbor's] standing corn,' — twice: since its purpose is not to teach that man may eat of what is attached,¹⁹ apply it to man, in respect of what is detached. R. Ammi said: That man may eat of what is detached, no [redundant] verse is necessary. For it is written, 'When thou contest into thy neighbor's vineyard': does this not hold good even if he was hired for portage?²⁰ And yet the Torah states that he may eat [of the grapes].

Whence do we know than an ox [may eat] of what is attached? — It follows, a *minori*, from man: if man, who does not eat of what is detached,²¹ may eat of what is attached; then an ox, which may eat of what is detached, may surely eat of what is attached! — As for man, [may it not be argued,] that [sc., the privilege mentioned] is because you are bidden to preserve his life; will you say the same of an ox, whose life you are not bidden to preserve? (But then infer a duty to preserve the life of an ox,²² a *minori*: if man, though you are not forbidden to muzzle him, you are commanded to preserve his life; then an ox, which you may not muzzle, you are surely commanded to keep it alive! — Scripture saith, *That thy brother may live with thee*, — thy brother, but not an ox.) Then [the question remains,] whence do we know that an ox may eat of what is attached? — Scripture saith, '[When thou contest into] thy neighbor's [vineyard] ... [When thou comest into the standing corn of] thy neighbor' — twice: since it²³ is unnecessary for man in respect of what is attached, apply it to an ox in respect of what is attached.

Rabina said: Neither for a man, in respect of what is detached, nor for an ox, in respect of what is attached, are the [above] verses necessary; because it is written, Thou shalt not muzzle the ox, when he treadeth out the corn.²⁴

1. V. Deut. XIV, 22f. Hence, only when the farmer consumes his crops himself must he tithe it, but not if he sells it; likewise, only the increase of one's own seed is liable, but not bought grain. And this is designated Biblical law.
2. Sc. [H], exempting the laborer.
3. V. p. 507, n, 3 end. Since, however, a purchaser is exempt by Biblical law, it follows, even without a verse, that a laborer is exempt.
4. I.e., although the laborer is entitled to eat, yet if the employer stipulates that he shall not, or forcibly prevents him — metaphorically referred to as muzzling, cf. Deut. XXV, 4: *Thou shalt not muzzle the ox when he treadeth out the corn* — he is not punished for transgressing the injunction just quoted.
5. Ma'as. I, 5.
6. Though they have not yet faced the courtyard or the house.
7. 'As soon as, etc.,' implies that wherever they are the shedding renders them liable. The suggested emendation, however, would imply, even when brought into the house, they are still not liable until, etc.
8. Sc. if one eats anything thereof without tithing it. Before it becomes liable to tithes it is permissible to make a light meal of it, without transgressing the prohibition of *tebel*.
9. 'Brought in' being understood in the sense of 'collected into a stack'.
10. *Supra* 87b, bottom.
11. Hence the liability to tithes is established only when they 'see the face of the house.'
12. Num. XVIII, 30: Then it shall be counted unto the Levites as the increase of the threshing floor. This shows that in the case of cereals the threshing floor establishes the Levite's right to the tithe.
13. Deut. XXV, 4. Threshing follows reaping, when the crops are no longer in the earth.
14. As stated in the Mishnah.
15. I.e., which Scripture does not explicitly permit to do so, though it is inferred below.
16. I.e., permission is explicitly granted: Deut. XXIII, 25f.
17. V. *supra* p. 509, n. 5.
18. V. Lev. XXV, 36.
19. It being unnecessary to state 'standing corn' twice for that purpose.
20. I.e., for carrying the cut-off grapes to the press or elsewhere; for Scripture does not specify the nature of the work.
21. V. p. 510, n. 7.
22. I.e., until it is actually needed for food, one should be bidden to keep it in good health and save it from an unnecessary death.
23. The repetition of 'thy neighbor'.
24. Deut. XXV, 4.

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Now consider: everything is included in this prohibition of muzzling, because we employ the analogy of 'ox' written here and in the case of the Sabbath:¹ then Scripture should have written, 'Thou shalt not thresh with muzzled [animals]:' why write, 'ox'? To assimilate the muzzler [sc. man] to the muzzled [sc. ox and animals in general], and vice versa. Just as the muzzler [man] may eat of what is attached, so the muzzled may eat of what is attached; and just as the muzzled may eat of what is detached, so the muzzler may eat of what is detached.

Our Rabbis taught: 'Threshing':² just as threshing is peculiar in that it applies to what is grown in the earth, and the laborer may eat whilst employed thereon; so also, of everything which is grown in the earth, the laborer may eat. Hence milking, pressing thick milk,³ and cheese-making are excluded: since they are not earth-grown, the laborer may not partake thereof. But why is this needed? Does it not follow from, 'When thou comest into thy neighbor's vineyard'? — It is necessary: I might think, since 'kamah' is written to include everything that stands upright,⁴ it also embraces what is not earth-grown; therefore we are taught otherwise.

Another [Baraita] teaches: 'Threshing': just as threshing is peculiar in that it is an employment at the completion of its labour,⁵ and the worker may eat whilst engaged thereon; so during everything which is done at the completion of its labor, the worker may eat. Hence weeding amongst garlic and onions is excluded: as it is not the completion of the work,⁶ the laborer may not eat. But why is this necessary?⁷ Does it not follow from, but thou shalt not put any in thy vessel?⁸ — It is necessary, [to intimate that he may not eat] even when removing small onions from amongst large ones.⁹

Another [Baraita] taught: 'Threshing': just as threshing is peculiar as being a process which does not complete its work [to render it

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liable] to tithes, and the laborer may eat thereof; so also during everything which does not complete the work [to subject it] to tithes, the laborer may eat. Hence separating dates and dried figs [sticking together] is excluded: since its work is finished in respect of tithes, the worker may not eat. But has it not been taught: When separating dates and dried figs, the worker may partake thereof? — R. Papa replied: That refers to half-ripe dates.¹⁰

Another [Baraita] taught: 'Threshing': just as threshing is peculiar in that it is a process which does not finish its work for *hallah*,¹¹ and the laborer may eat whilst engaged thereon; so during every process which does not finish its work in respect of *hallah*, the laborer may eat. Thus kneading, shaping [the dough] and baking are excluded; since its work is completed in respect of *hallah*, the worker may not eat whilst engaged thereon. But its work is complete in respect of tithes!¹² — There is no difficulty: the reference is to the Diaspora,¹³ where there are no tithes. If so, *hallah* too is not practised!¹⁴ — But after all, this refers to Palestine, yet there is no difficulty. For the reference is to the seven years of conquest and seven years of division.¹⁵ For a Master said: In the seven years of conquest and the seven of division there was a liability to *hallah*, but not to tithes. But is it the tithing that is responsible? It is the finishing of the work that is responsible!¹⁶ — But, said Rabina, combine [the two Baraitas] and read [thus]: 'Threshing': just as threshing is peculiar in that its work is not complete in respect of tithes and *hallah*, and the worker may eat whilst engaged thereon, so during everything, the work of which is not complete in respect of tithes and *hallah*, the laborer may eat.¹⁷

The scholars propounded: Is the laborer permitted to parch [the ears of corn] at a fire and eat them? Is it the equivalent of [eating] grapes together with something else,¹⁸ or not?¹⁹ — Come and hear: An employer may give his employees wine to drink, that they should not eat many grapes; [on the other

hand,] the laborers may dip their bread in brine, that they should eat many grapes!²⁰

1. V. B.K. 54b. Just as 'ox' is singled out in connection with the Sabbath, yet at the same time Scripture adds that all animals must rest (Deut. V. 14), so by 'ox' here all animals are meant.
2. I.e., the law forbidding the muzzling of an ox during 'threshing', 'treading out the corn', from which it was deduced that both man and beast may eat of that upon which they labor.
3. In the process of making a certain kind of cheese,
4. V. *supra*.
5. Sc. of harvesting.
6. Of producing these vegetables.
7. Sc. the analogy from threshing.
8. Deut. XXIII, 25. V. p. 505, n. 9.
9. I.e., onions which never grow to a large size. These were removed to give the others room for more vigorous growth. Now, although these are 'Put into the employer's basket,' the laborer may not eat, not being engaged upon the completion of the work.
10. I.e., a kind of date and fig which does not fully ripen on the tree but only in the house. The 'separating' spoken of here means before they have ripened in the house, and so are not finished in respect of tithes.
11. V. *Glos*.
12. And, as stated above, that alone forbids the worker to eat; why then base the ruling upon *hallah*?
13. Lit., 'outside the land,' sc. Palestine.
14. Though a small Portion of dough is separated and burnt even in the Diaspora, that is only symbolical; but the real law of *hallah* requires that a definite portion be given to the priests, and that is not practiced outside Palestine.
15. I.e., the Baraita treats of the fourteen years during which Palestine was conquered and allotted to the tribes by Joshua.
16. As deduced by analogy from 'threshing'. And therefore, whether the law of tithes is in force or not, once the stage of threshing or its equivalent is reached, when there would be a liability to tithes if the law were in force, the laborer may not eat. And so the difficulty remains: why exclude kneading on the grounds of liability to *hallah*, seeing that threshing preceded it?
17. Hence, if it is a process which completes the work for tithes, and there is no further stage to subject it to *hallah*, e.g., the separating of dates, the laborer may not eat. If, however, its final stage is liability to *hallah*, e.g., wheat, the last stage of which is the kneading, when it is subject to *hallah*, if the worker is engaged

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upon an earlier stage, though it is already liable to tithes, he may eat. Rashi and Tosaf.

18. Which is forbidden. *Supra*.
19. For it may be argued that since grapes may not be eaten with bread, because thereby an unreasonably large quantity is consumed, the same holds good of parched corn, which is more palatable than unparched.
20. The moistened bread creating an appetite. So, by analogy, a laborer may parch the corn.

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— As for making the man fit [to eat more], of that there is no question: our problem is only whether the food may be rendered more appetising?¹ What is the ruling? — Come and hear: Laborers may eat the top most grapes of the [vine-] rows,² but must not parch them at the fire! — There it [the prohibition] is on account of loss of time:³ but our problem arises when he has his wife or children with him; what then?⁴ — Come and hear: He [the laborer] may not parch [the crops] at the fire and eat, nor warm them in the earth,⁵ nor crush them on a rock; but he may crush them between his hands and eat them! — There [too] it is on account of loss of time. That too is logical: for should you think it⁶ is because he [thereby] makes the fruit tasteful, what tastefulness is there [acquired by crushing them] on a rock? — [No; the reasoning is incorrect,] because it is impossible for it not to become slightly [more] tasteful.

Come and hear: Workers engaged in picking figs, harvesting dates, vintaging grape, or gathering olives, may eat, and are exempt [from tithes],⁷ because the Torah privileged them. But they must not eat these with their bread, unless they obtain permission from the owner, nor dip them in salt and eat!⁸ — Salt is certainly the same as grapes and something else.⁹

[It has just been stated:] 'Nor dip them in salt and eat.' But the following contradicts it: if one engages a laborer to hoe and to cover up the roots of olive trees, he may not eat.¹⁰ But if he engages him to vintage [grapes], pluck

[olives], or gather [fruit], he may eat, and is exempt [from tithes], because the Torah privileged him. If he [the laborer] stipulates [that he is to eat], he may eat then, singly, but not two at a time.¹¹ And he may dip them in salt and eat. Now, to what [does this refer]? Shall we say, to the last clause? But having stipulated, he can [obviously] eat just as he wishes! Surely then it must refer to the first clause!¹² — Abaye answered: There is no difficulty: here it [the second Baraita] refers to Palestine; there [the first] to the Diaspora. In Palestine, dipping [in salt] establishes [a liability to tithes]; in the Diaspora, it does not.¹³ Raba demurred: Is there aught for which dipping establishes [a liability] in Palestine, but not in the Diaspora, so that it is permitted from the very outset?¹⁴ But, said Raba, both in Palestine and without, for one [fig] salting does not establish [liability],¹⁵ but for two it does. But if he [sc. the laborer] stipulates [that he is to eat], whether he salts or not, he may eat [them] one by one, but not in twos. [Hence:] If he neither stipulates nor salts them, he may eat them two by two; if he salts them, he may eat them one by one, but not two by two, even if he obtained the employer's permission,¹⁶ because they become *tebel* in respect of tithes, the salting establishing [that liability].¹⁷ And whence do we know that salting establishes [liability only for] two? — Said R. Mattana: Scripture saith, For he hath gathered them as the sheaves to the threshing floor.¹⁸

Our Rabbis taught: When cows stamp [hullin] grain¹⁹

1. Lit., 'fit'.
2. They may conserve their appetite till they reach these, which being more exposed to the sun than the lower ones, are sweeter (Rashi).
3. Lit., 'cessation of work'.
4. There is no loss of time, as they can singe it.
5. By placing them in warm soil.
6. I.e., the Prohibition referred to.
7. V. p. 507, n. 3.
8. Now, it was assumed that dipping in salt is forbidden because it renders it more appetizing, and therefore parching too will be forbidden.

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9. I.e., no deduction may be drawn from this, for salt is an addition. Yet it may be permissible to parch corn, since nothing is added.
10. Of the olives, because it is not the finish of the work.
11. Two together count as a store, therefore are subject to tithes. Since the laborer stipulates that he is to eat, it is part of his payments and hence ranks as bought, and therefore he may not eat them; v. *supra* 88a.
12. Where no stipulation was made: hence it contradicts the first Baraitha.
13. When one dips an olive in salt he shows that he attaches value to it, which renders it completely ready for eating, and precludes further storing. Hence, in Palestine, where tithing is Biblical, the dipping imposes a liability. But in the Diaspora, where it is only Rabbinical and consequently less stringent, it does not.
14. Sc. to partake thereof without having rendered the tithes. Though tithes in the Diaspora are only Rabbinical, the Rabbis formulated the law on the same conditions as in Palestine, and therefore, whatever establishes a liability there establishes it in the Diaspora too.
15. Being of insufficient value.
16. For otherwise, not having stipulated, he may not salt them at all, as stated above.
17. V. p. 515, n. 7. Only when the stage of liability is reached it is called *tebel*. — Thus the first Baraitha refers to eating two at a time; no stipulation having been made, they may not be dipped in salt, But the second refers to a case where a stipulation was made; since the mere stipulation establishes a liability for two, it follows that he must eat the fruit singly, and that being so, the Tanna can state in general terms that he may salt them.
18. Mic. IV, 12. Thus there can be no threshing floor, i.e., storage, the final stage of which imposes liability, without gathering, and there cannot be gathering of less than two (actually, the Heb. has [H] sing., but the plural must be understood).
19. V. [Glos.](#) Barley grain was soaked in water, dried in an oven, and threshed by the treading of cows, which removed the husks.

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or thresh *terumah* and tithes,¹ there is no prohibition of, *Thou shalt not muzzle [the ox when he treadeth out — i.e., threshes — his corn]*;² but for the sake of appearances³ he must bring a handful of that species and hang

it on the nosebag at its mouth. R. Simeon b. Yohai said: He must bring vetches and hang them up for it, because these are better for it than anything else. Now the following contradicts it: When cows are stamping on grain, there is no prohibition of, *Thou shalt not muzzle*; but when they thresh *terumah* or tithes, there is. When a heathen threshes with an Israelite's cow, that prohibition is not transgressed;⁴ but if an Israelite threshes with a heathen's beast, he does. Thus the rulings on *terumah* are contradictory, and likewise those on tithes. Now, as for the rulings on *terumah*, it is well, and there is no difficulty: the one refers to *terumah* [itself]; the other to the produce of *terumah*;⁵ but as for the rulings on tithes, these are certainly difficult. And should you answer, there is no contradiction in the rulings on tithes either, one referring to tithes and the other to the produce of tithes⁶ — as for the produce of *terumah*, the answer is fitting, since it is *terumah*;⁷ but the produce of tithes is *hullin*. For we learnt: The produce of *tebel* and the produce of the second tithe⁸ are *hullin*!⁹ — But there is no difficulty: the one refers to the first tithe; the other to the second.¹⁰ Alternatively, both refer to the second tithe, yet there is no difficulty: the one [sc. the first Baraitha] agrees with R. Meir; the other with R. Judah. [Thus:] The one agrees with R. Meir, who maintained that the second tithe is sacred property;¹¹ the other with R. Judah, who held it secular property.¹² [And] how is it conceivable?¹³ — E.g., if he [the owner] anticipated [the tithing] whilst it was yet in ear. But [even] on R. Judah's view, does it not require the wall [of Jerusalem]?¹⁴ — He threshed it within the walls of Beth Pagi.¹⁵ Another alternative is this: there is no difficulty: one refers to a certain tithe, the other to a doubtful tithe.¹⁶ Now that you have arrived at this [solution], there is no contradiction between the two rulings on *terumah* too: the one refers to certain *terumah*, the other to doubtful *terumah*. Now, that is well with respect to a doubtful tithe, which exists. But is there a doubtful *terumah*? Has it not been taught: He¹⁷ also abolished

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the widow¹⁸ and enacted the law of *demai*. Because he sent [messengers] throughout the territory of Israel, and saw that only the great *terumah* was rendered!¹⁹ — But there is no difficulty: the one refers to *terumah* of the certain tithe; the other to *terumah* of the doubtful tithe.

The scholars put a problem to R. Shesheth: What if it ate and excreted?²⁰ Is it [sc. the prohibition of muzzling] because it [the crops] benefits her, whereas here it does not; or because it sees and is distressed [through inability to eat], and here too it is distressed [if muzzled]? — R. Shesheth replied: We have learnt it: R. Simeon b. Yohai said: He must bring vetches and hang them up for her, because these are better for her than anything else. This proves that the reason is that it benefits her. This proves it.

The scholars propounded: May one say to a heathen, 'Muzzle my cow and thresh therewith'? Do we say, the principle that an instruction to a heathen is a shebuth²¹ applies only to the Sabbath, [work] being forbidden on pain of stoning;²² but not to muzzling, which is prohibited merely by a negative precept: or perhaps there is no difference? — Come and hear: If a heathen threshes with the cow of an Israelite, he [the Israelite] does not infringe the precept, Thou shalt not muzzle! [This implies,] He merely does not infringe it,²³ yet it is forbidden!²⁴ — Actually, it is not even forbidden; but because the second clause states that if an Israelite threshes with a heathen's cow, he does infringe;²⁵ the first clause too teaches that he does not infringe.

Come and hear: For they [the scholars] sent to Samuel's father: What of those oxen

1. Though stated above that at the stage of threshing there is no liability of tithes, yet the owner can separate the *terumah* and the tithes, if he wishes, whilst the grain is in the ear; in that case the cows thresh ears of corn that are actually *terumah* or tithes.
2. Deut. XXV, 4; stamping, because that is a later stage. With respect to *terumah*, (v. [Glos.](#)), etc., two reasons are given: (i) Since threshing of

terumah is not usual, the injunction could not have applied to it (Rashi); (ii) ... when he treadeth out his corn, excludes *terumah*, which is entirely prohibited to an Israelite (i.e., not a priest), and tithes, which are considered as sacred property, though not forbidden, and therefore not 'his' (Tosaf.).

3. That one who sees it should not think he is transgressing.
4. I.e., the Jew does not transgress by permitting the Gentile to muzzle his cow.
5. With respect to the former there is no prohibitions as explained on p. 516, n. 7. But if it were sown and produced a further crop, Biblically speaking it is not *terumah* at all, but ordinary *hullin*, though by a Rabbinical enactment it ranks as such. Since the Rabbis cannot nullify a Scriptural prohibition, the injunction, Thou shalt not muzzle, remains in force. The reason for this Rabbinical measure was that otherwise the Israelite might evade his obligations by separating *terumah* and then resowing it. Also, should a priest possess defiled *terumah*, which may not be eaten, he might keep it for resowing, when likewise it reverts to *hullin* by Scriptural law; but whilst keeping it he might forget its defiled nature and eat it.
6. As in the case of *terumah*.
7. I.e., by Rabbinical law, and therefore it is necessary to teach that in this respect the Scriptural law applies.
8. Two tithes were separated; the first, given to the Levite, and the second, which was retained by the Israelite and eaten in Jerusalem, v. Deut. XIV, 22ff.
9. As stated above, p. 516, n. 3, the crops are called *tebel* only when the stage of liability to this has been reached. Before that it is permissible to make a light meal thereof even without tithing, but not after. Now, if the stage of liability was reached, so that it became *tebel*, and it was resown, the produce is not *tebel* but *hullin*, and one may enjoy a light meal thereof before tithing. As for the second tithe, the Rabbis did not enact that its produce shall be second tithe too, as in the case of *terumah*, because there was no fear that the Israelite would keep and resow it, in order to evade his obligations, since the second tithe might be redeemed and eaten outside Palestine, v. Ter. IX. 4.
10. The first tithe is regarded as his corn, since an Israelite may eat it too, and without restriction of place, hence the prohibition of muzzling applies. But the second tithe, since it must be eaten in Jerusalem, is regarded as sacred property, and so not included in the prohibition (Tosaf.).

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11. Lit., 'property of the (Most) High.'
12. Kid. 24a.
13. That it should be a tithe before threshing: — The bracketed 'and' ([H]) is absent from our text and Rashi's, but given in Tosaf.
14. I.e., since he tithed the crops in ear, nothing thereof is to be consumed — not even by beasts — outside the walls of Jerusalem. How then may the animal thresh it unmuzzled?
15. The outer wall of Jerusalem, added to the original limits of the town; v. Sanh. (Sonc. ed.) p. 67, n. 9.
16. Heb. [H]. Corn purchased from the ignorant peasants, who were very lax in their rendering of tithes, had to be tithed by the purchaser, for fear that the vendor had not done so. This was called a doubtful tithe, and required only by Rabbinical law; therefore the prohibition of muzzling applies; v. p. 517, n. 2.
17. Sc. John Hyrcanus.
18. Lit., 'confession'; v. Deut. XXVI, 1-15. The declaration referred to is called *widuy*. But John Hyrcanus abolished it, because of the verse, *I have brought away the hallowed things out of mine house, and also have given them unto the Levite*, 'Them' refers to the first tithe, but according to the Talmud, after the return from Babylon Ezra enacted that it should be given to the priests, as a punishment to the Levites for their reluctance to return to the Holy Land. Since one could not truthfully say, *I have given them unto the Levite*, the recital was abolished.
19. Because of the dread of the penalty involved — death at the hands of Heaven. The separation of *terumah* made by the Israelites and given to the priests was called 'the great *terumah*', to distinguish it from 'the *terumah* of the tithe', i.e., a tenth part given by the Levite, of the tithe he received, to the priest, and which had the higher sanctity of *terumah*. Since, then, even the irreligious rendered the great *terumah*, the law of *demai* would not have been enacted in respect thereto.
20. Through suffering with diarrhea.
21. Lit., 'rest, abstention from work', and is mainly applied to types of work which, though not falling within the definition of labor forbidden on the Sabbath, are nevertheless prohibited as being out of keeping with its sacredness. To instruct a Gentile to work on the Sabbath is a shebuth, i.e., not actual labor, yet interdicted as not harmonizing with the Sabbath. This is an instance where one may not instruct a Gentile to do what is forbidden to oneself, and the problem here is whether this prohibition applies to all forbidden acts.
22. Hence it is unseemly to bid a Gentile do it.
23. In the sense that he incurs punishment.

24. For an Israelite to bid him to do this.
25. And is punished.

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which Arameans¹ steal [at the instance of the owners] and castrate?² He replied: Since an evasion was committed with them, turn the evasion upon them [their owners], and let them be sold!³ — R. Papa replied: The Palestinian scholars⁴ hold with R. Hidka, viz., that the Noachides are themselves forbidden to practice castration, and hence he [the Israelite, in instructing the heathen to do it,] violates, *Ye shall not put a stumbling block before the blind.*⁵ Now, Raba thought to interpret: They must be sold for slaughter.⁶ Thereupon Abaye said to him: It is sufficient that you have penalized them to sell.⁷

Now, it is obvious that an adult son is as a stranger;⁸ but what of a minor son? — R. Ahi forbade it;⁹ whilst R. Ashi permitted it. Meremar and Mar Zutra — others state, certain two hasidim — 10 interchanged with each other.¹¹

Rami b. Hama propounded: What if one put a thorn in its [sc. the animal's] mouth?¹² [You ask, What] if one put [a thorn in its mouth]? Surely that is real muzzling!¹³ — But [the problem is], what if a thorn stuck in its mouth?¹⁴ [Similarly,] What if one caused a lion to lie down outside [the field in which the ox was threshing]?¹⁵ 'What if one caused a lion to lie down?' Surely that is actual muzzling! — But [the problem is], What if a lion lay down outside [of its own accord]?¹⁶ What if one placed its [sc. the animal's] young outside the field?¹⁷ What if it thirsted for water [and so could not eat]? What if he spread a leather cover over the grain to be threshed?¹⁸ — Solve one of these problems from the following [Baraita]. For it has been taught: The owner of the cow¹⁹ may let it go hungry, that it should eat much of the grain it threshes; whilst on the other hand, the landowner may untie a bundle of [trodden] sheaves before the cow, that it should not eat much of the threshing!²⁰ — There it is

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different, because it does eat nevertheless. Alternatively [it means], the field owner may untie a bundle of [trodden] sheaves in front of the cow before the commencement [of the threshing], so that it should not eat much of the corn that is threshed.²¹

R. Jonathan asked R. Simai: What if he muzzled it outside?²² Does Scripture mean, *[Thou shalt not muzzle] an ox when* [i.e., at the time that] *it thresheth*, (-----)²³ whilst this is not [done] when it thresheth? Or perhaps Scripture meant, *Thou shalt not thresh with a muzzled ox?* — He replied: You may learn from your father's house.²⁴ *Do not drink wine or strong drink, thou, nor thy sons with thee, when ye enter* [into the tabernacle, etc.].²⁵ Now, is it forbidden only when ye enter, yet one may drink before and then enter? But Scripture saith, *And that ye may put difference between holy and unholy!*²⁶ Hence, just as there, when the priest has entered there must be no drunkenness, so here too: when threshing, the ox must not be in a muzzled state.

Our Rabbis taught: He who muzzles an ox or harnesses together [two] heterogeneous animals²⁷ is exempt [from punishment], and only he who threshes or drives them is flagellated.²⁸

It has been stated: If one frightened it off²⁹ with his voice, or drove them [sc. the yoke of heterogeneous animals] with his voice: R. Johanan held him liable to punishment, the movement of the lips being an action; Resh Lakish ruled that he is not, because [the use of] the voice is not an action.³⁰ R. Johanan raised an objection to Resh Lakish:

1. [From the third century onward the Babylonian heathens, the Mandeans or Sabaeans, were designated Arameans, v. Obermeyer, *op. cit.* p. 75.]
2. [This was a device resorted to by Jewish owners in order to evade the relevant prohibition; Lev. XXII, 24.]
3. This proves that one may not even instruct a heathen to perform that which is forbidden merely by a negative precept, as castration.
4. Lit., 'children of the West'.

5. Lev. XIX, 14. But muzzling is not forbidden to heathens.
6. Which brings less than when sold for work.
7. Without insisting that they lose part of their value.
8. To whom it may be sold.
9. To sell them to him.
10. Lit., 'pious men', a designation of men known for their extreme piety.
11. I.e., their oxen having been castrated without their knowledge (Tosaf.).
12. To prevent it from eating; is it the equivalent of muzzling or not?
13. Surely there can be no doubt that it is forbidden.
14. Is the owner bound to remove it or not?
15. Thereby frightening off the animal from eating.
16. Is the owner bound to chase it away or not?
17. And the mother in her yearning toward it could not eat. Here the Talmud does not object that this is actual muzzling, because yearning is not as strong a preventive as terror. But other texts read: what if its young stationed itself, etc.? (Tosaf.)
18. So that it might not see the grain.
19. Who hires it out.
20. Thus, one may do something to prevent the cow from eating, and it is assumed that this is analogous to spreading a leather over the grain.
21. Whereas the problem is whether a leather may be spread when it is threshing.
22. I.e., before it entered the field.
23. I.e., the muzzling must be done then.
24. I.e., from the law appertaining to priests, R. Jonathan being one. [The reference is to R. Jonathan b. Joseph, the Tanna, a disciple of R. Ishmael, and not to R. Jonathan, the disciple of R. Hiyya, who certainly was no priest; v. Sanh. 71a. The question he put to R. Simai who, as a younger contemporary of Rabbi was considerably his junior, would then be merely to test him. It is, however, preferable to read with MS. Venice, 'R. Simeon (b. Yohai)' instead of 'R. Simai'; v. Hyman Toledoth, II. p. 698.]
25. Lev. X, 9.
26. Ibid. 20; and for that it does not signify whether one drinks before entering or after.
27. But leaves them for another to plow with.
28. Tosaf. Kel. V.
29. Lit., 'muzzled it'.
30. Punishment is incurred for the violation of a negative precept only when it entails a positive action, and R. Johanan and Resh Lakish dispute whether speech is such.