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BABA KAMMA

TRANSLATED INTO ENGLISH WITH NOTES

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Baba Kamma 93b

CHAPTER IX

MISHNAH. IF ONE MISAPPROPRIATES PIECES OF WOOD AND MAKES UTENSILS OUT OF THEM, OR PIECES OF WOOL AND MAKES GARMENTS OUT OF THEM, HE HAS TO PAY FOR THEM IN ACCORDANCE WITH [THEIR VALUE AT] THE TIME OF THE ROBBERY.[1] IF ONE MISAPPROPRIATED A PREGNANT COW WHICH MEANWHILE GAVE BIRTH [TO A CALF], OR A SHEEP BEARING WOOL WHICH HE SHEARED, HE WOULD PAY THE VALUE OF A COW WHICH WAS ABOUT TO GIVE BIRTH [TO A CALF], AND THE VALUE OF A SHEEP WHICH WAS READY TO BE SHORN [RESPECTIVELY]. BUT IF HE MISAPPROPRIATED A COW WHICH BECAME PREGNANT WHILE WITH HIM AND THEN GAVE BIRTH, OR A SHEEP WHICH WHILE WITH HIM GREW WOOL WHICH HE SHEARED, HE WOULD PAY IN ACCORDANCE WITH [THE VALUE AT] THE TIME OF THE ROBBERY. THIS IS THE GENERAL PRINCIPLE: ALL ROBBERS HAVE TO PAY IN ACCORDANCE WITH [THE VALUE OF THE MISAPPROPRIATED ARTICLES AT] THE TIME OF THE ROBBERY.

GEMARA. Shall we say that it is only where he actually made utensils out of the pieces of wood [that the Mishnaic ruling will apply], whereas if he merely planed them this would not be so?[2] Again, it is only where he made garments out of the wool that this will be so, whereas where he merely bleached it this would not be so! But could not a contradiction be raised from the following: 'One who misappropriated pieces of wood and planed them, stones and chiseled them, wool and bleached it or flax and cleansed it, would have to pay in accordance with [the value] at the time of the robbery'?[3] — Said Abaye: The Tanna of our Mishnah stated the ruling where the change [in the article misappropriated] is only such as is recognized by the Rabbis, that is, where it can still revert [to its former condition] and of course it applies all the more where the change is such[4] as is recognized by the pentateuch:[5] [for the expression ONE WHO MISAPPROPRIATES] PIECES OF WOOD AND MAKES OUT OF THEM UTENSILS refers to pieces of wood already planed, such as ready-made boards, in which a reversion to the previous condition is still possible, since if he likes he can easily pull the boards out [and thus have them as they were previously]; PIECES OF WOOL AND MADE GARMENTS OUT OF THEE also refers to wool which was already spun, in which [similarly] a reversion to the previous condition is possible, since if he likes he can pull out the threads and restore them to the previous condition; the same law would apply all the more in the case of a change [where the article could no more revert to the previous condition and] which would thus be recognized by the pentateuch.[5] But the Tanna of the Baraitha deals only with a change [where the article could no more revert to its previous condition and] which would thus be recognized by the Pentateuch, but does not deal with a change [in which the article could revert to its previous condition and which would be] recognized only by the Rabbis. R. Ashi, however, said: The Tanna of our [Mishnah also] deals with a change which would be recognized by the Pentateuch, for by PIECES OF WOOD AND MAKES UTENSILS OUT OF THEM he means clubs, which were changed by planing them; by PIECES OF WOOL AND MAKES GARMENTS OUT OF THEM he similarly means felt cloths, which involves a change that can no more revert to its previous condition.

But should bleaching be considered a change?[6] Could no contradiction be raised [from the following]: 'If the owner did not manage to give the first of the fleece to the priest until it had already been dyed, he would be exempt,[7] but if he only bleached it without having dyed it, he would still be liable'?[8] — Said Abaye: This is no difficulty,

as the former statement is in accordance with R. Simeon and the latter in accordance with the Rabbis; for it was taught: 'If after the owner had shorn his sheep he span the wool or wove it, this portion would not be taken into account[9] [with the other wool which was still left in a raw state];[10] but if he only purified it, R. Simeon says: It would [still] not be taken into account, whereas the Sages say that it would be taken into account. But Raba said that both statements might be in accordance with R. Simeon, and there would still be no difficulty, as in one case[11] [the process of bleaching was] by beating the wool [where no actual change took place], whereas in the other case[12] the wool was corded with a comb. R. Hiyya b. Abin said that in one case[11] the wool was merely washed [so that no actual change took place]. whereas in the other[12] it was whitened with sulphur. But since even dyeing is according to R. Simeon not considered a change, how could bleaching be considered a change, for was it not taught: 'Where the owner had shorn one sheep after another and in the interval dyed the [respective] fleeces, [or shorn] one after another and in the interval spun the wool, [or shorn] one after another and in the interval wove the wool, this portion would not be taken into account,[9] but R. Simeon b. Judah said in the name of R. Simeon[13] that if he [only] dyed the wool it would be taken into account'?[14] — Said Abaye: There is no difficulty, as the former statement was made by the Rabbis according to R. Simeon whereas the latter[15] was made by R. Simeon b. Judah according to R. Simeon. But Raba said: You may still say that the Rabbis did not differ from R. Simeon b. Judah on this point,[16] for dyeing might be different, the reason being that since the color could be removed by soap, [it is not considered a change], and as to the statement made there, 'If the owner did not manage to give the first of his fleece to the priest until it had already been dyed he would be exempt' which has been stated to be accepted unanimously, this deals with a case where it was dyed with indigo [which could not be removed by soap].

Abaye said: R. Simeon b. Judah, Beth Shammai, R. Eliezer b. Jacob. R. Simeon b. Eleazar and R. Ishmael all maintain that a change leaves the article in its previous status: R. Simeon b. Judah here in the text quoted by us; but what about Beth Shammai? — As it was taught:[17] 'Where he gave her as her hire wheat of which she made flour, or olives of which she made oil, or grapes of which she made wine,' one [Baraitha] taught that 'the produce is forbidden to be sacrificed upon the altar,' whereas another [Baraitha] taught 'it is permitted'. and R. Joseph said: Gorion

1. I.e., of the pieces of wood and wool but not of the utensils and garments respectively, as by the change which took place he acquired title to them; cf. *supra* p. 384.
2. I.e., the ownership would thereby not be transferred to the robber.
3. The reason being that through the change which took place the ownership was transferred.
4. I.e., where the article can no longer revert to its former condition; v. *supra* p. 386.
5. To transfer ownership.
6. In regard to which it was stated in the Baraitha that the robber will thereby acquire title to the wool.
7. As by this change the original obligation was annulled and the owner acquired unqualified and absolute right to the wool.
8. Hul. XI, 2; v. *supra* p. 382. Does not this prove that mere bleaching unlike dyeing does not constitute a change?
9. In regard to the first fleece offering the minimum of which is according to R. Dosa b. Harkinas the weight of seven *maneh* and a half collected equally from not less than five sheep, but according to the Rabbis one *maneh* and a half collected equally from the same number of sheep would suffice; cf. Hul. XI, 2. A *maneh* amounts to twenty-five sela's; for Samuel's view according to the Rabbis cf ibid. 137b.
10. On account of the change which had been made.
11. Not considering it a change.
12. Considering it a change.
13. I.e., R. Simeon b. Yohai; cf. Sheb. 2b.
14. This shows that R. Simeon b. Yohai does not consider dyeing a change, much less bleaching.
15. v. p. 443. n. 5.

16. As to the view of R. Simeon b. Yohai on this matter.
17. For notes on passage following v. *supra* p. 380.

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of Aspurak taught: 'Beth Shammai prohibit the produce to be used as sacrifices, whereas Beth Hillel permit it.' Now, what was the reason of Beth Shammai? — Because it is written gam, to include their transformation. But Beth Hillel maintains that hem implies only them and not their transformations. Beth Shammai, however, maintains that though hem is written, what it implies is 'them and not their offspring'. Beth Hillel still argue that you can understand both points from it: 'them and not their transformations, them and not their offspring.' But how could Beth Hillel explain the insertion of gam? Gam offers a difficulty according to the view of Beth Hillel.

What about R. Eliezer b. Jacob? — As it was taught:[1] R. Eliezer b. Jacob says: If one misappropriated a *se'ah*[2] of wheat and kneaded it and baked it and set aside a portion of it as *hallah*,[3] how would he be able to pronounce the benediction?[4] He would surely not be pronouncing a blessing but pronouncing a blasphemy, as to such a one could be applied the words: *The robber pronounceth a benediction [but in fact] contemneth the Lord*.[5]

What about R. Simeon b. Eleazar? — As it was taught: This principle was stated by R. Simeon b. Eleazar: In respect of any improvement carried out by the robber, he would have the upper hand; if he wishes he can take the improvement, or if he wishes he may say to the plaintiff: 'Here take your own.' What is meant by this [last] statement?[6] — Said R. Shesheth: This is meant: Where the article has been improved, the robber may take the increased value, but where it has deteriorated he may say to him: 'Here, take your own,' as a change leaves the article in its previous status. But if so why should it not be the same even in the case where the article was improved? We may reply, in order to make matters easier for repentant robbers.[7]

What about R. Ishmael? — It was taught:[8] [Strictly speaking,] the precept of *Pe'ah*[9] requires that it should be set aside from standing crops. If, however, the owner did not set it aside from standing crops he should set it aside from the sheaves; so also if he did not set it aside from the sheaves he should set it aside from the heap [in his store] so long as he has not evened the pile. But if he had already evened the pile[10] he would have first to tithe it and then set aside the *Pe'ah* for the poor. Moreover, In the name of R. Ishmael it was stated that the owner would even have to set it aside from the dough and give it to the poor.[11] Said R. papa to Abaye: Why was it necessary to repeat and bring together all these Tannaitic statements for the sole purpose of making us know that they concurred with Beth Shammai?[12] — He replied: It was for the purpose of telling us that Beth Hillel and the Beth Shammai did probably not differ at all on this matter. But Raba said: What ground have we for saying that all these Tannaim follow one view? Why not perhaps say that R. Simeon b. Judah meant his statement there[13] to apply only to the case of dyeing on account of the fact that the color could be removed by soap, and so also did Beth Shammai mean their view there to apply only to a religious offering because it looks repulsive, or again that R. Eliezer b. Jacob meant his statement there to apply only to a benediction on the ground that it was a precept performed by the means of a transgression,[14] and so also did R. Simeon b. Eleazar mean his view there to apply only to a deterioration which can be replaced, or again R. Ishmael meant his view there to apply only to the law of *Pe'ah*, on account of the repeated expression. *'Thou shalt leave'*?[15] If however you argue that we should derive the law[16] from the latter case,[17] [it might surely be said that] gifts to the poor are altogether different,[18] as is shown by the question of R. Jonathan. For R. Jonathan asked concerning the reason of R. Ishmael: 'Was it because he held that a change does not

transfer ownership, or does he as a rule hold that a change would transfer ownership, but here it is different on account of the repeated expression, *Thou shalt leave*'![19]

But if you find ground for assuming that the reason of R. Ishmael was because a change does not transfer ownership, why then did the Divine Law repeat the expression '*Thou shalt leave*'?[15] Again, according to the Rabbis, why did the Divine Law repeat the expression '*Thou shalt leave*'? — This [additional] insertion was necessary for that which was taught:[20] If a man after renouncing the ownership of his vineyard gets up early on the following morning and cuts off the grapes, he will be subject to the laws of Peret, 'Oleloth, Forgetting and *Pe'ah*,[21] but will be exempt from tithes.

Rab Judah said that Samuel stated that the *halachah* is in accordance with R. Simeon b. Eleazar.[22] But did Samuel really say so? Did not Samuel state that assessment of the carcass is made neither in cases of theft nor of robbery, but only of damage?[23] I grant you that according to Raba who said that the statement made there by R. Simeon b. Eleazar related only to a deterioration where a recovery would still be possible, there would be no difficulty since Samuel in his statement that the *halachah* is in accordance with R. Simeon b. Eleazar [who holds] that a change leaves the article in its previous status, referred to the case of deterioration where a recovery would still be possible, whereas the statement made there[23] by Samuel that assessment of the carcass is made neither in the case of theft nor of robbery but only of damage would apply to deterioration where no recovery seems possible. But according to Abaye who said that the statement made by R. Simeon b. Eleazar [also] referred to deterioration where a recovery is no more possible, how can we get over the contradiction? — But Abaye might read thus: Rab Judah said that Samuel stated:

1. Cf. Sanh. 6b.
2. V. Glos.
3. I.e., the priestly portion set aside from dough. cf. Num. XV, 19-21.
4. According to Asheri on Ber. 45a it refers to the grace over the meal.
5. Ps. X. 3; [E.V.: And the covetous renounceth, yea, contemneth the Lord. In spite of the many changes the wheat had undergone it is still not his and not fit to have a blessing uttered over it.]
6. For in the case of improvement it is surely not in the interests of the robber to plead, 'Here is thine before thee.'
7. Cf. *supra* p. 383 and *infra* 547.
8. Sanh. 68a; Mak. 16b.
9. 'The corners of the field', cf. Lev. XIX. 9.
10. When the grain becomes subject to the law of tithing; cf. Ber. 40b and Ma'as. I, 6.
11. In spite of the many changes which had been made.
12. Whose views have generally not been accepted; cf. 'Er. 13b.
13. Regarding the dyeing of the wool which was subject to the law of the first of the fleece to be set aside for the priest.
14. v. Ber. 47b.
15. Lev. XIX. 10 and XXIII, 22 — implying in all circumstances.
16. That change does not transfer ownership.
17. I.e., from the law of *Pe'ah*.
18. [Adreth. S., Hiddushim, improves the text by omitting: 'If however … different.']
19. [This concludes Raba's argument. V. Adreth, *loc. cit.*]
20. For notes v. *supra* pp. 148-9.
21. On account of the repeated '*Thou shalt leave*'.
22. That in cases of deterioration the robber will be entitled to say. 'Here there is thine before thee.'
23. Explained *supra* p. 44.

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They said that the *halachah* is in accordance with R. Simeon b. Eleazar though Samuel himself did not agree with this.

R. Hiyya b. Abba said that R. Johanan stated that according to the law of the Torah a misappropriated article should even after being changed be returned to the owner in its present condition, as it is said: *He shall restore that which he took by robbery*[1] — in all cases. And should you cite against me the Mishnaic ruling,[2] my answer is that this was merely an

enactment for the purpose of making matters easier for repentant robbers.[3] But did R. Johanan really say this? Did R. Johanan not say[4] that the *halachah* should be in accordance with an anonymous Mishnah, and we have learnt: 'If the owner did not manage to give the first of the fleece to the priest until it had already been dyed, he is exempt'?[5] — But a certain scholar of our Rabbis whose name was R. Jacob said to them: 'This matter was explained to me by R. Johanan personally, [that his statement referred only to a case] where, e.g., there were misappropriated planed pieces of wood out of which utensils were made, as after such a change the material could still revert to its previous condition.[6]

Our Rabbis taught: 'If robbers or usurers [repent and of their own free will] are prepared to restore [the misappropriated articles], it is not right to accept [them] from them, and he who does accept [them] from them does not obtain the approval of the Sages.'[7] R. Johanan said: It was in the days of Rabbi that this teaching was enunciated, as taught: 'It once happened with a certain man who was desirous of making restitution that his wife said to him, Raca, if you are going to make restitution, even the girdle [you are wearing] would not remain yours, and he thus refrained altogether from making repentance. It was at that time that it was declared that if robbers or usurers are prepared to make restitution it is not right to accept [the misappropriated articles] from them, and he who accepts from them does not obtain the approval of the Sages.'

An objection was raised [from the following:] 'If a father left [to his children] money accumulated by usury, even if the heirs know that the money was [paid as] interest, they are not liable to restore the money [to the respective borrowers].[8] Now, does this not imply that it is only the children who have not to restore, whereas the father would be liable to restore?[9] The law might be that even the father himself would not have had to restore, and the reason why the ruling was stated with reference to the children[10] was that since it was necessary to state in the following clause 'Where the father left them a cow or a garment or anything which could [easily] be identified, they are liable to restore [it], in order to uphold the honor of the father,' the earlier clause similarly spoke of them. But why should they be liable to restore[11] in order to uphold the honor of the father? Why not apply to them [the verse] *'nor curse the rule of thy people'*,[12] [which is explained to mean.] 'so long as he is acting in the spirit of *'thy people'*?[13] — As however, R. Phinehas [elsewhere][14] stated, that the thief might have made repentance, so also here we suppose that the father had made repentance. But if the father made repentance, why was the misappropriated article still left with him? Should he not have restored it?[15] — But it might be that he had no time to restore it before he [suddenly] died.

Come and hear: Robbers and usurers even after they have collected the money must return it.[16] But what collection could there have been in the case of robbers. for surely if they misappropriated anything they committed robbery, and if they had not misappropriated anything they were not robbers at all? It must therefore read as follows: 'Robbers, that is to say usurers, even after they have already collected the money, must return it.'[17] — It may, however, be said that though they have to make restitution of the money it would not be accepted from them. If so why have they to make restitution? — [To make it quite evident that out of their own free will] they are prepared to fulfill their duty before Heaven.[18]

Come and hear: 'For shepherds, tax collectors and revenue farmers it is difficult to make repentance, yet they must make restitution [of the articles in question] to all those whom they know [they have robbed].[19] — It may, however, [also here] be said that though they have to make restitution, it would not be accepted from them. If so why have they to

make restitution? — [To make it quite evident that out of their free will] they are prepared to fulfill their duty before Heaven. But if so why should it be difficult for them to make repentance?[20] Again, why was it said in the concluding clause that out of articles of which they do not know the owners they should make public utilities,[21] and R. Hisda said that these should be wells, ditches and caves?[22] — There is, however, no difficulty, as this teaching[23] was enunciated before the days of the enactment,[24] whereas the other statements were made after the enactment. Moreover, as R. Nahman has now stated that the enactment referred only to a case where the misappropriated article was no more intact, it may even be said that both teachings were enunciated after the days of the enactment, and yet there is no difficulty,

1. Lev. V. 23.
2. That payment is made in accordance with the value at the time of robbery.
3. v. p. 545. n. 6.
4. Shab. 46a and *supra* p. 158.
5. For notes v. *supra* p. 382. [This shows that change transfers ownership even where the consideration of penitents does not apply.]
6. [In which case but for the consideration of penitent robbers, change transfers no ownership. Where the change. however, cannot be reverted, it confers unqualified ownership.]
7. Rashi renders 'no spirit of wisdom and piety resides in him', but see also Tosaf. Yom Tob. Aboth III, 10.
8. Tosef. B.M. V, 8.
9. [Whereas above it is stated that the monies thus returned are not accepted.]
10. And not to the father himself
11. In the case dealt with in the concluding clause.
12. Ex. XXII, 27.
13. Excluding him who willfully violates the laws of Israel.
14. Hag. 26a.
15. [I.e. not to retain it with him, despite the refusal of the owners to accept it (v. Tosaf.).]
16. B.M. 62a.
17. Does this not prove that the misappropriated money if restored would be accepted from them?
18. As it is only in such a case that the restored money will not be accepted.
19. Tosef B.M. VIII. Does this not prove that misappropriated articles if restored would be accepted?
20. Since no actual restitution will have to be made.
21. Cf. Az. 29a.
22. And thus provide water to the general public among whom the aggrieved persons are to be found.
23. Where actual restitution is implied.
24. Which was ordained in the days of Rabbi.

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as the latter deals with a case where the misappropriated article is still intact whereas the other teaching refers to a case where the misappropriated article is no more intact. But what about the girdle [referred to above],[1] in which case the misappropriated article was still intact? — What was meant by 'girdle' was the value of the girdle. But is it really the fact that so long as the misappropriated article was intact our Rabbis did not make this enactment?[2] What then about the beam in which case the misappropriated article was still intact and we have nevertheless learnt: [R. Johanan b. Gudgada testified] that if a misappropriated beam has been built into a house, the owner will recover only its value?[3] — That matter is different altogether, for since the house would otherwise be damaged. the Rabbis regarded the beam as being no longer intact.[4]

IF ONE MISAPPROPRIATED A PREGNANT COW WHICH MEANWHILE GAVE BIRTH [TO A CALF], etc. Our Rabbis taught: 'He who misappropriates a sheep and shears it, or a cow which has meanwhile given birth [to a calf], has to pay for the animal and the wool and the calf;[5] this is the view of R. Meir. R. Judah says that the misappropriated animal will be restored intact.[6] R. Simeon says that the animal will be considered as if it had been insured with the robber for its value [at the time of the robbery].' The question was raised: What was the reason of R. Meir? Was it because he held that a change leaves the article in its existing

status?[7] Or [did he hold] in general that a change would transfer ownership, but here he imposes a fine [upon the robber], the practical difference being where the animal became leaner?[8] — Come and hear: If one misappropriated an animal and it became old, or slaves and they became old, he would still have to pay according to [their value at][9] the time of the robbery, but R. Meir said that in the case of slaves[10] [the robber] would be entitled to say to the plaintiff: 'Here, take your own.'[11] It thus appears that in the case of an animal [even R. Meir held that] the payment would have to be in accordance with [the value at] the time of the robbery.[9] Now, if you assume that R. Meir was of the opinion that a change leaves the article in its previous status,[12] why even in the case of an animal [can the robber not say. 'Here, take your own']? Does this therefore not prove that even R. Meir held that a change would transfer ownership, and that [in the case of the wool and the calf] it was only a fine which R. Meir imposed on the robber? — It may, however, be said that R. Meir was arguing from the premises of the Rabbis, thus: According to my view a change does not transfer ownership, so that also in the case of an animal [the robber would be entitled to say. 'Here, take your own'], but even according to your view, that a change does transfer ownership, you must at least agree with me in the case of slaves, who are compared to real property, and, as we know, real property is not subject to the law of robbery.[13] The Rabbis, however, answered him: 'No, for slaves are on a par with movables [in this respect].'[14]

Come and hear: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black but he dyed it red, R. Meir says that he would have to pay [the owner of the wool] for the value of the wool.[15] [It thus appears that] he had to pay only for the original value of the wool but not for the combined value of the wool and the improvement [on account of the color]. Now, if you suppose that R. Meir held that a change would not transfer ownership, why should he not have to pay for the combined value of the wool and the improvement? Does this therefore not prove that R. Meir held that a change would transfer ownership and that here [in the case of the calf] it was only a fine that R. Meir imposed [upon the robber]? — This could indeed be proved from it. Some even say that this question was never so much as raised; for since Rab transposed [the names in the Mishnah] and read thus: If one misappropriated a cow which became old, or slaves who became old, he would have to pay in accordance with [the value at] the time of the robbery;[16] this is the view of R. Meir, whereas the Sages say that in the case of slaves the robber would be entitled to say, Here, take your own',[16] it is quite certain that according to R. Meir a change would transfer ownership, and that here [in the case of a calf] it was only a fine that R. Meir imposed [upon the robber]. But if a question was raised, it was this: Was the fine imposed only in the case of willful misappropriation whereas in the case of inadvertent misappropriation[17] the fine was not imposed, or perhaps even for inadvertent misappropriation the fine was also imposed? — Come and hear: Five [kinds of creditors] are allowed to distrain only on the free assets [of the debtor];[18] they are as follows: [creditors for] produce,[19] for Amelioration showing profits,[20] for an undertaking to maintain the wife's son or the wife's daughter,[21] for a bond of liability without a warranty of indemnity[22] and for the *kethubah* of a wife where no property is made security.[22] Now, what authority have you heard lay down that the omission to make the property security[22] is not a mere scribal error[23] if not R. Meir?[24] And it is yet stated: 'Creditors for produce and Amelioration showing profits [may distrain on free assets in the hands of the debtor].' Now, who [are creditors for Amelioration showing] profits?[25] They come in, do they not, where the vendor has misappropriated a field from his fellow and sold it to another who ameliorated it and from whose hands it was subsequently taken

away. [The law then is that] when the purchaser comes to distrain

1. *Supra* p. 548.
2. And the actual article would have to be restored.
3. Cit. V, 5; 'Ed. VII, 9' and *supra* p. 385.
4. And the actual beam would not have to be restored. Its value will, however, be paid on account of the fact that the beam was actually in the house.
5. [The payment, that is to say, will have to be made for the combined value of the calf and wool and the improvement.] Cf. B.M. 43b.
6. [I.e., in the state it is at the time of payment. The robber will, however, have to make up in money for the difference in the value of the cow as it stood at the time of the robbery. The difference between R. Simeon and R. Judah will be explained anon.]
7. And no ownership could thereby be transferred.
8. Where according to the former consideration the robber would escape further liability by restoring the animal, but according to the latter he would have to pay for the difference.
9. As the change transferred the ownership to the robber.
10. Who are subject to the law applicable to immovables.
11. Mishnah, *infra* p. 561.
12. And no ownership could thereby be transferred.
13. Cf. Suk. 30b and 32a.
14. Cf. *supra* 12a.
15. For by acting against the instructions of the owner he rendered himself liable to the law of robbery; Mishnah *infra* 100b.
16. V. *infra* p. 561.
17. As in the case of the dyer, *supra* p. 552.
18. But not if the landed property is already in the hands of a third party such as a purchaser and the like.
19. Such as where a field full of produce was taken away in the hands of a purchaser through the fault of the vendor: the amount due to the purchaser for his loss of the actual field could be recovered even from property already in the hands of (subsequent) purchasers, whereas the amount due to him for the value of the produce he lost could be recovered only from property still in the hands of the vendor; cf. Git. V, I and B.M. 14b.
20. Such as where the purchaser spent money on improving the ground which was taken away from him through the fault of the vendor.
21. Cf. also Keth. XII, 1.
22. I.e., where the particular clause making the property security was omitted in the document. V. Keth. 51b.
23. But has legal consequences.
24. V. B.M. I, 6 and ibid. 14a.
25. Lit., 'how is this possible?'

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he will do so for the principal even on [real] property that has been sold, but for the Amelioration only on assets which are free [in the hands of the vendor]. [But this is certain,] that the owner of the field is entitled to come and take away the field together with the increment. Now, do we not deal here with a purchaser who was ignorant of the law and did not know whether real property is subject to the law of robbery or is not subject to the law of robbery?[1] And even in such a case the owner of the field will be entitled to come and take away the land together with the increment. Does not this show that even in the case of inadvertent misappropriation,[2] [R. Meir] would impose the fine? — It may however be said that this is not so, [as we are dealing here] with a purchaser who is a scholar and knows very well[3] [that real property is not subject to the law of robbery].[1]

Come and hear: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black and he dyed it red, R. Meir says that he would have to pay [the owner of the wool] for the value of the wool.[4] [It thus appears that he has to pay] only for the original value of the wool but not for the combined value of the wool and the improvement [on account of the color]. Now, if you assume that R. Meir would impose the fine even in the case of inadvertent misappropriation why should he not have to pay for the combined value of the wool and the improvement? Does this not prove that it is only in the case of willful misappropriation that the fine is imposed but in the case of inadvertent misappropriation the fine would not be imposed? — This could indeed be proved from it.

'R. Judah says that the misappropriated [animal] will be restored intact. R. Simeon says that the animal be considered as if it had been insured with the robber for its value [at the time of the robbery].' What is the practical difference between them?[5] — Said R. Zebid: They differ regarding the increased value [still] attaching to the misappropriated article. R. Judah maintained that this would belong to the plaintiff[6] whereas R. Simeon was of the opinion that this would belong to the robber.[7] R. papa, however, said that both might agree that an increased value [still] attaching to the misappropriated article should not solely belong to the plaintiff,[8] but where they differed was as to whether the robber should be entitled to retain a half or a third or a fourth[9] for [his attending to the welfare of the article]. R. Judah maintaining that an increased value [still] attaching to the misappropriated article would belong solely to the robber,[10] whereas R. Simeon maintained that the robber would be paid only to the extent of a half, a third or a fourth.

We have learnt: 'BUT IF HE MISAPPROPRIATED A COW WHICH BECAME PREGNANT WHILE WITH HIM AND THEN GAVE BIRTH, OR A SHEEP WHICH WHILE WITH HIM GREW WOOL WHICH HE SHEARED, HE WOULD PAY IN ACCORDANCE WITH [THE VALUE AT] THE TIME OF THE ROBBERY.' That is so only if the cow has already given birth, but if the cow has not given birth yet it would be returned as it is. This accords well with the view of R. Zebid who said that an increased value still attaching to the misappropriated article would according to R. Judah belong to the plaintiff; I [the Mishnah] would then be in accordance with R. Judah. But on the view of R. papa who said that it would belong to the robber,[10] it would be in accordance neither with R. Judah nor with R. Simeon? — R. Papa might say to you that the ruling [stated in the text] would apply even where the cow has not yet given birth, as even then he would have to pay in accordance with [the value at] the time of the robbery. For as for the mention of 'giving birth', the reason is that since the earlier clause contains the words 'giving birth', the later clause similarly mentions 'giving birth'. It was taught in accordance with R. papa: 'R. Simeon says that [the animal] is to be considered as if its pecuniary value had been insured with the robber, [who will however be paid] to the extent of a half, a third or a fourth [of the increase In value].'[11]

R. Ashi said: When we were at the School of R. Kahana, a question was raised with regard to the statement of R. Simeon that the robber will be paid to the extent of a half, a third or a fourth [of the increase in value] whether at the time of his parting with the misappropriated article he can be paid in specie, or is he perhaps entitled to receive his portion out of the body of the misappropriated animal. The answer was found in the statement made by R. Nahman in the name of Samuel: 'There are three cases where increased value will be appraised and paid in money. They are as follows: [In the settlement of accounts] between a firstborn and a plain son,[12] between a creditor and a purchaser.[13] and between a creditor[13] and heirs.'[14] Said Rabina to R. Ashi: Did Samuel really say that a creditor will have to pay the purchaser for increased value? Did Samuel not state[15] that a creditor distrains even on the increment?[16] — He replied: There is no difficulty, as the former ruling applies to an increment which could reach the shoulders to be carried away.[17] whereas the latter ruling deals with an increment which could not reach the shoulders to be carried away.[18] He rejoined:[19] Do not cases happen every day where Samuel distrains even on an increment which could reach the shoulders to be carried away? — He replied: There is still no difficulty,

1. V. p. 552. n. 1.
2. Such as was the case here with the purchaser.
3. Also that the field has been misappropriated by the vendor (cf. Shittah Mekubezeth a.l.) and as such is guilty of willful misappropriation.
4. V. Mishnah *infra* 100b.

5. I.e., R. Judah and R. Simeon.
6. Since the article has to be restored intact.
7. [Since the payment is made according to the value at the time of the robbery.]
8. Lit., 'should belong to the robber', but which means that it will not solely belong to the plaintiff, as will soon become evident in the text.
9. I.e., in accordance with the definite percentage in the profits fixed in a given province to be shared by a contractor for his care and attendance to the welfare of the article in question; cf. B.M. V, 4-5.
10. As the expression 'intact' means intact as it was at the time of the robbery.
11. V. p. 555. n. 4.
12. As the firstborn son has two portions in the estate as it was left at the time of the death of the father, but only one portion in the increased value due to amelioration after the father's death, so that by taking two portions in the estate the firstborn would have to pay back the other sons their appropriate portions in the increased value of the additional portion taken by him; cf. B.B. 124a.
13. I.e., a creditor distraining on a field that originally belonged to his debtor but which was subsequently disposed of or inherited by heirs and the purchaser or heirs increased its value by amelioration.
14. V. B.M. 110b.
15. B.M. ibid. and 14b; Bk. 42a.
16. Without paying for it, v. B.M. ibid.
17. As where the produce is quite ripe and could be separated from the ground in which case it is the property of the purchaser. V. B.B. (Sonc. ed.) p. 183. n. 3.
18. I.e., which is inseparable from the ground and which is distrained on together with the field by the creditor.
19. I.e., Rabina to R. Ashi.

Baba Kamma 96a

as this is so only where the amount of the debt owing to the creditor covers both the land and the increment, whereas the former ruling[1] applies where [the debt due to him] is only to the extent of the land. He rejoined: I grant you that on the view[2] that [even] if the purchaser possesses money he has no right to bar the creditor from land by paying in specie, your argument would be sound, but according to the view that a purchaser possessing money can bar the creditor from the field by paying him in specie, why should he not say to the creditor, 'If I had had money, I would surely have been able to bar you from the whole field [by paying you in specie]; now also therefore I am entitled to be left with a griva[3] of land corresponding to the value of my amelioration'?[4] — He replied: We are dealing here with a case where the debtor expressly made that field a security, as where he said to him: 'You shall not be paid from anything but from the field.'[5]

Raba stated: [There is no question] that where the robber improved [the misappropriated article] and then sold it, or where the robber improved [the misappropriated article] and then left it to his heirs, he has genuinely sold or left to his heirs the increment he has created.[6] Raba [however] asked: What would be the law where [after having bought the misappropriated article from the robber] the purchaser improved it? After asking the question he himself gave the answer: That what the former sold the latter, was surely all rights[7] which might subsequently accrue to him.[6]

Raba [again] asked: What would be the law where a heathen[8] [misappropriated an article and] improved it? — Said R. Aha of Difti to Rabina: Shall we trouble ourselves to make an enactment[9] for [the benefit of] a heathen? — He said to him: No; the query might refer to the case where. e.g., he sold it to an Israelite. [But he retorted:] Be that as it may, he who comes to claim through a heathen [predecessor], could surely not expect better treatment than the heathen himself. — No: the query could still refer to the case where, e.g., an Israelite had misappropriated an article and sold it to a heathen who improved it and who subsequently sold it to another Israelite. What then should be the law? Shall we say that since an Israelite was in possession at the beginning and an Israelite was in possession at the end, our Rabbis would also here make [use of] the enactment, or perhaps since a heathen intervened our Rabbis would

not make [use of] the enactment? — Let it remain undecided.

R. papa stated: If one misappropriated a palm tree from his fellow and cut it down, he would not acquire title to it even though he threw it from [the other's] field into his own land, the reason being that it was previously called palm tree and is now also called palm tree.[10] [So also] where out of the palm tree he made logs he would not acquire title to them, as even now they would still be called logs of a palm tree.[10] It is only where out of the logs he made beams that he would acquire title to them.[11] But if out of big beams he made small beams he would not acquire title to them,[12] though were he to have made them into boards he would acquire title to them.[11]

Raba said: If one misappropriated a *Lulab*[13] and converted it into leaves he would acquire title to them, as originally it was called *Lulab* whereas now they are mere leaves.[11] So also where out of the leaves he made a broom he would acquire title to it, as originally they were leaves whereas now they form a broom,[14] but where out of the broom he made a rope he would not acquire title to it since if he were to undo it, it would again become a broom.

R. papa asked: What would be the law where the central leaf[15] of the *Lulab* became split? — Come and hear: R. Mathon said that R. Joshua b. Levi stated that if the central leaf of the *Lulab* was removed the *Lulab* would be disqualified [for ritual purposes].

1. Ordering payment for the amelioration.
2. B.M. 15b and 110b.
3. The size of a field needed for a *se'ah* of seed.
4. Why then should the creditor distrain on the whole field together with the amelioration?
5. In which case the purchaser can in no circumstance bar the creditor from the field.
6. So that the purchaser (or heir) will be entitled to the half or third or quarter in profits to which the robber would have been entitled, according to the view of R. Simeon.
7. Cf. *supra* p. 32.
8. Who neither respects nor feels bound by Rabbinic enactments.
9. That according to R. Simeon payment is to be made for amelioration to the extent of a half or third or quarter.
10. [The change involved does not confer ownership enabling him to make restitution by payment in money.]
11. V. p. 552. n. 6.
12. V. p. 552. n. 5.
13. I.e., a palm branch used for the festive wreath on the Feast of Tabernacles in accordance with Lev. XXIII, 40.
14. V. p. 543, n. 6.
15. Cf. Suk. 32a and Rashi.

Baba Kamma 96b

Now, would not the same law apply where it was merely split?[1] — No; the case where it was removed is different, as the leaf is then missing altogether. Some [on the other hand] read thus. Come and hear what R. Mathon said, that R. Joshua b. Levi stated that if the central leaf was split it would be considered as if it was altogether removed and the *Lulab* would be disqualified;[1] which would solve [R. papa's question].

R. papa [further] said: If one misappropriated sand from another and made a brick out of it, he would not acquire title to it, the reason being that it could again be made into sand, but if he converted a brick into sand he would acquire title to it. For should you object that he could perhaps make the sand again into a brick, [it may be said that] that brick would be [not the original but] another brick, as it would be a new entity which would be produced.

R. Papa [further] said: If one misappropriated bullion of silver from another and converted it into coins, he would not acquire title to them, the reason being that he could again convert them into bullion, but if out of coins he made bullion he would acquire title to it. For should you object that he can again convert it into coins, [my answer is that] it would be a new entity which would be produced. If [the coins were] blackened

and he made them look new he would thereby not acquire title to them,[2] but if they were new and he made them black he would acquire title to them, for should you object that he could make them look again new, [it may be said that] their blackness will surely always be noticeable.

THIS IS THE GENERAL PRINCIPLE: ALL ROBBERS HAVE TO PAY IN ACCORDANCE WITH [THE VALUE OF THE MISAPPROPRIATED ARTICLES AT] THE TIME OF THE ROBBERY. What additional fact is the expression. THIS IS THE GENERAL PRINCIPLE intended to introduce? — It is meant to introduce that which R. Elai said: If a thief misappropriated a lamb which became a ram, or a calf which became an ox, as the animal underwent a change while in his hands he would acquire title to it, so that if he subsequently slaughtered or sold it, it was his which he slaughtered and it was his which he sold.[3]

A certain man who misappropriated a yoke of oxen from his fellow went and did some plowing with them and also sowed with them some seeds and at last returned them to their owner. When the case came before R. Nahman he said [to the sheriffs of the court]: 'Go forth and appraise the increment [added to the field].' But Raba said to him: Were only the oxen instrumental in the increment, and did the land contribute nothing to the increment?[4] — He replied: Did I ever order payment of the full appraisement of the increment? I surely meant only half of it. He, however, rejoined:[5] Be that as it may, since the oxen were misappropriated they merely have to be returned intact, as we have indeed learnt: ALL ROBBERS HAVE TO PAY IN ACCORDANCE WITH [THE VALUE] AT THE TIME OF THE ROBBERY. [Why then pay for any work done with them?] — He replied: Did I not say to you that when I am sitting in judgment you should not make any suggestions to me, for Huna our colleague said with reference to me that I and 'King' Shapur[6] are [like] brothers in respect of civil law? That person [who misappropriated the pair of oxen] is a notorious robber, and I want to penalize him.

***MISHNAH*. IF ONE MISAPPROPRIATED AN ANIMAL AND IT BECAME OLD, OR SLAVES AND THEY BECAME OLD, HE WOULD HAVE TO PAY ACCORDING TO [THE VALUE AT] THE TIME OF THE ROBBERY.[7] R. MEIR, HOWEVER, SAYS THAT IN THE CASE OF SLAVES[8] HE MIGHT SAY TO THE OWNER: HERE, TAKE YOUR OWN. IF HE MISAPPROPRIATED A COIN AND IT BECAME CRACKED, FRUITS AND THEY BECAME STALE OR WINE AND IT BECAME SOUR, HE WOULD HAVE TO PAY ACCORDING TO [THE VALUE AT] THE TIME OF THE ROBBERY.[7] BUT IF THE COIN WENT OUT OF USE, THE *TERUMAH*[9] BECAME DEFILED,[10] THE LEAVEN FORBIDDEN [FOR ANY USE BECAUSE] PASSOVER HAD INTERVENED,[11] OR IF THE ANIMAL [HE MISAPPROPRIATED] BECAME THE INSTRUMENT FOR THE COMMISSION OF A SIN[12] OR IT BECAME OTHERWISE DISQUALIFIED FROM BEING SACRIFICED UPON THE ALTAR,[13] OR IF IT WAS TAKEN OUT TO BE STONED,[14] HE CAN SAY TO HIM: 'HERE, TAKE YOUR OWN.'**

***GEMARA*. R. Papa said: The expression IT BECAME OLD does not necessarily mean that it actually became old, for [the same law would apply] even where it had otherwise deteriorated. But do we not expressly learn. IT BECAME OLD?[15] — This indicates that the deterioration has to be equivalent to its becoming old, i.e., where it will no more recover health. Mar Kashisha, the son of R. Hisda, said to R. Ashi: It has been expressly stated in the name of R. Johanan that even where a thief misappropriated a lamb which became a ram, or a calf which became an ox,[16] since the animal underwent a change while in his hands he would acquire title to it, so that if he subsequently slaughtered or sold it, it was his which he slaughtered and it was his which he sold.[17] He said to him: Did I not say to you that you should not transpose the**

names of scholars?[18] That statement was made in the name of R. Elai.[19]

R. MEIR, HOWEVER. SAYS THAT IN THE CASE OF SLAVES HE MIGHT SAY TO THE OWNER, 'HERE TAKE YOUR OWN.' R. Hanina b. Abdimi said that Rab stated that the *halachah* is in accordance with R. Meir. But how could Rab abandon the view of the Rabbis[20] and act in accordance with R. Meir? — It may, however, be said that he did so because in the text of the [relevant] Baraitha the names were transposed. But again how could Rab abandon the text of the Mishnah and act in accordance with the Baraitha?[21] — Rab, even in the text of our Mishnah, had transposed the names. But still what was the reason of Rab for transposing the names in the text of the Mishnah because of that of the Baraitha? Why not, on the contrary, transpose the names in the text of the Baraitha because of that of our Mishnah? — It may be answered that Rab, in the text of our Mishnah too, was taught by his masters to have the names transposed. Or if you like I may say that [the text of a Mishnah] is not changed [in order to be harmonized with that of a Baraitha] only in the case where there is one against one, but where there is one against two,[22] it must be changed [as is indeed the case here]; for it was taught:[23] If one bartered a cow for an ass and [the cow] gave birth to a calf [approximately at the very time of the barter], so also if one sold his handmaid and she gave birth to a child [approximately at the time of the sale], and one says that the birth took place while [the cow or handmaid was] in his possession and the other one is silent [on the matter], the former will obtain [the calf or child as the case may be], but if one said 'I don't know', and the other said 'I don't know', they would have to share it. If, however, one says [that the birth took place] when he was owner and the other says [that it took place] when he was owner, the vendor would have to swear that the birth took place when he was owner [and thus retain it], for all those who have to take an oath according to the law of the Torah, by taking the oath release themselves from payment;[24] this is the view of R. Meir. But the Sages say that an oath can be imposed neither in the case of slaves nor of real property.[25] Now [since the text of our Mishnah should have been reversed,[26] why did Rab[27] state that] the *halachah* is in accordance with R. Meir? Should he not have said that the *halachah* is in accordance with the Rabbis?[27] — What he said was this: According to the text you taught with the names transposed, the *halachah* is in accordance with R. Meir.[27]

1. [Should it be disqualified, it would, if occurring whilst in the possession of the robber, be considered a change and confer ownership.]
2. V. p. 543. n. 5.
3. *Supra* 379.
4. Why then should the whole amount of the increase due to the amelioration be paid to the plaintiff?
5. Raba to R. Nahman.
6. Meaning Samuel, who was a friend of the Persian King Shapur I, and who is sometimes referred to in this way; cf. B.B. 115b. [To have conferred the right of bearing the name of the ruling monarch, together with the title 'tham', 'mighty'. was deemed the highest honor among the Persians, and 'Malka', 'King'. is apparently the Aramaic counterpart of the Persian title 'Malka' (v. Funk, Die Juden in Babylonien. I, 73). On Samuel's supreme authority in Babylon in matters of civil law, v. Bek. 49b.]
7. As the change transferred the ownership to him.
8. Who are subject to the law applicable to immovables, where the law of robbery does not apply.
9. V. Glos.
10. And thus unfit as food; cf. Shab. 25a.
11. Cf. Pes. II. 2.
12. Such as in Lev. XVIII, 23; cf. also *supra* p. 229.
13. Such as through a blemish, hardly noticeable, as where no limb was missing; cf. Zeb. 35b and 85b; v. also Git. 56a.
14. As in the case of Ex. XXI. 28.
15. In which a temporary deterioration could hardly be included.
16. [Although there is an inevitable and natural change.]
17. [And he would be exempt from the threefold and fourfold restitution.]
18. Lit., 'people'.

19. And not in that of R. Johanan: *supra* p. 379.
20. The representatives of the anonymous view of the majority cited first in the Mishnah.
21. In accordance with the anonymous view of the majority cited in the Baraitha.
22. I.e., where two Baraithas are against the text of one Mishnah.
23. B.M. 100a, q.v. for notes.
24. Shebu. VII, 1.
25. Cf. Shebu. VI, 5. It is thus evident that it was the majority of the Rabbis and not R. Meir who considered slaves to be subject to the law of real property.
26. In which case it was the Rabbis who maintained that slaves are subject to the law of real property.
27. Meaning that slaves are on the same footing as real property.

Baba Kamma 97a

But did Rab really say that slaves are on the same footing as real property? Did R. Daniel b. Kattina not say that Rab stated that if a man forcibly seizes another's slave and makes him perform some work, he would be exempt from any payment?[1] Now, if you really suppose that slaves are on the same footing as real property. why should he be exempt? Should the slave not be considered as still being in the possession of the owner?[2] — We are dealing there[3] with a case [where he took hold of the slave at a time] when [the owner] usually required no work from him, exactly as R. Abba sent to Mari b. Mar, saying. 'Ask R. Huna whether a person who stays in the premises[4] of another without his knowledge must pay him rent or not, and he sent him back reply that 'he is not liable to pay him rent'.[5] But what comparison is there? There is no difficulty [in that case][6] as if we follow the view that premises which are inhabited by tenants keep in a better condition,[5] [we must say that] the owner is well pleased that his house be inhabited. or again if we follow the view[5] that the gate is smitten unto roll,[7] [we can again say that] the owner benefited by it. But here [in this case][8] what owner could be said to be pleased that his slave became reduced [by overwork]? — It may, however, be said that here[9] also it may be beneficial to the owner that his slave should not become prone to idleness.

Some at the house of R. Joseph b. Hama used to seize slaves of people who owed them money, and make them perform some work. Raba his son said to him: Why do you, Sir, allow this to be done? — He thereupon said to him: Because R. Nahman stated that the [work of the] slave is not worth the bread he eats. He rejoined:[10] Do we not say that R. Nahman meant his statement only to apply to one like Daru his own servant who was a notorious dancer in the wine houses, whereas with all other servants who do some work [the case is not so]? — He however said to him: I hold with R. Daniel b. Kattina, for R. Daniel b. Kattina said that Rab stated that one who forcibly seizes another's slave and makes him perform some work would be exempt from any payment, thus proving that this is beneficial to the owner, by preventing his slave from becoming idle. He replied:[10] These rulings [could apply] only where he has no money claim against the owner, but [in your case], Sir, since you have a money claim against the owner, it looks like usury, exactly as R. Joseph b. Manyumi said [namely] that R. Nahman stated that though the Rabbis decided that one who occupies another's premises without his consent is not liable to pay him rent, if he lent money to another and then occupied his premises he would have to pay him rent.[11] He thereupon said to him: [If so,] I withdraw.

It was stated: If one forcibly seizes another's ship and performs some work with it, Rab said that if the owner wishes he may demand payment for its hire, or if he wishes he may demand payment for its wear and tear. But Samuel said: He may demand only for its wear and tear. Said R. Papa: They do not differ as Rab referred to the case where the ship was made for hire and Samuel to the case where it was not made for hire. Or if you like, I can say that both statements deal with a case where it was made for hire, but whereas [Rab deals with a case] where possession was taken

of it with the intention of paying the hire,[12] '[Samuel refers to one] where possession was taken of it with the intention of robbery.[13]

IF HE MISAPPROPRIATED A COIN AND IT BECAME CRACKED, etc. R. Huna said: IT BECAME CRACKED means that it actually cracked, [and] IT WENT OUT OF USE means that the Government declared it obsolete. But Rab Judah said that where the Government declared the coin obsolete it would be tantamount to its being disfigured,[14] and what was meant by IT WENT OUT OF USE is that the inhabitants of a particular province rejected it while it was still in circulation in another province. R. Hisda said to R. Huna: According to your statement that IT WENT OUT OF USE meant that the Government declared it obsolete, why [in our Mishnah] in the case of fruits that became stale, or wine that became sour, which appears to be equivalent to a coin that was declared obsolete by the Government, is it stated that HE WOULD HAVE TO PAY IN ACCORDANCE WITH [THE VALUE AT] THE TIME OF THE ROBBERY?[15] — He replied: There [in the case of the fruits and the wine] the taste and the smell changed, whereas here [in the case of the coin] there was no change [in the substance]. Rabbah on the other hand said to Rab Judah: According to your statement that where the Government declared the coin obsolete it would be tantamount to its having been cracked, why in [our Mishnah in] the case of *terumah* that became defiled, which appears to resemble a coin that was declared obsolete by the Government[16] is it stated that he can say to him, 'HERE, TAKE YOUR OWN'? — He replied: There [in the case of the *terumah*] the defect[17] is not noticeable, whereas here [in the case of the coin] the defect is noticeable.[18]

It was stated: If a man lends his fellow [something] on [condition that it should be repaid in] a certain coin, and that coin became obsolete, Rab said

1. B.M. 64b.
2. So that payment for work done by him would have to be enforced.
3. Lit., 'here'.
4. [Which the owner is not accustomed to let — a case similar to the one where the owner requires no work from the slave.]
5. V. *supra* 21a for notes.
6. Of the house.
7. Isa. XXIV, 12.
8. Of the slave.
9. [Amounting as it does to the taking of interest.]
10. I.e., Raba to his father, R. Joseph.
11. So that it should not look like usury.
12. In which case the hire may be claimed.
13. In which case no more than compensation for the wear and tear could be enforced.
14. Since it would nowhere have currency.
15. As the change transferred the ownership.
16. For just as the latter case was proscribed by the political realm, the former was proscribed by the spiritual realm.
17. By becoming defiled.
18. As the coins which are in circulation have a different appearance.

Baba Kamma 97b

that the debtor would have to pay the creditor with the coin that had currency at that time,[1] whereas Samuel said that the debtor could say to the creditor, 'Go forth and spend it in Meshan.'[2] R. Nahman said that the ruling of Samuel might reasonably be applied where the creditor had occasion to go to Meshan, but if he had no occasion [to go there] it would surely not be so. But Raba raised an objection to this view of R. Nahman [from the following]: 'Redemption [of the second tithe] cannot be made by means of money which has no currency, as for instance if one possessed koziba-coins,[3] of Jerusalem,[4] or of the earlier kings;[5] no redemption could be made [by these].'[6] Now, does this not imply that if the coins were of the later kings, even though analogous [in one respect] to coins of the earlier kings,[7] it would be possible to effect the redemption by means of them?[8] — He, however, said to him that we were dealing here with a case where the Governments of the different provinces were not antagonistic to one another. But since this implies that the statement of Samuel [as explained by R.

Nahman] referred to the case where the Governments of the different provinces were antagonistic to one another, how would it be possible to bring the coins [to the province where they still have currency]?[9] — They could be brought there with some difficulty, as where no thorough search was made at the frontier though if the coins were to be discovered there would be trouble.

Come and hear: Redemption [of the second tithe] cannot be effected by means of coins which have currency here[10] but which are actually [with the owner] in Babylon;[11] so also if they have currency in Babylon but are kept here.[10] [But] where the coins have their currency in Babylon and are in Babylon redemption can be effected by means of them. Now, it is at all events stated here [is it not] that no redemption could be effected by means of coins which though having currency here[10] are actually [with the owner] in Babylon irrespective of the fact that the owner will have to go up here?[12] — We are dealing here with a case where the Governments [of the respective countries] were antagonistic to each other.[13] But if so how would coins which have currency in Babylon and are kept in Babylon be utilized as redemption money?[14] — They may be utilized for the purchase of an animal [in Babylon]. which can then be brought up to Jerusalem. But was it not taught[15] that there was an enactment that all kinds of money should be current in Jerusalem?[16] — Said R. Zera: This is no difficulty, as the latter statement refers to the time when Israel had sway [in Eretz Yisrael] over the heathen whereas the former referred to a time when the heathen governed themselves.[17]

Our Rabbis taught: What was the coin of Jerusalem?[18] [The names] David and Solomon [were inscribed] on one side and [the name of] Jerusalem on the other. What was the coin of Abraham our Patriarch? — An old man and an old woman[19] on the one side, and a young man and a young woman[20] on the other.

Raba asked R. Hisda: What would be the law where a man lent his fellow something on [condition of being repaid with] a certain coin,[21] and that coin meanwhile was made heavier?[22] — He replied: The payment will have to be with the coins that have currency at that time. Said the other: Even if the new coin be of the size of a sieve? — He replied: Yes, Said the other: Even if it be of the size of a 'tirtia'![23] — He again replied. Yes. But in such circumstances would not the products have become cheaper?[24] — R. Ashi therefore said: We have to look into the matter. If it was through the [increased weight of the] coin that prices [of products] dropped we would have to deduct [from the payment accordingly],

1. I.e., at the time of the payment.
2. [Mesene, a district S.E. of Babylon. It lay on the path of the trade route to the Persian Gulf. V. Obermeyer. *op. cit*., 89 ff.]
3. Coins struck by Bar Cochba, the leader of the uprising in Eretz Yisrael against Hadrian. [The name Koziba has been explained either as derivation from the city Kozeba, his home, or as 'Son of Lies', a contumelious designation when his failure belied all the hopes reposed in him, v. Graetz, Geschichte, p. 136.]
4. [Probably the old *shekels*. According to Rashi render: namely, Jerusalem coins.]
5. [Either the Seleucidean Kings or former Roman Emperors.]
6. Tosef. M. Sh. 1, 6.
7. Such as where they were declared obsolete in a particular province.
8. Even where one had not occasion to go there, which refutes R. Nahman's view.
9. Even though one had occasion to go there.
10. In Jerusalem.
11. Where they have no currency.
12. [Lit. 'there'. The text does not read smoothly, and is suspect. MS.M. in fact omits 'Now … here.']
13. To a greater degree, so that thorough searches are made and the transport of coins would constitute a real danger.
14. Which would have to be spent for certain commodities to be partaken of in Jerusalem.
15. Cf. I.M. Sh. I. 2.
16. How then were Babylonian coins not current there?
17. A euphemism for Israel.
18. Cf. p. 556. n. 7.
19. I.e., Abraham and Sarah.
20. I.e., Isaac and Rebeccah.

21. V. p. 566, n. 4.
22. [The question is according to the view of Rab, ibid., that payment has to be made with the coin that had currency at the time.]
23. A quoit of certain size.
24. A larger supply being obtained by the heavier coin, and the increase would appear as usury.

Baba Kamma 98a

but if it was through the market supplies[1] that prices dropped, we would not have to deduct anything. Still,[2] would the creditor not derive a benefit from the additional metal? — [We must] therefore [act] like R. Papa and R. Huna the son of R. Joshua who gave judgment in an action about coins, according to [the information[3] of] an Arabian agoran,[4] that the debtor should pay for ten old coins [only] eight new ones.[5]

Rabbah stated: He who throws a coin of another [even] into the ocean[6] is exempt, the reason being that he can say to him, 'Here it lies before you, if you are anxious to have it take it.' This applies, however, only where [the water was] clear so that it could be seen, but if it was so muddy that the coin could not be seen this would not be so. Again, this holds good only where the throwing was merely indirectly caused by him,[7] but if he took it in his hand he would surely have already become subject to the law of robbery[8] and as such would have been liable to make [proper] restitution.[8]

Raba raised an objection [from the following:] 'Redemption [of the second tithe] cannot be made by means of money not in one's actual possession, such as if he had money in Castra or in the King's Mountain[9] or if his purse fell into the ocean; no redemption could then be effected'.[10] — Said Rabbah: The case [of redemption] of tithe is different, as it is required there that the money should be [to all intents and purposes] actually in your hand, for the Divine Law says, And bind up the money in thy hand,[11] which is lacking in this case.[12]

Rabbah further said: One who disfigures a coin belonging to another is exempt, the reason being that he did not do anything [to reduce the substance of the coin]. This of course applies only where he knocked on it with a hammer and so made it flat, but where he rubbed the stamp off with a file he certainly diminished its substance [and would thus be liable]. Raba raised an objection [from the following:] 'Where [the master] struck [the slave] upon the eye and blinded him or upon the ear and deafened him the slave would on account of that go out free,[13] but [where he struck on an object which was] opposite the slave's eye and he lost his sight or [on an object which was] opposite his ear through which he lost his hearing the slave would [on account of this] not go out free'![14] — Rabbah, however, follows his own reasoning, for Rabbah stated: He who makes his father deaf is subject to be executed,[15] for it is impossible to cause deafness without first making a bruise through which a drop of blood falls into the ear.[16]

And Rabbah [further] stated: He who splits the ear of another's cow[17] is exempt, the reason being that [so far as the value of] the cow [is concerned it] remains as it was before, for he did not do anything [to reduce it], since not all oxen are meant to be sacrificed upon the altar.[18] Raba raised an objection [from the following]: If he did work with the water of Purification or with the Heifer of Purification he would be exempt according to the judgments of Man but liable according to the judgments of Heaven.[19] Now surely this is so only where mere work was done with it,[20] in which case the damage [done to it] is not noticeable, whereas in the case of splitting where the damage is noticeable there would also be liability according to the judgments of Man?[21] — It may, however, be said that the same law would apply in the case of splitting, where he would similarly be exempt [according to the judgments of Man], and that what we are told here is that even in the case of mere work where the damage is not

noticeable there would still be liability according to the judgments of Heaven.

Rabbah further stated: If one destroyed by fire the bond of a creditor he would be exempt, because he can say to him, 'It was only a mere piece of paper of yours that I have burnt.'[22] Rami b. Hania demurred: What are the circumstances?

1. I.e., through the supply surpassing the demand.
2. [Even if the drop in the prices was due to the latter cause.]
3. [That ten old coins had the weight of eight new ones.]
4. Market commissioner.
5. If, however, the increase in weight was less than 25%, the new coins paid would have to be equal in number to the old ones; so Rashi; Tosaf. explains differently.
6. Lit., 'the great sea', the Mediterranean.
7. [On the principle that damage caused by indirect action is not actionable.]
8. Cf. Lev. V, 23.
9. [Har-ha-Melek, also known as Tur Malka. There is still a good deal of uncertainty in regard to the identification of these two localities. Buchler JQR. 1904. 181 ff. maintains that the reference in both cases is to Roman fortifications, access to which was barred to the Jews, the former being simply the Roman Castra, the latter, a fortification situated somewhere in Upper Idumea. For other views, v. Schlatter, Tage Trojans, p. 28, and Neubauer, Geographie, p. 196.]
10. M.Sh. I, 2. Now, if coins thrown into the ocean are not considered as lost to the owner, as indeed suggested by Rabbah. why should no redemption be effected?
11. Deut. XIV, 25.
12. On account of which no redemption could be effected.
13. In accordance with Ex. XXI, 26-27.
14. *Supra* 91a. Does this not prove that even where the substance was not reduced, such as in the case of deafening, still so long as the damage was done there is liability?
15. As having committed the capital offence of Ex. XXI. 25, v. *supra* 86a.
16. [And for the same reason the slave would be set free.]
17. Rendering her thus disqualified as blemished for the altar; cf. Lev. XXII, 20-25.
18. Cf. Kid. 66a.
19. I.e., the 'red heifer' rendering it thus disqualified in accordance with Num. XIX. 2 and 9.
20. V. *supra* 56a.
21. Thus contradicting the view of Rabbah.
22. V. *supra* 33b.

Baba Kamma 98b

If there are witnesses who know what were the contents of the bond why not draw up another bond which would be valid? If on the other hand such witnesses are not available, how could we know [what were the contents]?[1] — Raba said: [The case could arise] where the defendant takes the plaintiff's word [as to the contents of the bond]. R. Dimi b. Hanina said that [regarding this ruling] of Rabbah there was a difference of opinion between R. Simeon and our [other] Rabbis. According to R. Simeon who held[2] that an object whose absence would cause an outlay of money is reckoned in law as money there would be liability,[3] but according to the Rabbis who said that an object whose absence would cause an outlay of money is not reckoned in law as money there would be no liability. R. Huna the son of R. Joshua demurred: I would suggest that you have to understand R. Simeon's statement, that an object whose absence would cause an outlay of money is reckoned in law as money, to apply only to an object whose substance is its intrinsic value, exactly as [in another case made Out by] Rabbah, for Rabbah said that where leaven was misappropriated before [the arrival of] Passover and a third person came along and burnt it, if this took place during the festival he would be exempt as at that time all are enjoined to destroy it,[4] but if after Passover[5] there would be a difference of opinion between R. Simeon and our Rabbis, as according to R. Simeon who held that an object whose absence would cause an outlay of money is reckoned in law as money, he would be liable,[6] while according to our Rabbis who said that an object whose absence would cause an outlay of money is not reckoned in law as money, he would be

exempt. [But whence could it be proved that even] regarding an object whose substance is not its intrinsic value R. Simeon similarly maintained the same view?

Amemar said that the authority who is prepared to adjudicate liability in an action for damage done indirectly[7] would similarly here adjudge damages to the amount recoverable on a valid bill. but the one who does not adjudicate liability in an action for damage done indirectly would here adjudge damages only to the extent of the value of the mere paper. It once happened that in such an action Rafram compelled R. Ashi[8] and damages were collected [from him] like a beam fit for decorative mouldings.[9]

BUT IF … THE LEAVEN [HE MISAPPROPRIATED BECAME FORBIDDEN FOR ANY USE BECAUSE] PASSOVER HAD INTERVENED … HE CAN SAY TO HIM: HERE, TAKE YOUR OWN. Who is the Tanna who, in regard to things forbidden for any use, allows [the offender] to say, 'Here, take your own'? — R. Hisda said: He is R. Jacob, as indeed taught: If an ox killed [a person], and before its judgment was concluded its owner disposed of it, the sale would hold good; if he pronounced it sacred, it would be sacred; if it was slaughtered its flesh would be permitted [for food]; if a bailee returned it to [the house of] its owner, it would be a legal restoration. But if after its sentence had already been pronounced, the owner disposed of it, the sale would not be valid; if he consecrated it, it would not be sacred; if it was slaughtered its flesh would be forbidden [for any use]; if a bailee returned it to [the house of] its owner, it would not be a legal restoration. R. Jacob, however, says: Even if after the sentence had already been pronounced the bailee returned it to its owner, it would be a legal restoration.[10] Now, is not the point at issue between them[11] that R. Jacob, in the case of things forbidden for any use, allows the offender to say. 'Here, take your own', whereas the Rabbis disallow this in the case of things forbidden for any use?[12] Rabbah said to him:[13] No; all may agree that even regarding things forbidden for any use the offender is allowed [in certain circumstances] to say, 'Here, take your own', for if otherwise. why did they[11] not differ in the case of leaven during Passover?[14] Rabbah therefore said: Here [in the case before us] the point at issue must be whether [or not] sentence may be pronounced over an ox in its absence. The Rabbis hold that sentence cannot be pronounced over an ox in its absence so that the owner may plead against the bailee thus: 'if you had returned it to me [before the passing of the sentence], I would have driven it away to the pastures,[15] whereas now you have surrendered my ox into the hands of those against whom I am unable to bring any action.'[16] R. Jacob, however, holds that sentence can be pronounced over the ox even in its absence, so that the bailee may retort to the owner thus: In any case the sentence would have been passed on the ox, even in its absence.

R. Hisda came across Rabbah b. Samuel and said to him: Have you been taught anything regarding things forbidden for any use?[17] — He replied: Yes, I was taught [the following]: *'He shall restore the misappropriated object*.[18] What is the point of the additional words, *which he violently took away*? [It is that] so long as it was intact he may restore it.[19] Hence did the Rabbis declare that if one misappropriated a coin and it went out of use, fruits and they became stale, wine and it became sour,[20] *terumah*[21] and it became defiled,[22] leaven and [it became forbidden for any use because] Passover intervened,[23] an animal and it became the instrument for the commission of a sin,[24] or an ox and [it subsequently became subject to be stoned,[25] but] its judgment was not yet concluded, he can say to the owner, 'Here, take your own.' Now, which authority can you suppose to apply this ruling only where the judgment was not yet concluded, but not where the judgment was already concluded, if not the Rabbis, and it is at [the same time] stated that

[if he misappropriated] leaven and [it became forbidden for any use because] Passover intervened[26] he can say to him, 'Here, take your own'?[27] — He replied:[28] If you happen to meet them[29] [please] do not tell them anything [of this teaching].[30]

['If one misappropriated] fruits and they became stale … he can say to him: "Here, take your own."' But did we not learn:[31] [IF HE MISAPPROPRIATED] FRUITS AND THEY BECAME STALE … HE WOULD [CERTAINLY] HAVE TO PAY ACCORDING TO [THE VALUE AT] THE TIME OF THE ROBBERY? — Said R. Papa: The latter ruling[32] refers to where the whole of them became stale,[33] the former to where only parts of them became stale.

***MISHNAH*. IF AN OWNER GAVE CRAFTSMEN [SOME ARTICLES] TO SET IN ORDER AND THEY SPOILT THEM, THEY WOULD BE LIABLE TO PAY. WHERE HE GAVE A JOINER A CHEST, A BOX OR A CUPBOARD[34] SET IN ORDER AND HE SPOILT IT, HE WOULD BE LIABLE TO PAY. IF A BUILDER UNDERTOOK TO PULL DOWN A WALL AND BROKE THE STONES OR DAMAGED THEM, HE WOULD BE LIABLE TO PAY, BUT IF WHILE HE WAS PULLING DOWN THE WALL ON ONE SIDE ANOTHER PART FELL ON ANOTHER SIDE, HE WOULD BE EXEMPT, THOUGH, IF IT WAS CAUSED THROUGH THE KNOCKING, HE WOULD BE LIABLE.**

***GEMARA*. R. Assi said: The Mishnaic ruling could not be regarded as applying except where he gave a joiner a box, a chest, or a cupboard to knock a nail in and while he was knocking in the nail he broke them. But if he gave the joiner timber to make a chest, a box or a cupboard and after he had made the box, the chest or the cupboard they were broken by him, he would be exempt,[35] the reason being that a craftsman acquires title to the increase in [value caused by the construction of] the article.[36] But we have learnt: IF AN OWNER GAVE CRAFTSMEN SOME ARTICLES TO SET IN ORDER AND THEY SPOILT THEM THEY WOULD BE LIABLE TO PAY. Does this not mean that he gave them timber to make utensils?[37] — No, [he gave them] a chest, a box or a cupboard.[38] But since the concluding clause in the text mentions 'chest, box or cupboard' is it not implied that the opening clause refers to timber? — It may, however, be said that [the later clause] only means to expand the earlier [as follows]: 'In the case where an owner gave craftsmen some articles to set in order and they spoiled them, how would they be liable to pay? As, e.g., where he gave a joiner a chest, a box, or a cupboard.' There is also good reason for supposing that the text [of the latter clause] was merely giving an example. For should you assume that the opening clause refers to timber, after we have been [first] told that [even] in the case of timber they would be liable to pay and that we should not say that the craftsman acquires title to the increase in [value caused by the construction of] the article, what necessity would there be to mention afterwards chest, box and portable turret?[39] — If only on account of this, your point could hardly be regarded as proved, for the later clause might have been inserted to reveal the true meaning of the earlier clause, so that you should not think that the earlier clause refers to [the case where he gave the joiner a] chest, box and cupboard, whereas [where he gave him] timber the law would not be so; hence the concluding clause specifically mentions chest, box and cupboard[38] to indicate that the opening clause refers to timber, and that even in that case the craftsman would be liable to pay.[37] May we say that he[40] can be supported [from the following]: If wool was given to a dyer**

1. **[To know what liability to impose on him.]**
2. ***Supra* 71b.**
3. **Since the creditor has through the destruction of his bond suffered an actual loss of money.**
4. **Cf. Pes. II. 2.**
5. **When though forbidden to be used for any purpose it is still not under an injunction to be destroyed; cf. Pes. II. 2.**
6. **To the robber, since the robber would have been able to restore the leaven to the owner**

and say. 'Here there is thine before thee', whereas after the leaven was destroyed he would have to pay the full original value if the leaven.
7. I.e., R. Meir; cf. *infra* 100a.
8. [Who in his childhood had destroyed a bond of a creditor.]
9. A metaphorical expression for 'straight and exact and out of the best of the estate', as *supra* p. 16; v. Rashi and Sh.M. a.l.
10. v. *supra* 45a for notes.
11. R. Jacob and the Rabbis.
12. Our Mishnah thus represents the view of R. Jacob.
13. I.e., to R. Hisda.
14. Whether a robber would be entitled to restore it and plead 'Here there is thine before thee'.
15. And no sentence would have been passed on it.
16. [I.e., the court. This plea would, however, not apply to leaven where the incidence of the prohibition is not due to an act of the robber but to the intervention of the Passover (Rashi).]
17. [Whether the plea 'Here, take your own' is admissible in their case.]
18. Lev. V, 23.
19. Though it meanwhile became valueless.
20. [MS.M. rightly omits 'wine and it became sour' as in this case payment is according to value at time of robbery; *Var. lec*. and he poured from it a libation (to an idol).]
21. V. Glos.
22. V. p. 561, n. 4.
23. V. ibid., n. 5.
24. V. ibid., n. 6.
25. V. ibid., n. 8.
26. V. p. 561, n. 5.
27. Thus confirming the view of Rabbah as against that of R. Hisda.
28. I.e., R. Hisda to Rabbah b. Samuel.
29. My colleagues.
30. For a similar attitude cf. 'Er. 11b where R. Shesheth said so to the same Rabbah b. Samuel, and ibid. 39b where the same R. Shesheth said so to Raba (= Rabbah) b. Samuel.
31. In our Mishnah.
32. Where payment must be made.
33. And the change was definite.
34. Lit., 'a turret', a cupboard in the form of a turret.
35. So far as the increase in value caused by the construction of the article is concerned, [for when he parts with it he effects a sale of the improvement of the article and the stipulated sum paid to him is but the purchase money for the same.]
36. Cf. B.M. 112a.
37. And their liability would thus extend to the whole value of the utensils made by them.
38. For some repair, in the performance of which they were broken.
39. In which case the law is quite evident.
40. I.e., R. Assi.

Baba Kamma 99a

and it was burnt by the dye, he would have to pay the owner the value of his wool.[1] Now, it is only the value of the wool that he has to pay, but not the combined value of the wool and the increase in price.[2] Does this not apply even where it was burnt after the dye was put in,[3] in which case there has already been an increase in value, which would thus show[4] that the craftsman acquires title to the improvement carried out by him on any article? — Said Samuel: We are dealing here with a case where, e.g., it was burnt at the time when the dye was put in,[5] so that there has not yet been any increase in value. But what would it be if it were burnt after it was put in?[6] Would he really have to pay the combined value of the wool and the increase? Must we not therefore say that Samuel did not hold the view of R. Assi?[7] — Samuel might say to you that we are dealing here with a case where e.g., both the wool and the dye belonged to the owner, so that the dyer had to be paid only for the labor of his hands.[8] But if so, should it not have been stated that the dyer would have to pay the owner for the value of both his wool and his dye? — Samuel was only trying to point out that a refutation[9] would be possible.[10] Come and hear:[11] If he gave his garment to a craftsman and the latter finished it and informed him of the fact, even if from that time ten days elapsed [without his paying him] he would through that not be transgressing the injunction thou shalt not keep all night.[12] But if [the craftsman] delivered the garment to him in the middle of the day, as soon as the sun set [without payment having been made] the owner would through that transgress the injunction. Thou shalt not keep all night.[13] Now, if you assume that a craftsman acquires title to the

improvement [carried out by him] on any article,[14] why should the owner be transgressing[15] the injunction. Thou shalt not keep all night? — Said R. Mari the son of R. Kahana: [The work required in this case was] to remove the woolly surface of a thick cloth where there was no accretion.[16] But be it as it may, since he gave it to him for the purpose of making it softer, as soon as he made it softer was there not already an improvement? — No; the ruling is necessary [for meeting the case] where he hired him to stamp upon it [and undertook to pay him] for every act of stamping one *ma'ah*,[17] which is but the hire [for labor].

But according to what we assumed previously that he was not hired for stamping,[18] [this ruling] would have been a support to [the view of] R. Shesheth, for when it was asked of R. Shesheth[19] whether in a case of contracting the owner would transgress[20] the injunction, Thou shalt not keep all night, or would not transgress, he answered that he would transgress! But are we [at the same time] to say that R. Shesheth differed from R. Assi?[21] — Samuel b. Aha said: [R. Shesheth was speaking] of a messenger sent to deliver a letter.[22]

Shall we say [that the same difference is found between] the following Tannaim? [For it was taught: If a woman says,] 'Make for me bracelets, earrings and rings,[23] and I will become betrothed unto thee,'[24] as soon as he makes them she becomes betrothed [unto him];[25] this is the view of R. Meir. But the Sages say that she would not become betrothed until something of actual value has come into her possession.[26] Now, what is meant by actual value? We can hardly say that it refers to this particular value,[27] for this would imply that according to R. Meir [it was] not [necessary for her to come into possession] even of that value. If so, what would be the instrument to effect the betrothal?[25] It therefore appears evident that what was meant by 'actual value' was some other value.[28] Now again, it was presumed [by the students] that according to all authorities there is continuous [growth of liability for] hire from the very commencement of the work until the end of it,[29] and also that according to all authorities if one betroths [a woman] through [foregoing] a debt [owing to him from her], she would not be betrothed.[30] Would it therefore not appear that they[31] differed on the question whether a craftsman acquires title to the improvement carried out by him upon an article, R. Meir maintaining that a craftsman acquires title to the improvement carried out by him upon an article,[32] while the Rabbis maintained that the craftsman does not acquire title to the improvement carried out by him upon an article?[33] — No; all may agree that the craftsman does not acquire title to the improvement carried out by him upon an article, and here they differ as to whether there is progressive [liability for] hire from the very commencement of the work until the very end, R. Meir maintaining that there is no liability for hire except at the very end,[34] whereas the Rabbis maintained that there is progressive [liability for] hire[35] from the commencement until the very end.[36] Or if you wish I may say that in the opinion of all there is progressive [liability for] hire[35] from the very commencement to the end,[36] but here they[37] differ [in regard to the law] regarding one who betroths [a woman] by [forgoing] a debt [due from her], R. Meir maintaining that one who betroths [a woman] by [forgoing] a debt [due from her] would thereby effect a legal betrothal, whereas the [other] Rabbis maintained that he who betroths [a woman] by [forgoing] a debt [due from her] would thereby not effect a valid betrothal.[38]

1. *Infra* 100b.
2. Caused by the process of dyeing.
3. Lit., 'after falling in'. i.e. after the dye had already exercised its effect on the wool which thereby increased in value.
4. Since he has to pay only for the wool and nor for its increase in value.
5. Lit., 'at the time of falling in', i.e., before the dye has yet exercised any effect on the wool.
6. V. *supra* n. 3.

7. According to whom even then only the original value of the wool would have to be paid for. [Which means that R. Assi's view cannot stand since in civil law we follow the ruling of Samuel?]
8. In which case the craftsman acquires no title to the increase in value, since the dye which imparts to the wool the increased value is not his.
9. Of the proof advanced in support of R. Assi.
10. Without, however, intending to oppose R. Assi.
11. Cf. B.M. 112a.
12. Lev. XIX, 13.
13. V. p. 576, n. 11.
14. So that when he parts with it he affects a sale of the improvement of the article and the stipulated sum paid to him is but the purchase money for the same.
15. For surely by not paying purchase money in time a purchaser would not render himself liable to this transgression.
16. To which the worker should acquire title.
17. v. Glos.
18. But for the completion of a certain undertaking, [in which case he would be a contractor and in a sense a vendor and yet the injunction of not delaying the payment of the hire applies.]
19. V. B.M. 112a.
20. By not paying the stipulated sum in time.
21. Who maintained that a craftsman (i.e., a contractor) becomes the owner of the improvement carried out by him upon the article and when parting with it is but a vendor to whom purchase money has to be paid, and to whom the injunction does not apply.
22. Where there is no tangible accretion to which a title of ownership could be acquired, and to which consequently there applies the injunction.
23. The woman giving the man the material.
24. This was spoken by an unmarried woman to her prospective husband.
25. In accordance with Kid. I, 1.
26. Kid. 48a.
27. I.e., the bracelets.
28. I.e., irrespective of the bracelets, earrings and rings made by him. Whereas according to R. Meir these alone suffice.
29. I.e., that strictly speaking each *perutah* of the hire becomes due as soon as work for a *perutah* is completed; a *perutah* is the minimum value of liability; v. Glos.
30. As this is not reckoned in law sufficient consideration; cf. Kid. 6b and 47a.
31. I.e., R. Meir and the Rabbis.
32. So that when he makes her bracelets, earrings and rings out of her material, the improvement becomes his and could therefore constitute a valid consideration.
33. But since the improvement was never his he only had an outstanding debt for the hire upon the other party who was in this case his prospective wife, and as the forfeiture of a debt is not sufficient consideration some 'actual value' must be added to make the consideration valid.
34. I.e., when he restores her the manufactured bracelets, etc., in which case the hire had previously never become a debt.
35. Which thus becomes a debt rising from *perutah* to *perutah* (and as such could not constitute valid consideration).
36. V. p. 578, n. 7.
37. R. Meir and the Rabbis.
38. V. p. 578, n. 8.

Baba Kamma 99b

Raba, however, said that all might have been agreed that there is progressive [liability for] hire from the very commencement until the end, and also that one who betroths [a woman] by [forgoing] a debt [due from her] would not thereby effect a valid betrothal, and it was again unanimously held that a craftsman does not acquire title to the improvement carried out by him upon an article,[1] and here we are dealing with a case where, e.g., he added a particle out of his own [funds[2] to the raw material supplied by her], R. Meir holding that where the [instrument of betrothal] is both [the foregoing of] a debt and [the giving of] a *perutah*,[3] the woman thinks more[4] of the *perutah*,[2] whereas the Rabbis held that where the [instrument of betrothal] is both [the foregoing of] a debt and [the giving of] a *perutah*, she thinks more of the debt [which she is excused].

This was also the difference between the following Tannaim, as taught: [If a man says,] 'In consideration of the hire for the work I have already done for you[5] [be betrothed to me],'[6] she would not become betrothed,[7] but [if he says], 'In consideration of the hire for work which I will do for you [be betrothed to me]', she would become betrothed. R. Nathan

said that if he said, 'In consideration of the hire for work I will do for you,' she would thereby not become betrothed; and all the more so in this case where he said, 'In consideration of the hire for work I have already done for you.' R. Judah the Prince, however, says: It was truly stated that whether he said, 'In consideration of the hire for the work I have already done for you,'[6] or, 'In consideration of the hire for work I will do for you,' she would not thereby become betrothed, but if he added a particle out of his own funds[8] [to the raw material supplied by her], she would thereby become betrothed.[9] Now, the difference between the first Tanna and R. Nathan is on the question of the liability for hire [whether or not it is progressive from the very commencement],[10] while the difference between R. Nathan and R. Judah the Prince is on the question [what is her attitude when the betrothal is made both by the foregoing of] a debt [and the giving of] a *perutah*.[11]

Samuel said: An expert slaughterer who did not carry out the slaughter properly[12] would be liable to pay, as he was a damage-doer, [and] he was careless, and this would be considered as if the owner asked him to slaughter for him from one side[13] and he slaughtered for him from the other. But why was it necessary for him to say both 'he was a damage-doer [and] he was careless'? — If he had said only he was a damage-doer, I might have said that this ruling should apply only where he was working for a hire,[14] whereas where he was working gratuitously this would not be so; we are therefore told, [that there is no distinction as] he was careless. R. Hama b. Guria raised an objection to this view of Samuel [from the following]: If an animal was given to a slaughterer and he caused it to become *nebelah*,[15] if he was an expert he would be exempt, but if an amateur[16] he would be liable. If, however, he was engaged for hire, whether he was an amateur or expert he would be liable. [Is this not in contradiction to the view of Samuel?] — He replied:[17] Is your brain disordered? Then another one of our Rabbis came along and raised the same objection to his view. He said to him:[18] 'You surely deserve to be given the same as your fellow.[19] I was stating to you the view of R. Meir and you tell me the view of the Rabbis! Why did you not examine my words carefully wherein I said: "For he was a damage-doer [and] he was careless, and this should be considered as if the owner asked him to slaughter for him from one side[20] and he slaughtered for him from the other." For surely who reasons in this way if not R. Meir, who said that a human being has to take greater heed to himself?' But what [statement of] R. Meir [is referred to]? We can hardly say the one of R. Meir which we learned: (Mnemonic: *KLN*)[21] 'If the owner fastened his ox [to the wall inside the stable] with a cord or shut the door in front of it properly but the ox [nevertheless] got out and did damage, whether it had been *Tam* or already *Mu'ad* he would be liable; this is the opinion of R. Meir,'[22] for surely, in that case, there they differed as to the interpretation of Scriptural Verses![23] — It therefore seems to be the one of R. Meir which we learned: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black and he dyed it red, R. Meir says that he would have to pay [the owner] for the value of the wool.[24] But did he not there spoil it[25] with his own hands?[26] — The reference therefore must be to the one of R. Meir which was taught: 'If a pitcher is broken and [the potsherds] are not removed, or a camel falls down and is not raised, R. Meir orders payment for any damage resulting therefrom, whereas the [other] Sages say that no action can be instituted in civil courts though there is liability according to divine justice,'[27] and we came to the conclusion[28] that they differed as to whether or not stumbling implies negligence.

Rabbah b. Bar Hanah said that R. Johanan stated that an expert slaughterer who did not carry out the slaughter properly[29] would be liable to pay, even if he was as skilled as the slaughterer of Sepphoris. But did R. Johanan

really say so? Did Rabbah b. Bar Hanah not say that such a case came before R. Johanan in the synagogue of Maon[30] and he said to the slaughterer. 'Go and bring evidence that you are skilled to slaughter hens, and I will declare you exempt'? — There is, however, no difficulty, as the latter ruling was [in a case where the slaughterer was working] gratuitously whereas the former ruling applies [where the slaughterer works] for hire,[31] exactly as R. Zera said: If one wants the slaughterer to become liable to him,[32] he shall give him a dinarius beforehand.[31]

An objection was raised: If wheat was brought to be ground and the miller omitted to moisten it and he made it into bran-flour or coarse bran, or if flour [was given] to a baker and he made out of it bread which crumbled, or an animal to a slaughterer and he rendered it *nebelah*,[33] he would be liable, as he is on the same footing as a worker who receives hire.[34] [Does this not imply that he was working gratuitously? — No.] read: 'Because he is a worker receiving hire.'[31]

A case of *magrumeta*[35] was brought before Rab, who declared it *trefa* and nevertheless released the slaughterer from any payment. When R. Kahana and R. Assi met that man[36] they said to him: 'Rab did two things with you.' What was meant by these two things? If you say it meant two things to his[36] disadvantage, one that Rab should have declared it kasher in accordance with R. Jose b. Judah,[37] whereas he declared it *trefa* in accordance with the Rabbis,[37] and again that since he acted in accordance with the Rabbis,[37] he should at any rate have declared the slaughterer liable, is it permitted to say a thing like that? Was it not taught:[38] When [a judge] leaves [the court] he should not say, 'I wanted to declare you innocent, but as my colleagues insisted on declaring you liable I was unable to do anything since my colleagues formed a majority against me,' for to such behavior is applied the verse, A tale-bearer revealeth secrets?[39] — It must therefore be said that the two things were to his[36] advantage, first that he did not let you eat a thing which was possibly forbidden, secondly that he restrained you from receiving payment which might possibly have been a misappropriation.

It was stated: If a *denar* was shown to a money changer [and he recommended it as good] but it was subsequently found to be bad, in one Baraitha it was taught that if he was an expert he would be exempt but if an amateur he would be liable, whereas in another Baraitha it was taught that whether he was an expert or an amateur he would be liable. R. Papa stated: The ruling that in the case of an expert he would be exempt refers to such, e.g., as Dankcho and Issur[40] who needed no [further] instruction whatever, but who made[41] a mistake regarding a new stamp at the time when the coin had just [for the first time] come from the mint.

There was a certain woman who showed a *denar* to R. Hiyya and he told her that it was good. Later she again came to him and said to him, 'I afterwards showed it [to others] and they said to me that it was bad, and in fact I could not pass it.' He therefore said to Rab: Go forth and change it for a good one and write down in my register that this was a bad business. But why [should he be different from] Dankcho and Issur[42] who would be exempt because they needed no instruction? Surely R. Hiyya also needed no instruction? — R. Hiyya acted within the 'margin of the judgment,'[43] on the principle learnt by R. Joseph: 'And shalt show them[44] means

1. V. p. 578, n. 11.
2. Which could constitute valid consideration.
3. I.e., a coin which constitutes the minimum of value in legal matters.
4. V. Sanh. 19b.
5. The article having been already returned to her.
6. This was spoken to a prospective wife.
7. V. p. 578. n. 8.
8. V. p. 579, n. 7.
9. Kid. 48b.

10. [R. Nathan holding that it is, whereas the first Tanna holds that there is no liability except at the very end.]
11. [R. Nathan maintains that the woman thinks primarily of the debt, while, according to R. Judah the Prince she thinks more of the *perutah*.]
12. As required by the ritual, and has thus rendered the animal unfit for consumption according to the dietary laws.
13. Of the throat.
14. Where he could be made liable even in the absence of carelessness.
15. I.e., unfit for consumption through a flaw in the slaughter; v. Glos.
16. As he had no right to slaughter.
17. I.e., Samuel to R. Hama.
18. I.e., Samuel to the other Rabbi.
19. R. Hama.
20. V. p. 580, n. 9.
21. Keyword consisting of the Hebrew initial words of the three teachings that follow.
22. *Supra* 45b.
23. [V. *loc. cit*. This case cannot accordingly be appealed to as precedent.]
24. *Infra* 100b.
25. Lit., 'burn it'.
26. Since he intended to dye it in that color in which he actually dyed it, whereas in the case of the slaughterer, the damage looks more like an accident.
27. *Supra* 28b-29a.
28. [R. Meir holding that a human being must take greater heed to himself.]
29. V. p. 580, n. 8.
30. [In Judah, I Sam. XXIII, 24.]
31. V. p. 580, n. 10.
32. Were the slaughter not carried out effectively.
33. V. p. 581, n. 1.
34. Tosef. B.K. X, 4 and B.B. 93b.
35. I.e., where the slaughter was started in the appropriate part of the throat but was finished higher up, in which matter there is a difference of opinion between R. Jose b. Judah and the Rabbis in Hul. 1, 3.
36. I.e., the owner of the animal.
37. Hul. ibid.
38. Sanh. 29a.
39. Prov. XI, 13.
40. Two renowned money changers in those days.
41. Lit., 'But where was their mistake; they made, etc.
42. V. p. 583. n. 8.
43. For the sake of equity and mere ethical considerations. [On this principle termed lifenim mi-shurath ha-din according to which man is exhorted not to insist on his legal rights. v. Herford, Talmud and Apocrypha, pp. 140, 280. That there was nothing Essenic in that attitude, but that it is a recognized principle in Rabbinic ethics has already been shown by Buchler, Types, p. 37.]
44. Ex. XVIII, 20; the verse continues, the way wherein they must walk and the work.

Baba Kamma 100a

the source of their livelihood;[1] the way means deeds of loving-kindness; they must walk means the visitation of the sick; wherein means burial, and the work means the law; which they must do means within the margin of the judgment.'[2] Resh Lakish showed a *denar* to R. Eleazar who told him that it was good. He said to him: You see that I rely upon you. He replied: Suppose you do rely on me, what of it? Do you think that if it is found bad I would have to exchange it [for a good one]? Did not you yourself state that it was [only] R. Meir who adjudicates liability in an action for damage done indirectly,[3] which apparently means that it was only R. Meir who maintained so whereas we did not hold in accordance with his view? — But he said to him: No; R. Meir maintained so and we hold with him. But to what [statement of] R. Meir [was the reference]? It could hardly be the one of R. Meir which we learned: If a judge in giving judgment [in a certain case] has declared innocent the person who was really liable or made liable a person who was really innocent, declared defiled a thing which was levitically clean, or declared clean a thing which was really defiled,[4] his decision would stand, but he would have to make reparation out of his own estate,[5] for was it not taught in connection with this that R. Elai said that Rab stated[6] that [this would be so] only where he personally executed the judgment by his own hand?[7] The reference therefore appears to be the one of R. Meir which we learned: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black and he dyed it red, R. Meir says that he would have to pay [the owner] for the value of his wool.[8] But did he not in that case also spoil it with his own hands?[9] The reference must therefore

be to the one of R. Meir which we learned: He who with [the branches of] his vine covers the crops of his fellow renders them proscribed[10] and will be liable for damages.[11] But there also did he not do the mischief with his own hands? The reference must therefore be to the one of R. Meir which was taught: 'If the fence of a vineyard [near a field of crops] is broken through,

1. Either the means of an honest livelihood, as explained by Rashi on B.M. 30b or the study of the living law, as interpreted by Rashi a.l.
2. B.M. 30b.
3. *Supra* 98b.
4. And it so happened that that thing was consequently mixed with clean things and this spoiled them all; v. Sanh. (Sonc. ed.) p. 210, nn. 6-8.
5. Bk. IV, 4.
6. Bek. 28b.
7. I.e., where he acted both as judge and executive officer, in which case the damage was directly committed by him personally.
8. V. next Mishnah.
9. By dyeing it the wrong color.
10. In accordance with Deut. XXII, 9.
11. Kil. VII, 4.

Baba Kamma 100b

[the owner of the crops] may request [the owner of the vineyard] to repair it;[1] so also if it is broken through again he may similarly request him to repair it. But if the owner of the vineyard abandons it altogether and does not repair it he would render the produce proscribed and would incur full responsibility.[2]

MISHNAH. IF WOOL WAS GIVEN TO A DYER AND THE DYE[3] BURNT IT, HE WOULD HAVE TO PAY THE OWNER THE VALUE OF HIS WOOL. BUT IF HE DYED IT KA'UR,[4] THEN IF THE INCREASE IN VALUE[5] IS GREATER THAN HIS OUTLAY THE OWNER WOULD GIVE HIM ONLY THE OUTLAY, WHEREAS IF THE OUTLAY[6] WAS GREATER THAN THE INCREASE IN VALUE HE WOULD HAVE TO PAY HIM THE AMOUNT OF THE INCREASE, [WHERE WOOL WAS HANDED TO A DYER] TO DYE RED AND HE DYED IT BLACK, OR TO DYE BLACK AND HE DYED IT RED, R. MEIR SAYS THAT HE WOULD HAVE TO PAY [THE OWNER] FOR THE VALUE OF HIS WOOL. R. JUDAH, HOWEVER, SAYS: IF THE INCREASE IN VALUE[7] IS GREATER THAN THE OUTLAY, THE OWNER WOULD PAY THE DYER HIS OUTLAY, WHEREAS IF THE OUTLAY EXCEEDED THE INCREASE IN VALUE HE WOULD HAVE TO PAY HIM NO MORE THAN THE INCREASE.[8]

GEMARA. What does KA'UR mean? — R. Nahman said that Rabbah b. Bar Hanah stated: It means that the 'copper'[9] dyed it. What is meant by saying that the 'copper' dyed it? — Said Rabbah b. Samuel:

1. For otherwise he would have to remove his vines four cubits from the border; cf. B.B. 26a.
2. V. B.B. (Sonc. ed.) p. 2 and notes.
3. Lit., 'The cauldron', 'the dyer's kettle'.
4. Explained in the Gemara.
5. Resulting from the work done by him.
6. Incurred by the dyer.
7. V. p. 585, n. 11.
8. V. *supra* 95a-b.
9. [G]

Baba Kamma 101a

He dyed it with the sediments of the kettles.

Our Rabbis taught: If pieces of wood were given to a joiner to make a chair and he made a bench out of them, or to make a bench and he made a chair out of them R. Meir says that he will have to refund to the owner the value of his wood, whereas R. Judah says that if the increase in value exceeds his outlay the owner would pay the joiner his outlay, whereas if the outlay exceeds the increase in value he would have to pay him no more than the increase. R. Meir, however, agrees that where pieces of wood were given to a joiner to make a handsome chair out of and he made an ugly chair out of them, or to make a handsome bench and he made an ugly one if the increased value would exceed the outlay the owner would pay the joiner the amount of his

outlay, whereas if the outlay exceeded the increase in value he would have to pay him no more than the amount of the increase.

It was asked: Is the improvement effected by colors a [separate] item independent of the wool, or is the improvement effected by colors not a [separate] item independent of the wool? How can such a question arise in practice? The case can hardly be one where a man misappropriated pigments and after having crushed and dissolved them he dyed wool with them, for would he not have acquired title to them through the change which they underwent?[1] — No; the query could have application only where he misappropriated pigments already dissolved and used them for dyeing, so that if the improvement effected by colors is a [separate] item independent of the wool the plaintiff might plead: 'Give me back the dyes which you have taken from me',[2] but if on the other hand the improvement effected by colors is not a [separate] item independent of the wool the defendant might say to him: 'I have nothing of yours with me.' But I would here say: [Even] if the improvement effected by colors is not a [separate] item independent of the wool, why should the defendant be able to say to him: 'I have nothing of yours with me', seeing that the plaintiff can say to him: 'Give me back the pigments of which you have deprived me'?[3] — We must therefore take the other alternative: Are we to say that the improvement effected by colors is not a [separate] item independent of the wool and the defendant would have to pay him,[4] or is the improvement effected by colors a [separate] item independent of the wool and the defendant can say to him: 'Here are your dyes before you and you can take them away.'[5] But how can he take them away? By means of soap? But soap would surely remove them without making any restitution![6] — We must therefore be dealing here [in the query] with a case were e.g., a robber misappropriated dyes and wool of one and the same owner, and dyed that wool with those dyes and was returning to him that wool. Now, if the improvement effected by colors is a [separate] item independent of the wool, the robber would thus be returning both the dyes and the wool, but if the improvement effected by colors is not a [separate] item independent of the wool, it was only the wool which he was returning, whereas the dyes he was not returning.[7] But I would still say: Why should it not be sufficient [for the robber to do this] seeing that he caused the wool to increase in value?[8] — No: the query might have application where colored wool had meanwhile depreciated in price.[9] Or if you wish I may say that it refers to where e.g., he painted with them an ape[10] [in which case there was thereby no increase in value]. Rabina said: We were dealing here [in the query] with a case where e.g., the wool belonged to one person and the dyes to another,[11] and as an ape[12] came along and dyed that wool of the one with those dyes of the other; now, is the improvement effected by the colors a [separate] item independent of the wool so that the owner of the dyes is entitled to say to the owner of the wool: 'Give me my dyes which are with you',[13] or is the improvement effected by colors not a [separate] item apart from the wool, so that he might retort to him: 'I have nothing belonging to you'? — Come and hear: A garment which was dyed with the shells of the fruits of '*Orlah*[14] has to be destroyed by fire.[15] This proves that appearance is a distinct item [in valuation]![16] — Said Raba: [It is different in this case where] any benefit visible to the eye[17] was forbidden by the Torah as taught *Uncircumcised: it shall not be eaten of*;[18] this gives me only its prohibition as food. Whence do I learn that no other benefit should be derived from it, that it should not be used for dyeing with, that a candle should not be lit with it? It was therefore stated further, *Ye shall count the fruit thereof as uncircumcised: … uncircumcised, it shall not be eaten of*, for the purpose of including all of these.[19]

Come and hear: A garment which was dyed with the shells [of the fruits] of the sabbatical year has to be destroyed by fire![20] — It is

different there, as Scripture stated: '*It shall be*'[21] implying that it must always be as it was.[22]

1. And the whole liability upon him would be to pay the original value of the dyes as *supra* p. 541.
2. Since his dyes form now an integral part of the defendant's wool.
3. And with reference to which you have accordingly become subject to the law of robbery.
4. For the dyes.
5. I.e., remove them from the wool.
6. To which a robber is subject; cf. Lev. V, 23.
7. And would therefore still have to pay for the dyes.
8. By having dyed it with the dyes misappropriated from the same plaintiff.
9. And the increase through the process of dyeing is below the price of the dyes, [in which case the plaintiff can say that he would have sold the pigments before the depreciation].
10. Or as interpreted by others 'a basket of willows' which he misappropriated from the same plaintiff.
11. And it was not a case of misappropriation at all.
12. Belonging to no particular owner who could be made liable.
13. V. p. 587. n. 2.
14. I.e., the fruit in the first three years of the plantation of the tree; cf. Glos.
15. 'Orl. III, 1. *'Orlah* is proscribed from any use; cf. Lev. XIX, 23.
16. To render the garment itself proscribed.
17. Cf. Me'il. 20a.
18. Lev. XIX, 23.
19. Pes. 22b. Kid. 56b. *'Orlah* thus affords no precedent.
20. Now, could it not be proved from this that mere color is a distinct item!
21. Lev. XXV, 7.
22. Even after it has been changed and altered by various processes.

Baba Kamma 101b

Raba pointed out a contradiction. We have learnt: 'A garment which was dyed with the shells [of the fruits] of *'Orlah* has to be destroyed by fire,' thus proving that color is a distinct item; but a contradiction could be pointed out: 'If a quarter [of a *log*][1] of [the] blood [of a dead person] has been absorbed in the floor of a house, [all in] the house[2] would become defiled,[3] or as others say, '[all in] the house would not be defiled'; these two statements, however, do not differ, as the former refers to utensils which were there at the beginning,[4] whereas the latter refers to the utensils which were brought there subsequently [after the blood was already absorbed 'in the ground].[5] 'If the blood was absorbed in a garment, we have to see: if on the garment being washed a quarter [of a *log*] of blood would come out of it,[6] it would cause defilement,[7] but if not, it would not cause defilement'![8] — Said R. Kahana: The ruling stated in this Mishnah is one of concessions made in respect of quarters [of a *log*], applicable in the case of blood of one weltering in his blood who defiles by [mere] Rabbinic enactment.[9]

Raba again pointed out a contradiction: We have learnt: '[Among] the species of dyes, the after-growths of woad and madder are subject to the law of the sabbatical year,[10] and so also is any value received for them subject to the law of the sabbatical year; they are subject to the law of removal[11] and any value received for them is similarly subject to the law of removal,'[12] thus proving that wood is subject to the sanctity of the sabbatical year; but a contradiction could be pointed out: 'leaves of reeds and leaves of vines which have been heaped up for the purpose of making them into a hiding place upon a field, if they were gathered to be eaten would be subject to the sanctity of the sabbatical year but if they were gathered for firewood they would not be subject to the sanctity of the sabbatical year'![13] — But he himself answered: Scripture stated: 'for food',[14] implying that the law applies only to produce from which a benefit is derived at the time of its consumption,[15] so that the wood for fuel is excluded as the benefit derived from it[16] is after its consumption. But is there not the wood of the pine tree [used for torches] from which a benefit is derived at the time of its consumption? — Raba said:

1. A liquid measure; cf. Glos.
2. Subject to defilement.
3. As a quarter of a *log* of blood of a dead person is equal in law to the corpse itself and is subject to Num. XIX, 14.
4. I.e., before the blood was absorbed in the ground when it caused defilement.
5. And could no more cause defilement.
6. As to the way of calculation, v. Rashi and Tosaf. a.l.
7. As the blood is in stich a case still considered present and existing in the garment.
8. Because the blood could no more be considered present in the garment. Oh. III, 2. This proves that a mere color is not a distinct item.
9. Since it was doubtful whether the quarter of the *log* of blood oozed out while the person was still alive and clean or afterwards and unclean; cf. Nid. 71a.
10. Lev. XXV. 2-7.
11. From the house into the field as soon as similar crops are no more to be found in the field; cf. Sheb. IX. 2-3.
12. Sheb. VII, 1.
13. Suk. 40a. Now, does this not prove that wood is not subject to the law of the sabbatical year?
14. Lev. XXV, 6.
15. Such as is the case with fruits as food.
16. For heating purposes.

Baba Kamma 102a

Wood as a rule is meant for heating.[1]

R. Kahana said: Whether [or not] we say in regard to the Sabbatical Year that wood is meant as a rule for heating was a matter of difference between the following Tannaim, as taught: The produce of the Sabbatical Year should be handed over neither for the purpose of steeping nor for the purpose of washing with them. R. Jose, however, says that the products of the Sabbatical Year may be put into steep and into the wash.[2] Now, what was the reason of the Rabbis?[3] Because Scripture said, '*for food*' implying not for the purpose of steeping, '*for food*' and not for the purpose of washing. But R. Jose said that Scripture stated 'for you',[4] implying, for all your needs. But also according to the Rabbis was it not stated: 'for you'? — 'for you'[5] should be analogous to '*for food*', referring thus to any uses by which a benefit is derived from the products at the very time of their consumption, excluding thus the purposes of steeping and washing where the benefit is derived from the products after their consumption.[6] But what does R. Jose make of '*for food*'?[7] — He might say to you that that was solely necessary for the ruling [of the Baraitha], as taught: '*for food*', but not for a plaster. You say '*for food*', but not for a plaster; why perhaps not otherwise, '*for food*' but not for the purpose of washing? When it says 'for you'[8] the purpose of washing is indicated; what then do I make of '*for food*' [if not] '*for food*', but not for a plaster. But what reason had you for including the purpose of washing and excluding the purpose of a plaster? — I include the purpose of washing as this is a requirement shared alike by all people,[9] but exclude the purpose of plaster which is a requirement not shared alike by all people.[10] Now, whose view would be followed in that statement which was taught: '"*for food*" but not for a plaster. "*for food*" but not for perfume, "*for food*" but not to make it into an emetic'? — It must be in accordance with R. Jose, for if in accordance with the Rabbis, the purpose of washing and steeping [should also be excluded].

R. JUDAH, HOWEVER, SAYS: IF THE INCREASE IN VALUE, etc. (Mnemonic: *SaBaN*)[11] R. Joseph was once sitting behind R. Abba in the presence of R. Huna, who was sitting and stating that the *halachah* was in accordance with R. Joshua b. Karhah and again that the *halachah* was in accordance with R. Judah. R. Joseph thereupon turned his face towards him[12] and said: I understand his mentioning R. Joshua b. Karhah, as it was necessary to state that the *halachah* is in accordance with him, since you might have been inclined to think that the principle that where an individual differs from the majority the *halachah* is in accordance with the majority[13] [applies also] here; it was therefore made known to us that [in this] case the *halachah* is in accordance with the individual. (What statement of R. Joshua b. Karhah is referred to? — That which was taught: 'R.

Joshua b. Karhah says that a debt [recorded] in an instrument should not be collected from them,[14] whereas debts [contracted by mere word] of mouth may be collected from them because this is no more than rescuing one's money from the hands of the debtors.')[15] But why was it necessary to state that the *halachah* was in accordance with R. Judah? For his view was in the first instance stated as a point at issue [between the authorities] and subsequently as an anonymous ruling; and it is an established rule that if a view is first dealt with as a point at issue and then stated anonymously, the *halachah* is in accordance with the anonymous statement![16] The point at issue in this case was in Baba Kamma [IF WOOL WAS HANDED OVER TO A DYER] TO DYE IT RED BUT HE DYED IT BLACK, OR TO DYE IT BLACK BUT HE DYED IT RED, R. MEIR SAYS THAT HE WOULD HAVE TO PAY [THE OWNER] FOR THE VALUE OF HIS WOOL. BUT R. JUDAH SAYS: IF THE INCREASE IN VALUE EXCEEDS THE OUTLAY, THE OWNER WOULD REPAY TO THE DYER HIS OUTLAY, WHILE IF THE OUTLAY EXCEEDED THE INCREASE IN VALUE HE WOULD HAVE TO PAY HIM NO MORE THAN THE AMOUNT OF THE INCREASE, whereas the anonymous statement was made in Baba Mezi'a where we have learnt: 'Whichever party departs from the terms of the agreement is at a disadvantage, so also whichever party retracts from the agreement has the inferior claim'![17] — R. Huna considered that it was necessary for him to state so, since otherwise you might have thought that there was no precise order for [the teaching of] the Mishnah[18] so that this [ruling of R. Judah] might perhaps have been in the first instance anonymous but subsequently a point at issue.[19] [What does] R. Joseph [say to this]? — [He says] that if so, wherever a ruling is first a point at issue and then stated anonymously,[20] it might be questioned that as no precise order may have been kept in [the teaching of] the Mishnah it might have been anonymous in the first instance and a point at issue later on![19] To this R. Huna would answer that we never say that there was no precise order in [the teaching of] the Mishnah in one and the same tractate, whereas in the case of two tractates we might indeed say so. R. Joseph however considered the whole of Nezikin[21] to form only one tractate. If you like, again, I may say that it is because this ruling was stated among fixed laws: 'Whichever party departs from the terms of the agreement is at a disadvantage, and so also whichever party retracts from the argument has an inferior claim.'[22]

Our Rabbis taught: 'Where money was given to an agent

1. **In which case the benefit is derived after the wood has already been burnt.**
2. **Suk. 40a.**
3. **The first Tanna.**
4. **Lev. XXV. 6: *And the sabbath-produce of the land shall be for food for you.***
5. **Implying, for all your needs.**
6. **As when flax or a garment is put into wine the latter is spoilt before the former becomes thereby improved. According to the interpretation of Rashi a.l., R. Jose would maintain that we do not say that wood as a rule is destined for the purpose of heating, even as we do not say that fruits are meant only for eating and not for steeping or washing, whereas the Rabbis maintained otherwise; cf. however Tosaf. a.l., Rashi and Tosaf. on Suk. 40a.**
7. **Thus most probably excluding washing and steeping.**
8. **V. p. 590. n. 10.**
9. **Cf. Keth. 7a.**
10. **As it is used only by people afflicted with wounds.**
11. **Standing for the names of the three Rabbis that follow: JoSeph, ABba, HuNa.**
12. **Suk. 11a.**
13. **Ber. 9a.**
14. **I.e., from idolaters during the three days immediately before their religious festivals, as this might be a cause of special rejoicing to them and for offering additional thanksgiving to their idols, v. A.Z. 6b.**
15. **Since no documentary proof against them is available.**
16. **Yeb. 42b.**

17. B.M. VI, 2. Why then was it necessary for R. Huna to state explicitly that the *halachah* is in accordance with the view of R. Judah?
18. Though its compilation was according to a definite plan and system; cf. Tosaf. a.l.
19. In which case the anonymous statement does not constitute the accepted *halachah*.
20. Where the anonymous statement is considered to be the accepted *halachah*.
21. According to R. Sherira Gaon, Maim. and others this refers only to B.K., B.M. and B.B. which constitute three gates of one tractate but not to Sanhedrin and the other tractates of this Order. A different view is taken by Ritba and others; cf. Yad Malachi 338, and Tosaf. Yom Tob in his introduction to Nezikin.
22. B.M. VI. 2. So that there was no need for R. Huna to state that the *halachah* rested with R. Judah.

Baba Kamma 102b

to buy wheats and he bought with it barley, or barley and he bought with it wheat,[1] it was taught in one Baraitha that 'if there was a loss, the loss would be sustained by him,[2] and so also if there was a profit, the profit would be enjoyed by him,'[2] but in another Baraitha it was taught that 'if there was a loss, he would sustain the loss, but if there was a profit, the profit would be divided between them.'[3] [Why this difference of opinion?] — Said R. Johanan: There is no difficulty, as one[4] was in accordance with R. Meir and the other with R. Judah; the former was in accordance with R. Meir who said[5] that a change transfers ownership,[6] whereas the latter was in accordance with R. Judah who said[5] that a change does not transfer ownership.[7] R. Eleazar demurred: Whence [can you know this]? May it not be perhaps that R. Meir meant his view to apply only to a matter which was intended to be used by the owner personally,[8] but in regard to matters of merchandise[9] he would not say so?[10] — R. Eleazar therefore said that one as well as the other [Baraitha] might be in accordance with R. Meir, and there would still be no difficulty as the former dealt with a case where the grain was bought for domestic food,[11] whereas in the latter[12] it was bought for merchandise.[13] Moreover, in the West they were even amused[14] at the statement of R. Johanan regarding the view of R. Judah.[7] for [they said] who was it that informed the vendor of the wheat so that he might transfer the ownership of the wheat to the owner of the money?[15] R. Samuel b. Sasarti demurred: If so, why not also say the same even in the case where wheat [was wanted by the principal] and wheat [was bought by the agent]?[16] — R. Abbahu however said: The case where wheat [was wanted] and wheat [was bought] is different, as in this case the agent was acting for the principal upon the terms of his mandate and it is the same [in law] as if the principal himself had done it.[17] This could even be proved from what we have learnt: Neither in the case of one who has declared his possessions consecrated nor in the case of one who has dedicated the valuation of himself[18] can the Temple treasurer claim either the garments of the wife or the garments of the children[19] or the articles which were dyed for them or the new foot-wear bought for them.[20] Now, why not ask here also: Who informed the dyer that he was transferring the ownership of his dye to the wife?[21] But must we not then answer that since the husband was acting on behalf of his wife it is considered as if this was done by the actual hand of the wife? [If so,] also there as the agent was acting upon a mandate[22] it is considered as if the purchase of the wheat had been done by the actual hand of the principal. R. Abba, however, said: No; it was because when a man declares his possessions sacred, he has no intention to include the garments of his wife and children.[19] R. Zera demurred: Could it be said that in such circumstances a man would include in his mind even his *Tefillin*,[23] and we have nevertheless learnt that 'in the case of one who declares his possessions sacred, even his *Tefillin* would have to be included in the estimate'?[24] — Abaye, however, said to him: Yes, it is quite possible that a man may in his mind include even his *Tefillin*, as he who declares his possessions consecrated surely thinks that he

is performing a commandment,[25] but no man would in his mind include the garments of his wife and children as this would create ill feeling.[26] R. Oshaia demurred: Was this not stated here as applying also to liabilities for vows of value, regarding which case we have learnt that those who have incurred liabilities for vows of value can be forced to give a pledge,[27] though it could hardly be said that it was in the mind of a man that the giving of a pledge should be enforced upon himself? — R. Abba therefore said: One who declares his possessions consecrated is regarded as having from the very beginning transferred the ownership of the garments of his wife and children to them.

Our Rabbis taught: If one man buys a field in the name of another, he cannot compel the latter to sell it to him; but if he explicitly made this stipulation with the vendor he could force him to sell. What does this mean? Said R. Shesheth: What is meant is this: If one man buys a field from another in the name of the Exilarch,[28] he cannot subsequently force the Exilarch to sell it to him,[29] but if [when buying it] he explicitly made this stipulation[30] he could compel the Exilarch to sell it.[29]

The Master stated: 'If one buys a field in the name of the Exilarch, he cannot subsequently force the Exilarch to sell it', thus implying that he[31] would surely acquire title to it.[32] Shall we say that this differs from the view of the scholars of the West[33] who stated: Who indeed informed the vendor of the wheat so that he may transfer the ownership of the wheat to the owner of the money? — As far as that goes there would be no difficulty, as this could hold good where e.g., the vendee made this known to the owner of the field and also informed the witnesses [who signed the deed] about it. Read, however, the concluding clause: '[But if when buying it he explicitly made] this stipulation[30] he cold compel the Exilarch to sell it.'[29] But why should it be so? Why should the Exilarch not be entitled to say: 'I want neither your compliments[34] nor your insults.'[35] Abaye therefore said: what was meant is this: If one buys a field in the name of another

1. With the understanding that the Profit if any will be shared equally by principal and agent.
2. I.e., the agent.
3. I.e., between principal and agent in accordance with the original arrangement.
4. I.e., the former Baraitha.
5. In the case of wool given to a dyer to dye red and he dyed it black, as *supra* p. 586.
6. From which it would follow that on account of the change in the object purchased the ownership of it passed over to the agent who would thus enjoy the whole of any profit derived.
7. So that the principal is thus entitled to share any profit that may result from the transaction, though in the case of a loss he can back out and put it completely on the agent as he acted not in accordance with his mandate.
8. Such as wool to be used for his own garment, and a chair for his own use, as *supra* p. 586.
9. As was the case here with the wheat or barley.
10. For in such a case where the principal was merely out for profit he surely did not intend to distinguish between the objects of the purchase.
11. Which is on a par with the case of wool and where a change transfers ownership; v. n. 2.
12. Stating that the profit would be divided between principal and agent.
13. V. *supra* n. 6.
14. V. Sanh. 17b.
15. Why then should the wheat not altogether be the property of the agent since he acted ultra vires and thus set aside the mandate.
16. Since the vendor had no knowledge of the existence of the contract of agency between the purchaser and the principal.
17. Whereas in the case before us where the agent acted against the instructions, the mandate has thereby been set aside and the purchase could no more be ascribed to the principal.
18. Lev. XXVII, 1 ff.
19. Cf. *supra* p. 46.
20. 'Ar. VI, 5.
21. But if the ownership of the dye was transferred to the husband and not to his wife, why then should the Temple treasurer have no claim on it.
22. And not ultra vires.
23. I.e., Phylacteries; cf. Deut. VI. 8.
24. 'Ar. 23b. V. B.B. (Sonc. ed.) p. 652, n. 11.
25. Which in his view outweighs that of Deut. VI, 8.

26. And thus counteract the very purpose and function of sanctity and Sanctuary; Isa. LXI, 8 and Mal. I, 13; Mak. 11a.
27. 'Ar. 21a, *supra* 40a.
28. He asked him to draw up the deed in the name of the Exilarch for the purpose of frightening away possible disputants.
29. I.e., to draw up a new deed in the name of the actual purchaser.
30. To the vendor.
31. I.e., the actual purchaser.
32. Though the deed was drawn up in the name of the Exilarch.
33. V. *supra* p. 594.
34. In drawing up the deed in my name.
35. In making me appear as a dealer in land.

Baba Kamma 103a

[such as] the Exilarch[1] he cannot compel the vendor to sell it to him again. But if when buying it he explicitly made this stipulation he could compel the vendor to sell it to him again.[2] The Master stated: 'If one man buys a field in the name of another [such as] the Exilarch, he cannot compel the vendor to sell it to him again'. But is this not quite obvious? — You might, however, have said that the vendee could argue: 'You very well knew that I was taking the field for myself, and that [in buying it in the name of the other person] I merely wanted protection, and as I was surely not prepared to throw away money for nothing I undoubtedly made the purchase on the understanding that a new deed should be drawn up for me [by you].' It is therefore made known to us that the vendor can retort to him: 'It is for you to make arrangements with the person in whose name you bought the field that he should draw up for you a new title deed.'

'But if when buying it he explicitly made this stipulation he could compel the vendor to sell it to him again.' But is this not obvious? — No, it is required to meet the case where the vendee said to the witnesses in the presence of the vendor: 'You see that I want another deed.' You might in this case think that the vendor could say to him: 'I thought that you referred to a deed to be drawn up by the one in whose name you bought the field'; it is therefore made known to us that the vendee can reply to him: 'It was for that purpose that I took the trouble and stated to the witnesses in your own presence, [to show] that it was from you that I wanted the other deed.'

R. Kahana transmitted some money for the purchase of flax. But as flax subsequently went up in price, the owners of the flax sold it [on his behalf]. He thereupon came before Rab and said to him: What shall I do? May I go and accept the purchase money?[3] — He replied to him: If when they sold it they stated that it was Kahana's flax, you may go and receive the money,[4] but if not you may not accept it.[5] But was this ruling made in accordance with the view of the Western scholars who asked: 'Who was it that informed the vendor of the wheat so that he might transfer the ownership of his wheat to the owner of the money?[6] [But what comparison is there?] Had R. Kahana given four to receive eight [so that it were usury]? Was it not his flax[7] which had by itself gone up in price and which was definitely misappropriated [by the vendors],[8] and regarding this we have learnt that 'All kinds of robbers have to pay in accordance with the value at the time of the robbery'?[9] — It may, however, be said that there it was a case of advance payment.[10] and R. Kahana had never pulled the flax [to acquire title to it],[11] and Rab was following his own reasoning, for Rab [elsewhere] stated: Advance payment[10] [at present prices] may be made for [the future delivery of] products,[12] but no advance payment [at present prices] may be made [if the value of the products will subsequently be paid] in actual money[13] [in lieu of them].

MISHNAH. IF ONE MAN ROBBED ANOTHER TO THE EXTENT OF A *PERUTAH*[14] AND TOOK [NEVERTHELESS] AN OATH[15] [THAT HE DID NOT DO SO], HE WOULD HAVE TO CONVEY IT PERSONALLY TO HIM[16] [EVEN AS FAR AS] TO MEDIA.[17] HE MAY GIVE IT NEITHER TO HIS SON NOR TO HIS AGENT, THOUGH HE MAY GIVE IT TO THE SHERIFF

OF THE COURT OF LAW. IF THE PLAINTIFF DIED, THE ROBBER WOULD HAVE TO RESTORE IT TO THE HEIRS. IF HE REFUNDED TO HIM THE PRINCIPAL BUT DID NOT PAY HIM THE [ADDITIONAL] FIFTH,[18] OR IF THE OTHER EXCUSED HIM THE PRINCIPAL THOUGH NOT THE FIFTH, OR EXCUSED HIM BOTH ONE AND THE OTHER, WITH THE EXCEPTION, HOWEVER, OF LESS THAN THE VALUE OF A *PERUTAH* ON ACCOUNT OF THE PRINCIPAL, HE WOULD NOT HAVE TO GO AFTER HIM.[19] IF, HOWEVER, HE PAID HIM THE FIFTH BUT DID NOT REFUND THE PRINCIPAL, OR WHERE THE OTHER EXCUSED HIM THE FIFTH BUT NOT THE PRINCIPAL, OR EVEN WHERE HE REMITTED HIM BOTH ONE AND THE OTHER, WITH THE EXCEPTION, HOWEVER, OF THE VALUE OF A *PERUTAH* ON ACCOUNT OF THE PRINCIPAL, HE WOULD HAVE TO CONVEY IT PERSONALLY TO HIM.[20] IF HE REFUNDED TO HIM THE PRINCIPAL AND TOOK AN OATH[21] REGARDING THE FIFTH,[18]

1. [MS.M. omits 'the Exilarch'; in curr. edd. it is bracketed.]
2. V. p. 596, n. 2.
3. For which the flax was sold to the subsequent purchasers; would the acceptance of this increase not be a violation of the laws of usury; v. Lev. XXV, 36-37. Cf. also B.M. V, 1.
4. For in this case they acted on your behalf and the purchase money received was given to become yours.
5. For it would appear that for a smaller amount of money received from you, you were subsequently given a bigger sum, and this is against the spirit of the law of usury.
6. V. *supra* p 594. So that in this case too the purchase money received from the subsequent vendees was not automatically transferred to R. Kahana when his name was not mentioned at the time of the sale.
7. After it had legally been transferred to him.
8. Who sold it in his absence.
9. *Supra* 93b. And the value of the flax at the time of robbery in this case was exactly the amount of the purchase money received for it at the second sale.
10. I.e., when the vendors received the money from R. Kahana they were not yet in possession of flax at all, but acted in accordance with B.M. 72b.
11. In accordance with Kid. I, 5 and B.M. IV, 2.
12. I.e., where the very products stipulated for are to be delivered.
13. As this case would amount to the handing over of a smaller sum of money to be paid by a bigger amount and would thus appear to act against the spirit of the prohibition of usury.
14. A small coin (v. Glos.); this being the minimum amount of pecuniary value in the eyes of the law.
15. Falsely.
16. In accordance with Lev. V. 24.
17. Even where silver and gold are not of great importance; cf. Isa. XIII, 17. also Kid. 12a.
18. Lev. V, 24.
19. As the payment of the Fifth is not an essential condition in the process of atonement.
20. V. p. 598, n. 12.
21. v. p. 598. n. 11.

Baba Kamma 103b

HE WOULD HAVE TO PAY HIM A FIFTH ON TOP OF THE FIFTH AND SO ON UNTIL THE PRINCIPAL BECOMES REDUCED TO LESS THAN THE VALUE OF A *PERUTAH*. SO ALSO IS THE CASE REGARDING A DEPOSIT, AS IT IS STATED: IN THAT WHICH WAS DELIVERED HIM TO KEEP, OR IN FELLOWSHIP, OR IN A THING TAKEN AWAY BY VIOLENCE, OR HATH DECEIVED HIS NEIGHBOUR, OR HATH FOUND THAT WHICH WAS LOST AND LIETH CONCERNING IT AND SWEARETH FALSELY,[1] HE HAS TO PAY THE PRINCIPAL AND THE FIFTH AND BRING A TRESPASS OFFERING.[2]

GEMARA. This is so [apparently] only where the robber had taken an oath against him, but if he had not yet taken an oath this would not be so. But would this be not in agreement either with R. Tarfon or with R. Akiba? For we have learnt: If a man robbed one out of five persons without knowing which one he robbed, and each one claims that he was robbed, he may set down the misappropriated article between them and depart. This is the view of R. Tarfon. R. Akiba, however, said that this is not the way to liberate him from

sin; for this purpose he must restore the misappropriated article to each of them.[3] Now, in accordance with whose view is the ruling of our Mishnah? If in accordance with R. Tarfon, did he not say that even after he had sworn he may set down the misappropriated article among them and depart?[4] If again in accordance with R. Akiba, did he not say that even where no oath was taken he would have to restore the [value of the] misappropriated article to each of them? — It might still be in accordance with R. Akiba; for the statement of R. Akiba that he would have to pay for the misappropriated article to each of them was made only where an oath was taken, the reason being that Scripture stated: And give it unto him to whom it appertaineth in the day of his being guilty.[5] R. Tarfon, however, held that though an oath was taken, our Rabbis have still made an enactment to facilitate repentance, as indeed taught: R. Eleazar b. Zadok says: A general[6] enactment was laid down to the effect that where the expense of personally conveying the misappropriated article would be more than actual principal, he should be able to pay the principal and the Fifth to the Court of Law and thereupon bring his guilt offering and so obtain atonement. And R. Akiba?[7] — He argues that the Rabbis made the enactment only where he knew whom he robbed, in which case the amount misappropriated would ultimately be restored to the owner,[8] whereas where he robbed one of five persons and does not know whom he robbed, in which case the amount misappropriated could not be restored to its true owner, our Rabbis did surely not make the enactment.

R. Huna b. Judah raised an objection [from the following]: R. Simeon b. Eleazar said that R. Tarfon and R. Akiba did not differ in regard to one who bought [an article] from one out of five without knowing from whom he bought it, both holding that he may put down the purchase money among them and depart.[9] Where they differed was regarding one who robbed one out of five persons without knowing whom he robbed, R. Tarfon maintaining that he may leave the value of the misappropriated article among them and depart, whereas R. Akiba says that there could be no remedy for him unless he pays for the misappropriated article to each of them.[10] Now, if you assume that an oath was taken here, what difference is there between purchasing and misappropriating?[11]

Raba further objected [from the following]: It once happened that a certain pious man bought an article from two persons without knowing from whom he had bought it, and when he consulted R. Tarfon, the latter said to him: 'Leave the purchase money among them and depart', but when he came to R. Akiba he said to him: 'There is no remedy for you unless you pay each of them.' Now, if you assume that a [false] oath was taken here, would a pious man swear falsely?[12] Nor can you say that he first took an oath and subsequently became a pious man, since wherever we say that 'it once happened with a certain pious man,' he was either R. Judah b. Baba or R. Judah b. Il'ai,[13] and, as is well known, R. Judah b. Baba and R. Judah b. Il'ai were pious men from the very beginning![14] — [The ruling of the Mishnah] must therefore be in accordance with R. Tarfon, for R. Tarfon would agree where a false oath was taken,[15] the reason being that Scripture stated, And give it unto him to whom it appertaineth in the day of his trespass offering.[16] but R. Akiba maintained that even where no oath was taken, a fine has to be imposed.

Now, according to R. Tarfon, let us see. Where he took an oath he would surely not be subject [to the law][17] unless he admitted his guilt.[18] Why then only in the case where HE TOOK AN OATH? Would not the same hold good even where no oath was taken, as indeed taught: 'R. Tarfon agrees that if a man says to two persons, I have robbed one of you and do not know whom, he would have to pay each of them a *maneh*[19]

1. Lev. V, 21-22.
2. Ibid. 25.
3. B.M. 37a. Yeb. 118b.
4. Why then is the robber enjoined by the ruling in our Mishnah here to convey it to the plaintiff personally even so far as to Media?
5. V. Lev. V, 24.
6. Lit., 'great'.
7. What of the enactment?
8. Through the Court of Law.
9. As in this case no crime was committed by him.
10. Yeb. 118b.
11. Since in both cases the crime of perjury was committed.
12. I.e. could a person who committed perjury be called pious?
13. Tem. 15b; v. *supra* p. 454, n. 5.
14. It is therefore pretty certain that in the case of the pious man no false oath was taken and that R. Akiba maintained his view even in such circumstances, and if so how could our Mishnah here have confined its ruling to cases of perjury?
15. That proper restoration has to be made.
16. Lev. V. 24.
17. Laid down in our Mishnah.
18. On the analogy of Num. V, 7.
19. I.e., a hundred *zuz*; v. Glos.

Baba Kamma 104a

since he made a voluntary admission'?[1] — Raba therefore said: The case of our Mishnah is different altogether, for since he knows whom he robbed and in fact has admitted it, so that it is possible to restore the misappropriated value to the owner, it is considered as if the plaintiff had said to him: Let it [for time being] be in your possession. It is therefore only in the case where an oath was taken that though [it is considered as if] he said to him: Let it [for time being] be in your possession, yet since the robber is in need of atonement,[2] this is not sufficient until it actually comes into the plaintiff's hands, whereas where no oath was taken, the misappropriated article is considered as a deposit with him until the owner comes and takes it.[3]

HE MAY GIVE IT NEITHER TO HIS SON NOR TO HIS AGENT. It was taught: Where an agent was appointed in the presence of witnesses [to receive some payment of money] R. Hisda said that he would be a [properly accredited] agent,[4] but Rabbah said that he is still not an agent [to release the payer of responsibility]. R. Hisda said that he would be a [properly accredited] agent, for it was for this purpose that he took the trouble to appoint him in the presence of witnesses, so that he should stand in his place.[4] But Rabbah said that he is still not an agent [to release the payer of responsibility], for he meant merely to state that this man is honest and if you are prepared to rely upon him you may rely, and if you are prepared to send the payment through him you may send it through him.[5]

We have learnt: If one [agreed to] borrow a cow and the lender sent it by the hand of his son or by the hand of his slave or by the hand of his agent, or even by the hand of the son or by the hand of the slave or by the hand of the agent of the borrower, and it so happened that it died on the way, he would be exempt.[6] Now, how are we to picture this agent?[7] If he was not appointed[8] in the presence of witnesses, whence could we know that he was an agent at all? Must it therefore not be that he appointed him in the presence of witnesses and it is nevertheless stated that the [would-be] borrower is exempt, in contradiction to the view of R. Hisda? — It is as R. Hisda [elsewhere][9] said, that he was a hireling or a lodger of his;[10] so also here he was a hireling or a lodger of his.[10]

We have learnt: HE MAY GIVE IT NEITHER TO HIS SON NOR TO HIS AGENT.[11] How are we to picture this agent? If he did not appoint him in the presence of witnesses, whence could we know that he was appointed an agent at all? Does it therefore not mean that he appointed him in the presence of witnesses?[12] — R. Hisda however interpreted it as referring to a hireling or a lodger.[10] But what would be the law where the agent was appointed in the presence of witnesses? Would he indeed have to be

considered a [properly accredited] agent?[13] Why then state in the concluding clause, HE MAY GIVE IT TO THE SHERIFF OF THE COURT OF LAW, and not make the distinction in the same case by saying that these statements refer only to an agent who was not appointed in the presence of witnesses, whereas if the agent was appointed in the presence of witnesses he would indeed be considered a [properly accredited] agent?[14] — It may, however, be said that on this point [the Tanna] could not state it absolutely. Regarding the sheriff of the Court, no matter whether the plaintiff authorized him or whether the robber authorized him, he could state it absolutely that he is considered a [properly accredited] agent, whereas regarding an agent appointed in the presence of witnesses who if he were appointed by the plaintiff would be considered an agent, but if appointed by the robber would certainly not be a valid agent, he could not State it so absolutely.[15] This would indeed be contrary to the view of the following Tanna, as taught: R. Simeon b. Eleazar says: If the sheriff of the Court of Law was authorized by the plaintiff [to receive payment] though not appointed by the robber [to act on his behalf], or if he was appointed by the robber [to act on his behalf] and the plaintiff sent and received the payment out of his hands, there would be no liability in the case of accident.[16]

R. Johanan and R. Eleazar both said that an agent appointed in the presence of witnesses would be a [properly accredited] agent;[14] for if you raise an objection from the ruling in our Mishnah,[17] [it might be answered] that the agent there was [not appointed but] placed at his[18] disposal, as where he said to him,[19] 'There is some money owing to me from a certain person who does not forward it to me. It may therefore be advisable for you to be seen by him, since perhaps he has found no one with whom to forward it,'[20] or as explained by R. Hisda, that he was a hireling or a lodger of his.[21]

Rab Judah said that Samuel stated that

1. Tosaf. Yeb. XIV, 3; B.M. 37b.
2. Cf. Lev. V, 24-25.
3. The Mishnah may thus be in agreement with either R. Akiba or R. Tarfon.
4. And if some accident should happen with the money whilst still in his hands the payer would not be responsible
5. But the money will still be in the charge of the payer.
6. B.M. VIII, 3.
7. Of the would-be borrower.
8. By the would-be borrower.
9. V. the discussion which follows.
10. But not a duly accredited agent by law; cf. Shebu. 46b.
11. *Supra* 103a.
12. [And yet the robber is not released, by handing it over to him, from responsibility, which contradicts R. Hisda.]
13. Even to the extent of having handed over to him by the robber the misappropriated article.
14. V. previous note.
15. Lit., 'it was not decided with him.'
16. Cf. Tosef. X, 5. Proving that where it was the robber who appointed the sheriff, so long as the payment did not reach the plaintiff, the robber is not yet released from responsibility, as against the interpretation of the Mishnah releasing the robber in such a case.
17. V. p. 603. n. 7.
18. I.e., the robber's.
19. I.e., to the agent.
20. Such a request is by no means sufficient to render him an agent.
21. *Supra* ibid.

Baba Kamma 104b

it is not right to forward [trust] money through a person whose power of attorney is authenticated by a mere figure,[1] even if witnesses are signed on it [to identify the authentication]. R. Johanan, however, said: If witnesses are signed on it [to identify the authentication] it may be forwarded. But I would fain say: In accordance with the view of Samuel what remedy is available?[2] — The same as in the case of R. Abba,[3] to whom money was owing from R. Joseph b. Hama,[4] and who therefore said to R. Safra:[5] 'When you go there, bring it to me,' and it so happened that when the latter came there, Raba the son [of the debtor] said to him, 'Did the creditor give you a written statement that

by your accepting the money he will be deemed to have received it?'[6] and as he said to him, 'No,' he rejoined, 'If so, go back first and let him give you a written statement that by your acceptance he will be deemed to have received the money.'[6] But ultimately he said to him, 'Even if he were to write that by your acceptance he will be deemed to have received the money,[6] it would be of no avail, for before you come back R. Abba might perhaps [in the meantime] have died,[7] and as the money would then already have been transferred to the heirs the receipt executed by R. Abba would be of no avail.'[8] 'What then,' he asked, 'can be the remedy?' — 'Go back and let him transfer to you the ownership of the money by dint of land,[9] and when you come back you will give us a written acknowledgment that you have received the money.'[10] as in the case of R. Papa[11] to whom twelve thousand *zuz* were owing from men of Be-Huzae[12] and who transferred the ownership of them to Samuel b. Abba[13] by dint of the threshold of his house,[9] and when the latter came back the former [was so pleased that he] went out to meet him as far as Tauak.[14]

IF HE REFUNDED HIM THE PRINCIPAL BUT DID NOT PAY HIM THE FIFTH … HE WOULD NOT HAVE TO GO AFTER HIM [FOR THAT]. This surely proves that the Fifth is a civil liability,[15] so that were the robber to die[16] the heirs would have to pay it. We have also learnt: **IF HE REFUNDED TO HIM FOR THE PRINCIPAL AND TOOK AN OATH REGARDING THE FIFTH, HE WOULD HAVE TO PAY HIM A FIFTH ON TOP OF THE FIFTH,** similarly proving that the Fifth is a civil liability. It was moreover taught to the same effect: If one man robbed another but took an oath [that he did not do so] and [after admitting his guilt he] died, the heirs would have to pay the principal and the Fifth, though they would be exempt from the trespass offering. Now, since heirs are subject to pay the Fifth which their father would have had to pay, [it surely proves that the Fifth is a civil liability which has to be met by heirs]. But a contradiction could be raised [from the following]: 'I would still say that the case where an heir has not to pay the Fifth for a robbery committed by his father is only where neither he nor his father took an oath.[17] Whence could it be proved that [the same holds good] where he though not his father, took an oath or his father but not he took an oath or even where both he and his father took oaths? From the significant words, *That which he took by robbery or the thing which he hath gotten by oppression*[18] whereas in this case he[19] has neither taken violently away nor deceived anybody.'[20] — Said R. Nahman: There is no contradiction, as in one case the father admitted his guilt [before he died],[21] whereas in the other he[22] never admitted it. But if no admission was made, why should the heirs have to pay even the principal? If, however, you argue that this will indeed be so [that they will not have to pay it].[23] since the whole discussion revolves here[23] around the Fifth, does it not show that the principal will have to be paid? It was moreover taught explicitly: 'I would still say that the case where an heir has to pay the principal for a robbery committed by his father was only where both he and his father took oaths or where his father though not he, or he though not his father took an oath, but whence could it be proved that [the same holds good] where neither he nor his father took an oath? From the significant words: *The misappropriated article* and *the deceitfully gotten article, the lost article and the deposit*[24] as [Yesh Talmud=] this is certainly a definite teaching.'[25] And when R. Huna was sitting and repeating this teaching, his son Rabbah[26] said to him: Did the Master mean to say Yesh Talmud [i.e. there is a definite teaching on this subject] or did the Master mean to say Yishtallemu [i.e., it stands to reason that the heirs should have to pay]? He replied to him: I said Yesh Talmud [i.e. there is a definite teaching on the subject] as I maintain that this could be amplified from the [added] Scriptural expressions.[27] — It must therefore be said that what was meant by the statement 'he made no admission' was that the father made

no admission though the son did. But why should the son not become liable to pay even a Fifth for his own oath?[28] — It may, however, be said that the misappropriated article was no longer extant in this case.[29] But if the misappropriated article was no longer extant, why should he pay even the principal?[30] — No; it might have application where real possessions were left.[31] (But were even real possessions to be left, of what avail would it be since the liability is but an oral liability, and, as known,[32] a liability by mere word of mouth can be enforced neither on heirs nor on purchasers?[33] — It may however be said

1. Except at the sender's risk. If the figure was of people of great renown it would suffice; (Tosaf. a.l.)
2. In the case of power of attorney that the payer be released from further responsibility.
3. Who settled in the Land of Israel, for which cf. Ber. 24b.
4. Who lived in Mehoza in Babylon. cf. Git. 14a.
5. Who travelled extensively, cf. *infra* 116a.
6. And thus released my father from further responsibility.
7. On account of old age.
8. For the contract of agency as any other executory contract would by the death of the principal become null and void, just as he then instantly becomes deprived of the ownership of all his possessions.
9. In accordance with Kid. 26a, and *supra* p 49.
10. As in that case your receipt will suffice, you being the legal owner of the sum claimed.
11. Who was engaged in commerce in a large way; v. Ber. 44b.
12. [Modern Khuzistan, S.W. Persia; Obermeyer. p. 204 ff.]
13. Cf. B.B. 77b and 150b, where 'b. Aha' is in the text as is also in MS.M. and who is mentioned together with R. Papa in Naz. 51b and Men. 34a.
14. [S. of Naresh, the home of R. Papa.]
15. As it differs from the Principal only regarding the ruling stated in the Mishnah.
16. Before having paid the Fifth.
17. Falsely.
18. Lev. V, 23.
19. I.e., the heir.
20. This ruling contradicts the conclusion arrived at above that the Fifth is a civil liability and that heirs would have to pay it! V. *Supra* on Lev. V, 23.
21. In which case he has already become liable for the Fifth and the heirs would have to pay it.
22. I.e., neither the father nor the son, but cf. the discussion that follows.
23. In the latter case.
24. Cf. Lev. V, 23.
25. Sifra on Lev. V, 23.
26. Who did not catch the correct pronunciation of the last phrase in the original and was therefore doubtful as to whether it constituted two words or one word.
27. From the objects of payment enumerated in detail in Lev. V, 23. But if no admission whatever was made why should even the principal be paid?
28. When he took it falsely.
29. And as according to the Mishnaic ruling *infra* 111b the son could in such a case not be made responsible for the misappropriated article, by committing perjury he rendered himself subject to Lev. V, 4, but not to the Fifth, etc. ibid. 24-25.
30. Since the Mishnaic ruling, *infra loc. cit.* is to apply.
31. In which case the heirs are liable, v. *loc. cit.*
32. V. B.B. 42a, 157a and 175a.
33. As a liability which is not supported by a legally valid document or judicial decision is only personal with the debtor.

Baba Kamma 105a

that [before the father died] he had already appeared in court[1] [and liability was established against him].[2] But if he had already appeared in court[1] [and liability had been established on the denial of which the son took a false oath])[3] why then should the son not pay even the Fifth?[4] — Said R. Huna the son of R. Joshua: Because a Fifth is not paid for the denial of a liability which is secured upon real estate.[5] But Raba said [that the misappropriated article was still extant in this case as the reason that the son need not pay a Fifth for his own false oath is because] we were dealing here with a case where [the misappropriated article was kept in] his father's bag[6] that was deposited with others.[7] The principal therefore must be paid since it was subsequently discovered to be in existence, whereas the Fifth has not to be paid since when the son took the oath he meant to swear truly, as at that time he did not know

[that there was a misappropriated article in the estate].

WITH THE EXCEPTION, HOWEVER, OF LESS THAN THE VALUE OF A *PERUTAH* [DUE] ON ACCOUNT OF THE PRINCIPAL HE WOULD NOT HAVE TO GO AFTER HIM. R. Papa said: This Mishnaic ruling can apply only where the misappropriated article was no more in existence, for where the misappropriated article was still in existence the robber would still have to go after him, as there is a possibility that it may have risen in value.[8] Others, however, said that R. Papa stated that there was no difference whether the misappropriated article was in existence or not in existence, as in all cases he would not have to go after him, since we disregard the possibility that it may rise in price.[8]

Raba said: If one misappropriated three bundles [of goods altogether] worth three perutahs, but which subsequently fell in price and become worth only two, and it so happened that he restored two bundles, he would still have to restore the third: this could also be proved from the [following] teaching of the Tanna:[9] If one misappropriated leaven and Passover meanwhile came and went,[10] he may say to the plaintiff, Here there is thine before thee.[11] The reason evidently is that the misappropriated article is intact, whereas if it were not intact, even though it has at present no pecuniary value, he would have to pay on account of the fact that it originally[12] had some pecuniary value. So also in this case,[13] though the bundle is now not of the value of a *perutah*, since originally it was of the value of a *perutah* he must pay for it.

Raba raised the question: What would be the law where he misappropriated two bundles amounting in value to a *perutah* and returned the plaintiff one? Do we lay stress on the fact that there is not now with him a misappropriated object of the value of a *perutah*,[14] or do we say that since he did not restore the robbery[15] which was with him he did not discharge his duty?[16] Raba himself on second thoughts solved it thus: There is neither a robbery here[17] nor is there the performance of restoration here.[18] But if there is no robbery here,[17] is it not surely because there was restoration here? — What he meant was this: Though there remained no robbery here,[19] the performance of the injunction of restoration[20] was similarly not performed here.[21]

Raba said: It has been definitely stated[22] that a Nazirite who performed the duty of shaving[23] but left two hairs unshaved performed nothing at all [of the injunction]. Raba asked: What would be the law where he [subsequently] shaved one of the two and the other fell out of its own accord? — Said R. Aha of Difti[24] to Rabina: How could it have been doubtful to Raba whether a Nazirite would have performed his duty by shaving one hair after another?[25] — He replied:[26] No; the query has application where, e.g., one of the two hairs fell out of itself[27] and the other was shaved by him: Shall we say that [since] now there is no minimum of hair left unshaved [the duty of shaving has been performed], or was there perhaps no performance of shaving since originally he had left two hairs [unshaved] and when he [made up his mind to] shave them now, there were not two hairs to be shaved? On second thoughts Raba himself solved it thus: There is neither any hair here, nor is there the performance of shaving here. But if there is no hair [left] here, was not the duty of shaving surely performed here? — What he meant was this: Though there remained no hair, yet the performance of the injunction of shaving was not performed here.[28]

Raba also said: It has been stated that if an earthenware barrel[29] had a hole which was filled up with lees, they would render it safe [and secure[30] while in a tent where a corpse of a human being was kept, as the barrel would be considered to have a covering tightly fastened upon it].[31] Raba thereupon asked: What would be the law where only half of the hole was blocked up?[32] Said R. Yemar to R.

Ashi: Is this not covered by our Mishnah? For we have learnt: 'If an earthenware barrel[33] had a hole which was filled up with lees, they would render it safe [and secure[34] while in a tent where a corpse of a human being was kept]. If it was corked up with vine shoots[35] it would not do unless it was smeared with mortar.[36] If there were two vine shoots corking it up they would have to be smeared on all sides as well as between one shoot and another.'[37] Now the reason why this is so is because it was smeared, so that if it would not have been smeared this would not have been so. But why should this not be like a case where half of the hole was blocked up?[38] — It might, however, be said that there is no comparison at all: for in that case if he did not smear it the blocking would not hold at all,[39] whereas here[40] half of the hole was blocked up with such a material as would hold.

Raba further said: It was stated: If one misappropriated leaven and Passover came and went, he may say to him. Here there is thine before thee.[41] Raba thereupon asked:

1. **Where he was summoned on the instigation of witnesses after he had already denied the claim with a false oath; in which case there is no liability of a Fifth, v. Mishnah 108b. Tosaf. a.l.**
2. **On the strength of impartial evidence.**
3. **The text contained in parenthesis, i.e. 'But … oath' is stated by Rashi a.l. to have been an unwarranted insertion on the part of unauthorized scribes, since according to the Mishnah *infra* 121a, the children are liable to make restitution where real possessions were left to them by their father; v. however Tosaf. a.l.**
4. **For the oath he himself took falsely.**
5. **As for the denial of such a liability no oath could be imposed; v. Shebu. VI, 5 and 37b.**
6. **Cf. [G], *bisaccium*.**
7. **So that while the son took the oath that the article was not with him, he meant to swear truly and could therefore not be made liable for perjury; cf. Shebu. 36b.**
8. **Cf. Kid. 12a.**
9. **Since at the time of the robbery its value was not less than a *perutah*.**
10. **And thus rendered the leaven unfit for any use.**
11. **Since no tangible change took place in the misappropriated article, v. *supra* 96b.**
12. **I.e., at the time of the robbery.**
13. **Regarding the bundles.**
14. **And should accordingly not have to pay for it.**
15. **I.e., the whole of it.**
16. **In accordance with Lev. V, 23.**
17. **In the hands of the defendant.**
18. **Since the whole restoration was of an article worth less than a *perutah*.**
19. **V. p. 609, n. 10.**
20. **V. p. 609, n. 9.**
21. **V. p. 609. n. 11.**
22. **V. Naz. 42a.**
23. **In accordance with Num. VI, 9 and 18.**
24. **V. *supra* 73a.**
25. **Is this not generally so in all cases of shaving? The injunction has surely been performed, since at the beginning of shaving the minimum number of hairs was not lacking.**
26. **I.e., Rabina to R. Aha.**
27. **Before he started to shave the two hairs.**
28. **[I.e., he has not fulfilled the relevant precept (Tosaf.).]**
29. **That was covered on all sides.**
30. **From becoming defiled.**
31. **And thus not be subject to Num. XIX, 15.**
32. **[Reducing it to less than the prescribed minimum to act as outlet (v. Kel. IX, 8).]**
33. **V. p. 610, n. 11.**
34. **V.p. 610, n. 12.**
35. **But not with lees.**
36. **For the purpose of blocking up the hole well.**
37. **Kel. X, 6.**
38. **Hence the query of Raba should be answered in the negative.**
39. **Hence the smearing is essential.**
40. **I.e., in the query of Raba.**
41. ***Supra* 96b.**

Baba Kamma 105b

What would be the law where [instead of availing himself of this plea] the robber took a [false] oath[1] [that he never misappropriated the leaven]? Shall we say that since if the leaven were to be stolen from him he would have to pay for it, there was therefore here a denial of money,[2] or perhaps since the leaven was still intact and was [in the eyes of the law] but mere ashes, there was no denial here of an intrinsic pecuniary value?[3] [It appears that] this matter on which Raba was doubtful was pretty certain to Rabbah, for Rabbah stated: [If one man says to another] 'You have stolen my ox'. and the other says. 'I did not steal it at

all,' and when the first asks, 'What then is the reason of its being with you?' the other replies, 'I am a gratuitous bailee regarding it,' [and after affirming this defense by an oath he admitted his guilt], he would be liable,[4] for by this [false] defense he would have been able to release himself from liability in the case of theft or loss;[5] so also where the [false] defense was 'I am a paid bailee regarding it,' he would similarly be liable,[4] as he would thereby have released himself from liability in the case where the animal became maimed or died;[5] again, even where the false defense was that 'I am a borrower regarding it,' he would be liable,[4] for he would thereby have released himself from any liability were the animal to have died merely because of the usual work performed with it.[6] Now, this surely proves that though the animal now stands intact, since if it were to be stolen[7] the statement would amount to a denial of money, it is even now considered to be a denial of money.[4] So also here in this case though the leaven at present is considered [in the eyes of the law] to be equivalent to mere ashes, yet since if it were to be stolen he would have to pay him with proper value, even now there is a denial there of actual money.[4]

Rabbah[8] was once sitting and repeating this teaching when R. Amram pointed out to Rabbah a difficulty [from the following]: And lieth concerning it[9] [has the effect of] excepting a case where there is admission of the substance of the claim, as [where in answer to the plea] 'You have stolen my ox,' the accused says. 'I did not steal it,' but when the plaintiff retorts, 'What then is the reason of its being with you?' the defendant states, 'You sold it to me, you gave it to me as a gift, your father sold it to me, your father gave it to me as a gift, or the ox was running after my cow, or it came of its own accord to me, or I found it straying on the road, or I am a gratuitous bailee regarding it, or I am a paid bailee regarding it, or I am a borrower regarding it,' and after confirming [such a false defense] by an oath he admitted his guilt. But as you might say that he would be liable here, it is therefore stated further: And lieth concerning it,[9] to except a case like this where there is an admission of the substance of the claim'![10] — He replied:[11] This argument is confused, for the teaching there dealt with a case where the defendant tendered him immediate delivery[12] whereas the statement I made refers to a case where the animal was at that time kept on the meadow.[13] But what admission in the substance of the claim could there be in the defense 'You have sold it to me?' — It might have application where the defendant said to him, 'As I have not yet paid you its value, take your ox back and go.' But still what admission in the substance of the claim is there in the defense, 'You gave it to me as a gift or your father gave it to me as a gift'? — It might be [admission] where the defendant said to him, '[As the gift was made] on the condition that I should do you some favor and since I did not do anything for you, you are entitled to take your ox back and go.' But again, where the defense was, 'I found it straying on the road,' why should the plaintiff not plead, 'You surely have had to return it to me'? — But the father of Samuel[14] said: The defendant was alleging, and confirming it by an oath: 'I found it as a lost article and was not aware that it was yours to return it to you.'

It was taught: Ben 'Azzai said: [The following] three [false] oaths [taken by a single witness[15] are subject to one law]:[16] Where he had cognizance of the lost animal but not of the person who found it, of the person who found it but not of the lost animal, neither of the lost animal nor its finder.[17] But if he had cognizance neither of the lost animal nor of its finder, was he not swearing truly?[18] — Say therefore: '[He had cognizance] both of the lost animal and of its finder.[19] To what decision does this statement[20] point? — R. Ammi said on behalf of R. Hanina: To exemption; but Samuel said: To liability. They are divided on the point at issue between the [following] Tannaim, as taught: 'Where a single witness was adjured[21] [and the oath was subsequently admitted by him to have

been false], he would be exempt, but R. Eleazar son of R. Simeon makes him liable.'[22] In what fundamental principle do they differ? — The [latter] Master[23] maintained that a matter which might merely cause some pecuniary liability[24] is regarded in law as directly touching upon money.[25] whereas the [other] Master maintained that it is not regarded as directly touching upon money.[26]

R. Shesheth said: He who [falsely] denies a deposit is [instantly] considered as if he had misappropriated it, and will therefore become liable for all accidents;[27] this is also supported by the [following] Tannaitic teaching:[28] [From the verse] And he lieth concerning it[29] we could derive the penalty,[30] but whence could the warning be derived? From the significant words: Neither shall ye deal falsely.[31] Now, does this not refer to the 'penalty' for merely having denied the money?[32] — No, it refers to the 'penalty' for the [false] oath.[33] But since the concluding clause refers to a case where an oath was taken, it surely follows that the commencing clause deals with a case where no oath was taken, for it was stated in the concluding clause:[28] [From the text] 'And sweareth falsely'[29] we can derive the penalty;[34] but whence can the warning be derived? From the injunction, 'Nor lie.'[35] Now, since the concluding clause deals with a case where an oath was taken, must not the commencing clause deal with a case where no oath was taken?[36] — It may, however, be said that the one clause as well as the other deals with a case where an oath was taken. But while in the case of the concluding clause the defendant admitted [his perjury], in that of the commencing clause witnesses appeared and proved it. Where witnesses appeared and proved the perjury,[37] the defendant would become liable for all accidents [from the very moment he took the false oath], whereas where he himself admitted his perjury he would be liable for the Principal and the Fifth and the trespass offering.[38] Rami b. Hama raised an objection [from the following]:[39] 'Where the other party was suspected regarding the oath.[40] How so? [Where he took falsely] either an oath regarding evidence[41] or an oath regarding a deposit[42] or an oath in vain.'[43] But if there is legal force in your statement,[44] would not that party have become disqualified from the very moment of the denial?[45] — It might, however, be said that we are dealing here with a case where the deposited animal was at that time placed on the meadow, so that the denial could not be considered a genuine one, since he might have thought to himself, 'I will get rid of the plaintiff for the time being [so that he should no more press me for it] and later I will go and deliver up to him the deposited animal.'[46] This view could even be proved [from the following statement]:[47] R. Idi b. Abin said that he who [falsely] denies a loan[48] is not yet disqualified from giving evidence,[49]

1. After Passover.
2. For which he should be subject to Lev. V, 21-25.
3. And if this is the case the perjurer should be subject only to Lev. V, 4-10.
4. In accordance with Lev. V, 21-25.
5. For which a thief is liable but not a bailee.
6. Which is a valid defense in the case of a borrower but not in that of a thief.
7. In the case he swore he was an unpaid bailee.
8. So in MS.M. [This is to be given preference to the reading 'Raba' of cur. edd. as Raba was doubtful on the matter under discussion.]
9. Lev. V, 22.
10. Why then has Rabbah made a statement to the contrary effect?
11. I.e., Rabbah to R. Amram.
12. Lit., 'said to him, here is thine.' In which case there is no denial of money.
13. And there is therefore a potential denial of money.
14. I.e., Abba b. Abba.
15. So interpreted by Rashi, but v. Malbim on Lev. V, 22, n. 374.
16. Referring to Lev. V, 1. On the question whether it refers to the law of liability or exemption v. the discussion that follows.
17. Cf. Sifra on Lev. V, 22.
18. And no perjury at all was committed.
19. And took nevertheless an oath to the contrary.
20. I.e., whether to that of liability or to that of exemption.
21. To deliver evidence on a pecuniary matter and he falsely denied any knowledge of it.
22. Shebu. 32a.

23. I.e. R. Eleazar b. Simeon who follows the view of his father, cf. *supra* 71b.
24. I.e., such as where the evidence in question would not directly have any bearing upon a pecuniary matter but might indirectly at a subsequent stage bring about a pecuniary liability; this is so in the case of one witness whose evidence is not sufficient to establish pecuniary liabilities as stated in Deut. XIX, 15, but whose testimony is accepted for the purpose of imposing an oath upon a defendant who, if unprepared to swear, would have to make full payment; v. Shebu. 40a and 41a.
25. And the law of Lev. V, 1 has to apply.
26. The law of Lev. V, 1 could therefore not apply in the case of one witness.
27. In accordance with the law applicable to robbers.
28. Sifra on Lev. XIX, 11.
29. Lev. V, 22.
30. The restitution he is obliged to make, ibid. 23.
31. Ibid. XIX, 11.
32. I.e., even before having committed perjury; the fine thus being his becoming liable for all accidents.
33. In accordance with Lev. V, 21-24.
34. The Fifth and Guilt offering.
35. Lev. XIX, 11.
36. The penalty thus being his becoming liable for all accidents.
37. In which case Lev. V, 21-24 does not apply as gathered from Num. V, 7; v. *infra* 108b.
38. V. p. 614, n. 13.
39. Shebu. VII, 4.
40. The plaintiff will take the oath.
41. Dealt with in Lev. V, 2 and Shebu. IV.
42. Cf. Lev. V, 21-23.
43. Cf. ibid. V, 4.
44. That by mere denial of a deposit the depositor becomes subject to the law of robbery.
45. Even before having taken the false oath.
46. For the ruling of R. Shesheth applies only to a case where it was definitely proved that at the time of the denial the deposit was actually in the hands of the depositor.
47. B.M. 4a, 5b and Shebu. 40b.
48. Without, however, having taken an oath.
49. For since the denial was not confirmed by an oath it might have been made merely for the time being. i.e., to get rid of the plaintiff who pressed for immediate payment.

whereas [if this was done] in the case of a deposit he would thereby become disqualified from giving evidence.[1] But did Ilfa not say that an oath transfers possession,[2] which appears to prove that it is only the oath which would transfer responsibility, whereas mere denial would not transfer responsibility?[3] But here also we are dealing with a case where the deposited article was at that time situated on the meadow.[4] Or if you wish I may say that what was meant to be conveyed by the statement that an oath transfers possession was as in the case of R. Huna, for R. Huna said that Rab stated: [Where one said to another,] 'You have a *maneh*[5] of mine' and the other retorted, 'I have nothing of yours'[6] and confirmed it by an oath[7] and then witnesses came forward [and proved the defendant to have perjured himself] he would be exempt[8] as it is stated: *And the owner thereof shall accept it and he shall not make restitution,*[9] implying that wherever the plaintiff accepted an oath, the defendant could no more be made liable to pay money.

To return to a previous theme: 'R. Huna said that Rab stated [that where one said to another]. "You have a *maneh* of mine" and the other rejoined. "I have nothing of yours" and confirmed it by an oath and subsequently witnesses came forward [and proved the defendant to have perjured himself] he would be exempt as it is stated: *And the owner thereof shall accept it and he shall not make restitution,* implying that wherever the plaintiff accepted an oath, the defendant could no more be made liable to pay money.' Raba thereupon said: We should naturally suppose that the statement of Rab is meant to apply to the case of a loan where the money was given to be spent,[10] but not to a deposit which always remains in the possession of the owner.[11] But [I affirm] by God that Rab made his statement even with reference to a deposit, as it was regarding a deposit that the text [of the verse quoted][12] was written. R. Nahman

was sitting and repeating this teaching.[13] when R. Aha b. Manyumi pointed out to R. Nahman a contradiction [from the following: If a man says to another] 'Where is my deposit?' and the other replies. 'It is lost,' and the depositor then says. 'Will you take an oath,' and the bailee replies. 'Amen!'[14] then if witnesses testify against him that he himself had consumed it, he has to pay only the Principal,[15] whereas if he admits [this] on his own accord, he has to pay the Principal together with a Fifth and bring a trespass offering?[16] — R. Nahman said to him: We are dealing here with a case where the oath was taken outside the Court of Law.[17] He rejoined:[18] If so read the concluding clause: [But if on being asked] 'Where is my deposit?', the bailee replied: 'It was stolen!', [and when the depositor retorted] 'Will you take an oath?', the bailee said, 'Amen!' if witnesses testify against him that he himself had stolen it, he has to repay double, whereas if he admits this on his own accord, he has to pay the Principal together with a Fifth and a trespass offering. Now, if you assume that the oath was taken outside the Court of Law, how could there be liability for double payment?[19] — He replied: I might indeed answer you that [though in the case of] the commencing clause [the oath was taken] outside the Court of Law, [in that of] the concluding clause [it was taken] in the Court of Law. But as I am not going to give you a forced answer I will therefore say that though in the one case as well as in the other the oath was taken in the Court of Law,[20] there is still no difficulty, as in the first case we suppose that the claimant anticipated the Court[21] [in administering the oath] and in the other case[22] he did not do so.[23] But Rami b. Hama said to R. Nahman: Since you do not personally accept this view of Rab, why are you pledging yourself to defend this statement of Rab? — He replied: I did it [merely] to interpret the view of Rab, presuming that Rab might have thus explained this Mishnaic text. But did not Rab quote a verse[24] to support his view?[25] — It might be said that the verse intends only to indicate that those who have to be adjured by [the law of] the Torah are only they who by taking the oath release themselves from payment,[26] [as it is stated: *'And the owner thereof shall accept it and he shall not make restitution,'*[24] [implying that it is] the one who [otherwise] would be under obligation to make it good that has to take the oath.

R. Hamnuna raised an objection [from the following]: 'Where an oath was imposed upon a defendant five times [regarding the same defense], whether in the presence of the Court of Law or not in the presence of the Court of Law, and he denied the claim [on every occasion], he would have to be liable[27] for each occasion. And R. Simeon said: The reason is that [on each occasion] it was open to him to retract and admit the claim.'[28] Now in this case you can hardly say that the action of the Court was anticipated, for it is stated: 'Where an oath was imposed upon a defendant' [which naturally would mean, by the sanction of the Court]; you can similarly not say that it was done outside the Court of Law, for it is stated 'in the presence of the Court of Law.'[29] As he[30] raised this difficulty so he also solved it, by pointing out that the text should be interpreted disjunctively: 'Where an oath was imposed upon him [by the Court, but taken] outside the Court of law,[31] or where it was administered in the presence of the Court of Law' but in anticipation of its action.[31] Raba raised an objection [from the following:] If a bailee[32] advanced a plea of theft regarding a deposit and confirmed it by an oath but subsequently admitted [his perjury], and witnesses came forward [and testified to the same effect], if he confessed before the appearance of the witnesses, he has to pay the Principal together with a Fifth and a trespass offering; but if he confessed after the appearance of the witnesses he has to repay double and bring a trespass offering.[33] Now, here it could not be said that it was outside the Court of Law, or that it was done in anticipation [of the action of the Court], since the liability of double payment[34] is mentioned here![35] — Raba

therefore said: To all cases of confession,[36] no matter whether he pleaded in defense loss or theft, Rab did not mean his statement to apply, for it is definitely written: *Then they shall confess*,[37] implying [that in all cases] the perjurer would have to pay the Principal and the Fifth, [and so also in the case] where he pleaded theft[38] and witnesses came forward [and proved otherwise], Rab similarly did not mean his statement to apply, for [it is in this case that] the liability for double payment [is laid down in Scripture];[39] the statement made by Rab applies only to the case where, e.g., he pleaded in defense loss[40] and after confirming it by an oath he did not admit his perjury but witnesses appeared [and proved it].[41] R. Gamda went and repeated this explanation[42] in the presence of R. Ashi who said to him: Seeing that R. Hamnuna was a disciple of Rab[43] and surely knew very well that Rab meant his statement to apply also to the case of confession,[44] since otherwise he would not have raised an objection from a case of confession, how then can you say that Rab did not mean his statement to apply to a case of confession?[44] — Said R. Aha the Elder to R. Ashi: R. Hamnuna's difficulty may have been this:

1. V. p. 614, n. 7.
2. As a deposit (falsely) denied by a bailee committing perjury will no less than in the case of conversion no longer remain in the possession of the depositor but is transferred to the responsibility of the bailee who has become subject to the law of robbery.
3. And not render the bailee a robber, contrary to the view expressed by R. Shesheth.
4. V. p. 615, n. 16.
5. V. Glos.
6. In which case there is strictly speaking neither a biblical nor a Mishnaic oath, but the 'Heseth' oath which is of later Rabbinic origin, for which v. Shebu. 40b.
7. Even though in the days of Rab an oath in such circumstances was by no means obligatory; v. also Tur. H.M. 87-8.
8. From having to pay the *maneh*, for the oath he took with the consent of the plaintiff had the effect of preventing any possible revival of the claim; the meaning that an oath transfers possession would therefore be that it conclusively bars any further action in the matter.
9. Ex. XXII. 10.
10. And no special act to transfer ownership and possession is necessary.
11. Even while in the hands of the bailee, in which case an act of conveyance is necessary, which could hardly he done by an oath.
12. Ex. XXII, 10.
13. Which R. Huna stated in the name of Rab.
14. 'So be it.' Which in these circumstances amounts to an oath to all intents and purposes; v. Shebu. 29b.
15. But not double payment as his defense was not theft, and no Fifth as he 'did not confess perjury.
16. In accordance with Lev. V, 22-25. Sheb. 49a. *Supra* 63b and *infra* 108b. Now, the commencing clause is in glaring contradiction to the view of Rab. The case of confession, however, dealt with in the concluding clause would present no difficulty as Rab's ruling could never apply in that case, as it would have been against Lev. V, 22-23 interpreted on the analogy to Num. V, 7; so Rashi but v. also Tosaf. a.l.
17. Being thus a mere private matter it could not bar the judicial reopening of the case, whereas the ruling of Rab applies to an oath taken at the sitting of the Court of Law.
18. I.e., R. Aha to R. Nahman.
19. Which could be imposed upon the bailee only if his defense of theft was confirmed by him by an oath administered to him by the Court of Law.
20. I.e., in one and the same place.
21. Lit., 'jumped in'.
22. The latter clause as well as Rab's statement.
23. There would therefore still be a difference between the oath in the commencing clause and the oath in the concluding clause, but only in the manner of adjuration and not in the place where it was administered.
24. Ex. XXII, 10.
25. How then could anyone depart from it?
26. I.e., the defendants; v. Shebu. 45a.
27. In accordance with Lev. V, 21-24.
28. Shebu. 36b.
29. This Mishnaic text, from which it could be gathered that, though an oath has already been imposed and taken, the case could still be reopened, will thus be in contradiction to the view of Rab!
30. I.e., R. Hamnuna.
31. [In which case it still remains a private matter and does not bar the judicial re-opening of the case.]
32. Lit., 'the owner of a house'; v. Ex. XXII, 7.

33. Shebu. 37b; *supra* 65a.
34. V. p. 618, n. 1.
35. Is this not in contradiction to the view of Rab?
36. Of perjury regarding a claim of pecuniary value.
37. Num. V, 7.
38. Confirming it by a false oath.
39. Ex. XXII, 6-8 as interpreted *supra* p. 368.
40. In which case the bailee could never become liable for double payment.
41. It was in such a case that Rab laid down the ruling that once the oath had been administered the claim could no more be put forward again.
42. Of Raba.
43. Cf. Sanh. 17b; v. also *supra* 74a, n. 10.
44. Of perjury.

Baba Kamma 106b

I could quite understand that if you were to say that if witnesses appeared after he took the oath [thus proving him to be a perjurer] he would have to pay, as it would be on account of this that we should make him liable to bring sacrificial atonement[1] for the oath on the last occasion, since it was always open to him to retract and admit the claim. But if you maintain that should witnesses appear after he took the oath he would be exempt, is it possible that whereas if witnesses were to have come and testified against him he would have been exempt,[2] we should rise and declare him liable to sacrificial atonement[1] for an oath on the mere ground that he could have been able to retract and confess [his perjury]? For the time being at any rate he has not made such a confession!

R. Hiyya b. Abba said that R. Johanan stated: 'He who [falsely] advances a plea of theft with reference to a deposit in his possession may have to repay double;[3] so also if he slaughtered or sold it, he may have to repay fourfold or fivefold.[4] For since a thief repays double[5] and a bailee pleading the defense of theft has to repay double, just as a thief who has to repay double, is liable to repay fourfold or fivefold in the case of slaughter or sale, so also a bailee who, when pleading the defense of theft regarding a deposit has similarly to repay double, should likewise have to repay fourfold or fivefold in the case of slaughter or sale.'[6] But how can you argue from a thief who has to repay double even in the absence of perjury to a bailee pleading the defense of theft where no double payment has to be made unless where a false oath was taken? — It might, however, be said that a thief and a bailee alleging theft are made analogous [in Scripture],[7] and no refutation could be made against an analogy [in Scripture].[8] This may be granted if we accept the view[9] that one verse deals with a thief and the other with a bailee [falsely] advancing the plea of theft, but if we adopt the view that both [the verses] *'If the thief be found …* 'and *'If the thief be not found'* deal with a bailee falsely advancing a plea of theft, what could be said?[10] — It may still be argued [that they were made analogous by means of the definite article[11] as instead of] 'thief' [it was written] 'the thief'. R. Hiyya b. Abba pointed out to R. Johanan an objection [from the following]: [If a depositor says.] 'Where is my ox?' [and the bailee pleads:] 'It was stolen,' [and upon the plaintiff's saying,] 'I want you to take an oath,' the defendant says 'Amen,'[12] and then witnesses testify against him that he consumed it, he would have to repay double.[13] Now, in this case, where it was impossible [for him] to consume meat even of the size of an olive[14] unless the animal was first slaughtered [effectively].[15] It was stated that he would repay double [thus implying that it is] only double payment which will be made but not fourfold and fivefold pay ments![16] We might have been dealing here with a case where it was consumed *nebelah*.[17] Why did he[18] not answer that it was consumed *terefah*?[19] — [He adopted] the View of R. Meir who stated[20] that a slaughter which does not [render the animal ritually] fit for consumption is still designated [in law] slaughter.[21] But again, why not answer that the ox was an animal taken alive out of a slaughtered mother's womb [and as such it may be eaten[22] without any ritual slaughter]?[23] — [But on this point too he[18] followed] the view of R. Meir who

said that an animal taken alive out of a slaughtered mother's womb is subject to the law of slaughter.[22] But still, why not answer that the ruling applied where, e.g., the bailee had already appeared in the Court, and was told[24] to 'go forth and pay the plaintiff'? For Raba stated:[25] [Where a thief was ordered to] go and pay the owner [and after that] he slaughtered or sold the animal, he would be exempt,[26] the reason being that since the judges had already adjudicated on the matter, when he sold or slaughtered the animal he became [in the eye of the law] a robber, and a robber has not to make fourfold and fivefold payments;[27] [but where they merely said to him] 'You are liable to pay him' and after that, he slaughtered or sold the animal he would be liable [to repay fourfold or fivefold], the reason being that since they have not delivered the final sentence upon the matter, he is still a thief![28] — To this I might say: Granting all this,[29] why not answer that the bailee was a partner in the theft and slaughtered the ox without the knowledge of his fellow partner [in which case he could not be made liable for fourfold or fivefold payment]?[30] It must therefore be that one out of two or three [possible] answers has been adopted.

R. Hiyya b. Abba said that R. Johanan stated: He who advanced in his own defense a plea of theft regarding a lost article[31] [which had been found by him] would have to repay double, the reason being that it is written: *For any manner of lost thing whereof one saith*.[32] R. Abba b. Memel pointed out to R. Hiyya b. Abba an objection [from the following:] *If a man shall deliver*[33] implies that the delivery by a minor[34] is of no effect [in law].[35] So far I only know this to be the case where he was a minor at the time of the delivery and was still a minor at the time of the demand, but whence could it be proved that this is so also in the case where at the time of the delivery he had been a minor though at the time of the demand he had already come of age? Because it says further: *The cause of both parties shall come before the judges*.[36] [thus showing that the law of bailment does not apply] unless the delivery and the demand were made under the same circumstances.[37] Now, if your view is sound,[38] why should this case [with the minor] not be like that of the lost article?[39] — He replied:[40] We are dealing here with a case where the deposit was consumed by the bailee while the depositor was still a minor.[41] But what would be the law where he consumed it after the depositor had already come of age? Would he have to pay?[42] If so, why state 'unless the delivery and the demand were made under the same circumstances,' and not 'unless the consumption[43] and the demand took place under the same circumstances'? — He said to him:[44] You should indeed read 'unless the consumption[45] and the demand took place under the same circumstances'. R. Ashi moreover said: The two cases[46] could not be compared, as the lost article came into the hands of the finder from the possession of a person of responsibility,[47] whereas [in the case of a minor] the deposit did not come to the bailee from the possession of a person of responsibility.

R. Hiyya b. Abba further said that R. Johanan stated: He[48] who puts forward a defense of theft in the case of a deposit could not be made liable[49] unless he denies a part and admits a part [of the claim], the reason being that Scripture states: This is it[50] [implying 'this' only].[50] This view is contrary to that of R. Hiyya b. Joseph. for R. Hiyya b. Joseph said:

1. In accordance with Lev. V, 21-26.
2. V. p. 616, n. 8.
3. If he confirmed the plea by an oath.
4. Cf. Ex. XXI, 37.
5. Ibid. XXII, 6.
6. V. *supra* 62b, 63b.
7. Lit. 'It is an analogy, hekkesh. In Ex. XXII, 6-8 as interpreted *supra* pp. 368 ff.
8. This being an axiomatic hermeneutic rule; v. *supra* 63b and Men. 82b.
9. For notes, v. *supra* 63b.
10. I.e., where then were the two made analogous in Scripture?
11. Which has the effect of denoting the thing par excellence as in Pes. 58b; v. also Kid. 15a.

12. V. p. 617. n. 5.
13. *Infra* 108b, v. also Shebu. 49a.
14. Which is the minimum quantity constituting the act of eating; cf. 'Er. 4b.
15. In accordance with the law referred to in Deut. XII, 21 and laid down in detail in Hul. III.
16. Does this not contradict the view expressed by R. Johanan that even fourfold or fivefold payment would have to be made?
17. I.e. where the animal was not slaughtered in accordance with the ritual, v. Glos., in which case the law of fourfold and fivefold payments does not apply, as laid down *supra* p. 445,
18. I.e., R. Johanan.
19. I.e., where an organic disease was discovered in the animal, v. Glos.; according to the view of R. Simeon stated *supra* p. 403 the law of fourfold and fivefold payments does similarly not apply.
20. Hul. VI, 2.
21. So that the law of fourfold and fivefold payments will apply which is also the anonymous view stated *supra* p. 403.
22. V. Hul. IV, 5.
23. On account of the ritual slaughter carried out effectively on the mother.
24. Before he slaughtered the animal, in which case he would not have to make fourfold and fivefold payments for a subsequent slaughter.
25. *Supra* 68b.
26. From fourfold and fivefold payments.
27. In fact no pecuniary fine at all; cf. *supra* p. 452.
28. Who is subject to the law of Ex. XXI, 37. Why then not give this answer?
29. That there was also some other answer to be given.
30. V. *supra* 78b.
31. *Supra* 57a and 63a.
32. V. Ex. XXII, 8.
33. Ex. XXII, 6.
34. Since he has not yet attained manhood; cf. Sanh. 69a.
35. Regarding the possible liability upon the bailee for double payment.
36. V. Ex. XXII, 8.
37. Cf. J. Shebu. VI, 5.
38. That there would be double payment in the case of perjury committed regarding a lost article.
39. Where there would be liability in the absence of any depositor at all.
40. I.e., R. Hiyya to R. Abba.
41. In which case the bailee had regarding that deposit never had any responsibility to a person of age.
42. Double payment for perjury.
43. Though not the delivery.
44. V. p. 623. n. 11.
45. V. p. 623, n. 14.
46. I.e. a lost article and a deposit of a minor.
47. Lit., 'understanding', i.e. the person who lost it.
48. I.e., an unpaid bailee.
49. To take the oath of the bailees and in case of perjury to have consequently to restore double payment.
50. And no more, which thus constitutes an admittance of a certain part and the denial of the balance.

Baba Kamma 107a

There is here an 'interweaving of sections',[1] as the words, this is it written here[2] have reference to loans.[3] But why a loan [in particular]? In accordance with Rabbah, for Rabbah stated:[4] 'On what ground did the Torah lay down[5] that he who admits a part of a claim has to take an oath?[6] Because of the assumption that no man is so brazen-faced as to deny [outright] in the presence of his creditor[7] [the claim put forward against him].[8] It could therefore be assumed that he[9] was desirous of repudiating the claim altogether, and the reason that he did not deny it outright is[10] because no man is brazen-faced [enough to do so].[11] It may consequently be argued that he was on this account inclined[12] to admit the whole claim; the reason that he denied a part was because he considered: Were I to admit [now] the whole liability, he will soon demand the whole claim from me; I should therefore [better] at least for time being get rid of him,[13] and as soon as I have the money will pay him.[14] It was on account of this that the Divine Law[15] imposed an oath upon him so that he should have to admit the whole of the claim.[16] Now, it is only in the case of a loan that such reasoning could apply.[17] whereas regarding a deposit the bailee would surely brazen it out [against the depositor].[18]

Rami b. Mama learnt: The four bailees

1. I.e., an interpolation of another passage; Ex. XXII, 8, v. n. 7.
2. Confining the imposition of the oath to cases of part-admission.

3. According to Rashi a.l. the phrase in Ex. XXII, 8 confining the oath to part. admission referred not to v. 6 but to 24; v. also Sanh. (Sonc. ed.) P. 5, n. 3; regarding deposits there would thus he an oath even in cases of total denial. For the interpretation of R. *Tam*, cf. Tosaf. a.l. and Shebu. 45b. The accepted view is expounded by Riba and Rashb., a.l. that the condition of part admission is attached to all cases of pecuniary litigation including deposits, providing the defenses were such as would avail also in cases of loans, such as e.g.. the denial of the contract or a plea of payment and restoration; v. also Maim. Yad., Sekiroth, 11, 11-12; Tur. H.M. 296, 2. The meaning in the Talmudic text here would therefore be 'ascribed as dealing with the defenses of loans.' For regarding the specific defenses in the case of a deposit, i.e. theft or loss or accident, a biblical oath is imposed even without an admission of part liability. But as Ex. XXII, 6 deals with two kinds of deposits, i.e. 'money or stuff' there is indeed an interweaving of sections in this paragraph, for a deposit of money might in accordance with B.M. III, 11, amount to an implied mutuum involving all the liabilities of a loan. In other systems of law it is indeed called depositum irregulare for which see Dig. 19.2.31; Moyle, Imp. Just. Inst. 396 and Goodeve on 'Personal Property', 6th Ed., 25. The phrase in Ex. XXII, 8 confining the oath to part admission is thus said to be ascribed as dealing exclusively with this depositum irregulare, i.e. with the bailment of money when it became a loan to all intents and purposes; v. also J. Shebu. VI, I.
4. B.M. 3a; Shebu. 42b.
5. In Ex. XXII. 7-8.
6. Whereas for total denial there is no biblical oath.
7. Who was his benefactor.
8. A total denial in the case of a loan is thus somehow supported by this general assumption; cf. also Shebu. 40b.
9. Who admitted a part of the claim.
10. Not perhaps on account of honesty.
11. The fact that he admitted a part of the claim is to a certain extent a proof that he found it almost impossible to deny the claim outright.
12. Lit., 'willing'.
13. At least so far as a part of the claim is concerned.
14. For the whole of the claim.
15. Ex. XXII, 7-8.
16. As he would surely be loth to commit perjury.
17. As the creditor was a previous benefactor of his.
18. As in this case the bailee was generally the benefactor and not necessarily the depositor, so that the whole psychological argumentation of Rabbah fails; [and an oath is thus to be imposed even where there is a total denial, which is contrary to the view reported by R. Hiyya b. Abba in the name of R. Johanan.]

Baba Kamma 107b

have to deny a part and admit a part [of the claim before the oath can be imposed upon them]. They are as follows: The unpaid bailee and the borrower, the paid bailee and the hirer.[1] Raba said: The reason of Rami b. Hama is [as follows]: In the case of an unpaid bailee it is explicitly written: *This is* it;[2] the law for the paid bailee could be derived [by comparing the phrase expressing] 'giving'[3] [to the similar term expressing] 'giving' in the section of unpaid bailee;[4] the law for borrower begins with *'and if a man borrow'*[5] so that the *waw* copula ['and'] thus conjoins it with the former subject;[6] the hirer is similarly subject to the same condition, for according to the view that he is equivalent [in law] to a paid bailee[7] he should be treated as a paid bailee, or again, according to the view that he is equivalent [in law] to an unpaid bailee,[7] he should be subject to the same conditions as the unpaid bailee.

R. Hiyya b. Joseph further said: He who [falsely] advances the defense of theft in the case of a deposit would not be liable[8] unless he had [first] committed conversion,[9] the reason being that Scripture says: *The master of the house shall come near unto the judges to see whether he have not put his hand unto his neighbor's goods*,[10] implying that if he put his hand he would be liable,[8] and thus indicating that we are dealing here with a case where he had already committed conversion.[9] But R. Hiyya b. Abba said to them:[11] R. Johanan [on the contrary] said thus: The ruling[12] was meant to apply where the animal was still standing at the crib.[13] R. Ze'ira then said to R. Hiyya b. Abba: Did he mean to say that this is so[12] only where it was still standing at the crib,[13] whereas if the bailee had already

committed conversion,[9] the deposit would thereby [already] have been transferred to his possession,[14] so that the subsequent oath would have been of no legal avail,[15] or did he perhaps mean to say that this is so even where it was still standing at the crib?[16] — He replied: This I have not heard, but something similar to this I have heard. For R. Assi said that R. Johanan stated: One[17] who had in his defense pleaded loss and had sworn thus, but came afterwards and pleaded theft,[18] also confirming it by an oath, though witnesses appeared [proving otherwise], would be exempt.[19] Now, is the reason of this ruling not because the deposit had already been transferred to his possession through the first[20] oath? — He replied to him:[21] No; the reason is because he had already discharged his duty to the owner by having taken the first oath.[22]

It was indeed similarly stated: R. Abin said that R. Elai stated in the name of R. Johanan: If one advanced in his defense a plea of loss regarding a deposit and had sworn thus, but came afterwards and advanced a plea of theft also confirming it by an oath, and witnesses appeared [proving otherwise], he would be exempt.[19] because he had already discharged his duty to the owner by having taken the first oath.[22]

R. Shesheth said: One[20] who [falsely] pleads theft in the case of a deposit, if he had already committed conversion,[23] would be exempt,[19] the reason being that Scripture says, *'The master of the house shall come near unto the judges to see whether he have not put his hand'*, etc.[24] implying that were he to have already committed conversion he would be exempt. But R. Nahman said to him: Since three oaths are imposed upon him,[25] an oath that he was not careless, an oath that he did not commit conversion and an oath that the deposit was no more in his possession, does this not mean that the oath 'that he did not commit conversion' should be compared to the oath 'that the deposit was no more in his possession so that just as where he swears 'that the deposit was no more In his possession,' as soon as it becomes known that the deposit was really at that time in his possession he would be liable for double payment, so also where he swore 'that he did not commit conversion, when the matter becomes known that he did commit conversion he would be liable?[26] — He replied: No; the oath 'that he did not commit conversion' was meant to be compared to the oath 'that he was not careless'; just as where he swears 'that he was not careless' even if it should become known that he was careless,[27] he would be exempt from double payment.[28] so also where he swears 'that he did not commit conversion,' even if it becomes known that he did commit conversion,[29] he would still be exempt from double payment.

Rami b. Hama asked: [Since where there is liability for double payment there is no liability for a Fifth,[30] is it to be understood that] a pecuniary value for which there is liability to make double payment exempts from the Fifth, or is it perhaps the oath which involves the liability of double payment that exempts from the Fifth? In what circumstances [could this problem have practical application]? — E.g., where the bailee had pleaded in his defense theft confirming it by an oath and then came again and pleaded loss and similarly confirmed it by an oath,

1. B.M. 5a and 98a.
2. Ex. XXII, 8.
3. Opening the section of the paid bailee in Ex. XXII, 9.
4. V. Ex. XXII, 6, the opening section of the unpaid bailee.
5. Ibid. XXII, 13.
6. And makes him analogous in this respect to the bailees dealt with previously; v. B.M. 95a.
7. Cf. *supra* 57b.
8. To double payment in the case of perjury.
9. Lit., 'put his hand unto it'; v. Ex. XXII, 7.
10. Ibid.
11. I.e., to the sages, but correctly omitted in MS.M.
12. Regarding the liability for double payment.
13. And no conversion was committed; v. also J. Shebu. VIII, 3.

14. V. p. 616, n. 2.
15. Since the bailee had become already subject to the law of robbery.
16. And no conversion was committed.
17. An unpaid bailee.
18. Regarding the same deposit.
19. From double payment.
20. V. p. 616, n. 2.
21. I.e., R. Ze'ira to R. Hiyya b. Abba.
22. So that the second oath is no more judicial and could therefore not involve double payment.
23. V. p. 626, n. 9.
24. Ex. XXII, 7.
25. An unpaid bailee. Cf. B.M. 6a.
26. To double payment in case of perjury.
27. I.e., that the deposit was stolen from him through his carelessness.
28. Since he did not misappropriate the deposit for himself.
29. And then misappropriated it for himself.
30. For which v. *supra* 65b and 106a.

Baba Kamma 108a

and it so happened that witnesses appeared and proved the first oath [to have been perjury][1] while he himself confessed that the last oath was perjury.[2] Now, what is the law? Is it the pecuniary value for which there is liability to make double payment that exempts from the Fifth, so that [as] in this case too there is liability to make double payment [for the deposit, there would be no Fifth for it], or perhaps it is the oath which involves a liability for double payment that exempts from a Fifth, so that since the last oath does not entail liability for double payment[3] it should entail the liability for the Fifth? — Said Raba: Come and hear: If a man said to another in the market: 'Where is my ox which you have stolen,' and the other rejoined, 'I did not steal it at all,' whereupon the first said, 'Swear to me, and the defendant replied, 'Amen,' and witnesses then gave evidence against him that he did steal it, he would have to repay double, but if he confessed on his own accord, he would have to pay the Principal and a Fifth and bring a trespass offering.[4] Now here it is the witnesses[5] who make him liable for double payment, and yet it was only where he confessed of his own accord that he would be subject to the law of a Fifth,[6] whereas where he made a confession after [the evidence was given by] the witnesses, it would not be so. But if you assume that it is the oath involving liability of double payment that exempts from the Fifth, why then [in this case] even where he made confession after the evidence had already been given by the witnesses should the liability for the Fifth not be involved? Since the oath here was not instrumental in imposing the liability for double payment why should it not involve the liability for the Fifth? This would seem conclusively to prove that a pecuniary value for which there is liability to make double payment exempts from the Fifth, would it not? — This could indeed be proved from it.

Rabina asked: What would be the law as to a Fifth and double payment to be borne by two persons respectively? — What were the circumstances? — E.g., where an ox was handed over to two persons and both pleaded in defense theft, but while one of them confirmed it by an oath and subsequently confessed [it to have been perjury] the other one confirmed it by an oath and witnesses appeared [and proved it perjury]. Now, what is the law? Shall we say that it was only in the case of one man that the Divine Law was particular that he should not pay both the Fifth and double payment,[7] so that in this case [where two persons are involved]. one should make double payment and the other should pay a Fifth, or shall it perhaps be said that it was regarding one and the same pecuniary value that the Divine Law was particular that there should not be made any payment of both a Fifth and double payment;[8] and in this case also it was one and the same pecuniary value? — This must stand undecided.

R. Papa asked: What would be the law regarding two Fifths and two double payments in the case of one man? What are the circumstances? E.g., where the bailee first pleaded in his defense loss and after confirming it by an oath confessed [it to have been perjury],[9] but afterwards came back

and pleaded [again a subsequent] loss, confirming it by an oath, and then again confessed [it to have been perjury];[9] or, e.g., where he pleaded in defense theft confirming it by an oath and witnesses appeared [and proved it to have been perjury],[10] but he afterwards came back and advanced [again] the defense of [a subsequent] theft, confirming it by an oath, and witnesses appeared against him. Now, what would be the law? Shall we say that it was only two different kinds of pecuniary liability[11] that the Divine Law forbade to be paid regarding one and the same pecuniary value,[8] whereas here the liabilities are of one kind[12] [and should therefore be paid], or perhaps it was two pecuniary liabilities[13] that the Divine Law forbade to be paid regarding one and the same pecuniary value and here also the pecuniary liabilities are two?[12] — Come and hear what Raba stated: And shall add the fifth:[14] the Torah has thus attached many fifths to one principal.[15] It could surely be derived from this.

If the owner had claimed [his deposit] from the bailee who, [though] he [denied the claim] on oath [nevertheless] paid it, and [it so happened that] the actual thief was identified,[16] to whom should the double payment go?[17] — Abaye said: To the owner of the deposit, but Raba said: To [the bailee with] whom the deposit was in charge. Abaye said that it should go to the depositor, for since he was troubled[18] to the extent of having to impose an oath, he could not be expected to have transferred the double payment.[19] But Raba said that it would go to [the bailee with] whom the deposit was in charge, for since [after all] he paid him, the double payment was surely transferred to him. They are divided on the implication of a Mishnah, for we learned: Where one person deposited with another an animal or utensils which were subsequently stolen or lost, if the bailee paid, rather than deny on oath, although it has been stated[20] that an unpaid bailee can by means of an oath discharge his liability and [it so happened that] the actual thief was found and had thus to make double payment, or, if he had already slaughtered the animal or sold it, fourfold or fivefold payment, to whom should he pay? To him with whom the deposit was in charge. But if the bailee took an oath [to defend himself] rather than pay and [it so happened that] the actual thief was found and has to make double payment, or, where he already slaughtered the animal or sold it, fourfold or fivefold payment, to whom shall he pay? To the owner of the deposit.[21] Now, Abaye infers his view from the commencing clause, whereas Raba deduces his ruling from the concluding clause. Abaye infers his view from the commencing clause where it was stated: 'If the bailee paid, rather than deny on oath …' this is so only where he was not willing to swear,

1. And thus subject to Ex. XXII, 8.
2. Rendering himself thus liable under Lev. V, 21-25.
3. Since he did not confirm a defense of theft.
4. The Mishnah of Shebu. 49a, where, however, the adjuration is missing, but v. also Jer. ibid. 3.
5. And not at all the oath.
6. I.e., Lev. V, 24.
7. V. p. 628, n. 5.
8. V. p. 628, n. 5.
9. V. p. 628, n. 7.
10. V. p. 628, n. 6.
11. Such as double payment and a Fifth.
12. I.e., either two Fifths or two amounts of double payment.
13. No difference whether of one kind or of two different kinds.
14. Lev. V, 24.
15. *Supra* 65b, v. also Sifra on Lev. V, 24, and Malbim, a.l.
16. And has to pay double.
17. Either to the bailee in accordance with B.M. 33b, to be quoted presently, or to the depositor.
18. By the bailee.
19. To the bailee; v. B.M. 34a and also 35a.
20. Ibid VII, 8.
21. V. B.M. 33b.

Baba Kamma 108b

but where he did take an oath, even though he subsequently paid, the thief would surely have to pay the owner of the deposit; but Raba

deduces his ruling from the concluding clause where it was stated: 'But if the bailee took an oath [to defend himself] rather than pay …', this is so only where he was not willing to pay, but where he did pay even though he first denied the claim on oath, the thief would of course have to pay him with whom the deposit was in charge. Does not the implication of the concluding clause contradict the view of Abaye? — Abaye would say to you: What it means to say is this: 'If the bailee swore rather than pay before having taken the oath, though he did so after he took the oath, to whom will the thief pay? To the owner of the deposit.' But does not the implication of the commencing clause contradict the view of Raba? — Raba could say to you that the meaning is this: 'If the bailee paid, as he was not willing to take his stand upon his oath and consequently paid, to whom should the thief pay? To him with whom the deposit was in charge.

Suppose the owner had claimed [his deposit] from the bailee, and the latter denied upon oath, and the actual thief was then identified and the bailee demanded payment from him and he confessed the theft, but when the owner [of the deposit] demanded payment from him he denied it and witnesses were brought, did the thief become exempt[1] through his confession to the bailee,[2] or did the thief not become exempt[1] through his confession to the bailee?[3] — Said Raba: If the oath [taken by the bailee] was true, the thief would become exempt through his confession to the bailee,[4] but if he perjured himself in the oath[5] the thief would not become exempt through his confession to the bailee.[6] But Raba asked: What would be the law where the bailee was prepared to swear falsely but [it so happened that for some reason or other] he was not allowed to do so?[7] — This must remain undecided. But while R. Kahana was stating the text thus, R. Tabyomi was reading it as follows: 'Rab asked: What would be the law where the bailee has sworn falsely [to defend himself]?'[8] — This must stand undecided.

Suppose the owner claimed [his deposit] from the bailee who thereupon paid him, and the thief was then identified and when the owner demanded payment from him he confessed, whereas when the bailee demanded payment from him he denied it, and witnesses appeared [against him], should the thief become exempt[9] through his confession to the owner or not? Shall we maintain that the bailee is entitled to say to the owner: 'Since you have received the value [of your deposit] your interest has completely lapsed[10] in this matter', or can the owner say to him: 'Just as you did us a favour,[11] we also are willing to do you the same and are therefore hunting after the thief. Let us take back what belonged to us and you receive back what belonged to you'? — This must stand undecided.

It was taught:[12] Where the deposit was stolen through violence[13] and the thief was identified, Abaye said that if the bailee was unpaid he has the option of going to law with him,[14] or of [clearing himself by] an oath [so that the owner will himself have to deal with the thief], whereas if it was a paid bailee he would have to go to law with the thief and he cannot take an oath to discharge his liability.[15] But Raba said: Whichever he is[16] he would have to go to law with the thief and not take an oath. May we say that Raba differs from the view of R. Huna b. Abin, for R. Huna b. Abin sent word that where the deposit was stolen by violence and the thief was identified, if the bailee was unpaid he had the option of going to law with him or of [clearing himself by] an oath, whereas if he was a paid bailee he would have to go to law with the thief and could not clear himself by an oath?[17] — Raba could say to you that [in this last ruling] we are dealing with a case where the paid bailee took the oath before [the thief was identified].[18] But did R. Huna not say: 'He had the option of going to law or of clearing himself by an oath'?[19] — What he meant was this: 'The unpaid bailee had the choice of taking his stand on his oath[20] or of going to law with him.' Rabbah Zuti asked thus: Where the deposited animal was stolen

by violence and the thief restored it to the house of the bailee where it then died through carelessness [on the part of the bailee], what should be the law? Shall we say that since it was stolen by violence, the duty of bailment came to an end,[21] or perhaps since it was restored to him it once more came into his charge [which thus revived]?[22] — This must stand undecided.

MISHNAH. **[IF A MAN SAYS TO ANOTHER] 'WHERE IS MY DEPOSIT?' AND HE[23] REPLIES: 'IT IS LOST' [AND THE DEPOSITOR THEN SAYS]. 'I PUT IT TO YOU ON OATH.' AND THE OTHER REPLIES. 'AMEN', IF WITNESSES TESTIFY AGAINST HIM THAT HE HIMSELF HAD CONSUMED IT, HE HAS TO PAY ONLY THE PRINCIPAL, WHEREAS IF HE CONFESSES ON HIS OWN ACCORD HE HAS TO REPAY THE PRINCIPAL TOGETHER WITH A FIFTH AND BRING A TRESPASS OFFERING.[24] [BUT IF THE DEPOSITOR SAYS] 'WHERE IS MY DEPOSIT?' AND THE BAILEE REPLIES: 'IT WAS STOLEN' [AND THE DEPOSITOR THEN SAYS] I PUT IT TO YOU ON OATH, AND THE BAILEE REPLIES, AMEN, IF WITNESSES TESTIFY AGAINST HIM THAT HE HIMSELF HAD STOLEN IT HE HAS TO REPAY DOUBLE,[25] WHEREAS IF HE CONFESSES ON HIS OWN ACCORD HE HAS TO REPAY THE PRINCIPAL TOGETHER WITH A FIFTH AND BRING A TRESPASS OFFERING.[24] IF A MAN ROBBED HIS FATHER AND, [WHEN CHARGED BY HIM,] DENIED IT ON OATH, AND [THE FATHER AFTERWARDS] DIED,[26] HE WOULD HAVE TO REPAY THE PRINCIPAL AND A FIFTH [AND A TRESPASS OFFERING][27] TO HIS [FATHER'S] CHILDREN[28] OR TO HIS [FATHER'S] BROTHERS;[29] BUT IF HE IS UNWILLING TO DO SO,[30] OR HE HAS NOTHING WITH HIM,[31] HE SHOULD BORROW [THE AMOUNT FROM OTHERS AND PERFORM THE DUTY OF RESTORATION TO ANY OF THE SPECIFIED RELATIVES] AND THE CREDITORS CAN SUBSEQUENTLY COME AND [DEMAND TO] BE PAID[32] [THE PORTION WHICH WOULD BY LAW HAVE BELONGED TO THE ROBBER AS HEIR]. IF A MAN SAID TO HIS SON: 'KONAM BE[33] WHATEVER BENEFIT YOU HAVE OF MINE,'[34] AND SUBSEQUENTLY DIED, THE SON WILL INHERIT HIM.[35]**

1. From paying the fine.
2. In accordance with *supra* p. 427.
3. The problem is whether the bailee had an implied mandate to approach the thief or not, as a confession made not to the plaintiff or his authorized agent but to a third party uninterested in the matter is of no avail to exempt from the fine; cf. however the case of R. Gamaliel and his slave Tabi, *supra* p. 428.
4. As in this case the trust in the bailee has not been impaired and the implied mandate not cancelled.
5. I.e., he advanced another defense, e.g., accidental death.
6. Who could no longer be trusted and thus had no right to represent the depositor any more.
7. Has the trust in him thereby been impaired or not?
8. Shall it be said that though he had already sworn inaccurately he would sooner or later have been compelled by his conscience to make restoration, as he in fact exerted himself to look for the thief and should therefore still retain the trust reposed in him, especially since the article had really been stolen though he advanced for some reason another plea; R. Tabyomi had thus not read the concluding clause in the definite statement made above by Raba.
9. V. p. 632. n. 1.
10. Lit., 'removed'.
11. By paying us for the deposit and not resisting our claim.
12. Cf. B.M. 93b.
13. By an armed robber; v. *supra*, 57a.
14. I.e. the thief.
15. For since he was paid, though he is exempt in the case of theft by violence, it is nevertheless his duty to take the trouble to litigate with the thief, since the thief is identified.
16. I.e., unpaid as well as paid.
17. B.M. 93b.
18. In which case the depositor will himself have to deal with the case.
19. Which makes it clear that the oath has not yet been taken.
20. 'Already taken by him.
21. So that the bailee should no more be subject to the law of bailment.
22. To make the law of bailment still applicable.
23. Being an unpaid bailee.
24. In accordance with Lev. V, 21-25.

25. In accordance with Ex. XXII, 8.
26. When the son confessed the theft.
27. The phrase in parenthesis occurs in the Mishnaic text but not in Rashi. [And rightly so, for what have the children, etc. to do with the trespass offering.]
28. I.e., to his own brothers, for if he would retain anything for himself he would not obtain atonement, since he did not make full restoration (Rashi). [Tosaf.: to his own children, or to his own brothers in the absence of any children to him, v. B.B. 159a.]
29. I.e., his uncles, in the absence of any other children to his father.
30. I.e., to forfeit his own share in the payment which he has to make.
31. To be in a position to do so.
32. From the amount restored.
33. I.e., Let it be forbidden as sacrifice; v. Ned. I, 2.
34. [J.: 'that you do not benefit out of anything belonging to me.']
35. For through the death of the father his possessions passed out of his ownership and the son is no more benefiting out of anything belonging to him; cf. Ned. V, 3.

Baba Kamma 109a

[BUT IF HE SAID 'KONAM…'] BOTH DURING HIS LIFE AND AFTER HIS DEATH,[1] AND [THE FATHER] DIED, THE SON WILL NOT INHERIT HIM,[2] [BUT THE PORTION] WILL BE TRANSFERRED TO HIS FATHER'S [OTHER] CHILDREN OR TO HIS [FATHER'S] BROTHERS; IF THE SON HAS NOTHING [FOR A LIVELIHOOD], HE MAY BORROW [FROM OTHERS AN AMOUNT EQUAL TO HIS PORTION IN THE INHERITANCE] AND THE CREDITORS CAN COME AND DEMAND PAYMENT [OUT OF THE ESTATE].

***GEMARA*. R. Joseph said: [He must pay[3] the amount due for the robbery] even to the charity[4] box.[5] R. Papa added: He must however say, This is due for having robbed my father. But why should he not remit the liability to himself?[6] Have we not learnt: Where the plaintiff released him from payment of the principal though he did not release him from payment of the Fifth [etc.],[7] thus proving that this liability is subject to be remitted? — Said R. Johanan: This is no difficulty as that was the view of R. Jose the Galilean, whereas the ruling [here][6] presents the view of R. Akiba, as indeed taught: But if the man have no kinsman to restore the trespass unto,[8] how could there be a man in Israel who had no kinsmen?[9] Scripture must therefore be speaking of restitution to a proselyte.[10] Suppose a man robbed a proselyte and when charged denied it on oath and as he then heard that the proselyte had died he accordingly took the amount of money [due] and the trespass offering to Jerusalem, but there [as it happened] came across that proselyte who then converted the sum [due to him] into a loan, if the proselyte were subsequently to die the robber would acquire title to the amount in his possession; these are the words of R. Jose the Galilean. R. Akiba, however, said: There is no remedy for him [to obtain atonement] unless he should divest himself of the amount stolen.[11] Thus according to R. Jose the Galilean, whether to himself or to others, the plaintiff may[12] remit the liability,[13] whereas according to R. Akiba no matter whether to others or to himself, he cannot remit it. Again, according to R. Jose the Galilean, the same law[14] would apply even where the proselyte did not convert the amount due into a loan, and the reason why it says, 'who then converted the sum [due to him] into a loan' is to let you know how far R. Akiba is prepared to go, since he maintains that even if the proselyte converted the sum due into a loan there is no remedy for the robber [to obtain atonement] unless he divests himself of the proceeds of the robbery. R. Shesheth demurred to this: If so [he said] why did not R. Jose the Galilean tell us his view in a case where the claimant [remits it] to himself, the rule then applying *a fortiori* to where he remits it to others? And again why did not R. Akiba tell his view that it is impossible to remit, to others, then arguing *a fortiori* that he cannot remit it to himself? R. Shesheth therefore said that the one ruling as well as the other is in accordance with R. Jose the Galilean, for the statement made by R. Jose the Galilean that it is possible to remit**

such a liability applies only where others get the benefit,[15] whereas where he himself would benefit it would not be possible to remit it. Raba, however, said: The one ruling as well as the other [here,] is in accordance with R. Akiba, for when R. Akiba says that it is impossible to remit the liability, he means to himself, whereas to others[15] it is possible for him to remit it.

1. [J.: 'both during my life and after my death.']
2. As in this case it was the estate as such, and not as belonging to his father, which was declared forbidden; Ned. V, 3.
3. Where no other heir could be traced to his father except himself.
4. Lit., *'Arnaki'*, [G]; v. K. Krauss, *Lehnworter*, II, 133.
5. Cf. *supra* p. 204 and p. 540.
6. V. p. 635, n. 1.
7. *Supra* Mishnah 103a.
8. Num. V, 8.
9. Cf. Kid. 21a and Sanh. 68b; for if he has no issue the inheritance will revert to ancestors and their descendants; v. B.B. VIII, 2.
10. Who has no kinsman in law except the children born to him after he became a proselyte; cf. Sheb. X, 9 and Kid. 17b.
11. Tosef. B.K. X.
12. In all cases.
13. The Mishnah on 103a will accordingly agree with R. Jose.
14. Stated by him in the case of the proselyte.
15. V. p. 636. n. 2.

Baba Kamma 109b

This would imply that R. Jose the Galilean maintained that even to himself[1] he could remit it. Now, if that is so, how could a case ever arise that restitution for robbery committed upon a proselyte[2] should be made to the priests[3] as ordained in the Divine Law? — Said Raba: We are dealing here with a case where one robbed a proselyte and [falsely] denied to him on oath [that he had done so], and the proselyte having died the robber confessed subsequently, on the proselyte's death,[4] so that at the time he made confession God[5] acquired title to it[6] and granted it to the priests.[7]

Rabina asked: What would be the law where a proselytess was robbed? Shall we say that when the Divine Law says 'man'[7] it does not include 'woman' or perhaps this is only the Scriptural manner of speaking? — Said R. Aaron to Rabina: Come and hear: It was taught: '[The] man';[7] this tells me only that the law applies to a man; whence do I know that it applies also to a woman? When it is further stated 'That the trespass be restored'[7] we have two cases mentioned.[8] But if so, why was 'man' specifically mentioned? To show that only in the case of [a person who has reached] manhood[9] is it necessary to investigate whether he had kinsmen[10] or not, but in the case of a minor it is not necessary, since it is pretty certain that he could have no 'redeemers'.[11]

Our Rabbis taught: *Unto the Lord even to the priest*[12] means that the Lord acquired title to it[13] and granted it to the priest[14] of that [particular] division. You say 'to the priest of that [particular] division', but perhaps it is not so, but to any priest whom the robber prefers? — Since it is further stated, *Beside the ram of atonement whereby he shall make an atonement for him*,[12] it proves that Scripture referred to the priest of that [particular] division.

Our Rabbis taught: In the case where the robber was a priest, how do we know that he is not entitled to say: Since the payment would [in any case] have to go to the priests, now that it is in my possession it should surely remain mine? Cannot he argue that if he has a title to payment which is in the possession of others,[15] all the more should he have a title to payment which he has in his own possession? R. Nathan put the argument in a different form: Seeing that a thing in which he had no share until it actually entered his possession cannot be taken from him once it has entered his possession,[16] does it not stand to reason that a thing[17] in which he had a share[18] even before it came into his possession cannot be taken from him once it has come into his possession?[19] This, however, is not so: for

while this may be true[20] of a thing in which he had no share, since in that case just as he had no share in it, so has nobody else any share in it, it is not necessarily true[20] of the proceeds of robbery where just as he has a share in it, so also have others a share in it.[21] The [payment for] robbery must therefore be taken away from his possession and shared out to all his brethren the priests. But is it not written: And every man's hallowed things shall be his?[22] — We are dealing here with a priest who was [levitically] defiled.[23] But if the priest was defiled, could there be anything in which he should have a share?[24] — [The fact is that] the ruling[25] is derived by the analogy of the term, *'To the priest'*[26] to a similar term 'To the priest' occurring in the case of a field of [Permanent] possession,[27] as taught:[28] What is the point of the words the [permanent] possession thereof?[27] [The point is this:] How can we know that if a field which would [in due course] have to fall to the priests in the jubilee[27] but was redeemed by one of the priests, he should not have the right to say, 'Since the field is destined to fall to the priests in the jubilee and as it is already in my possession it should remain mine, as is indeed only reasonable to argue, for since I have a title to a field in the possession of others, should this not be the more so when the field is in my own possession?' The text therefore significantly says. As a field devoted, the [permanent] possession thereof shall be the priest's, to indicate that a field of [permanent] possession[29] remains with him, whereas this [field][30] will not remain with him.[31] What then is to be done with it? It is taken from him and shared out to all his brethren the priests.

Our Rabbis taught: Whence can we learn that a priest is entitled to come and sacrifice his offerings at any time and on any occasion he prefers? It is significantly stated, And come with all the desire of his mind … and shall minister.[32] But whence can we learn that the fee for the sacrificial operation[33] and the skin of the animal will belong to him? It is stated: *And every man's hallowed thing shall be his*,[34] so that if he was blemished,[35] he has to give the offering to a priest of that particular division, while the fee for the operation and the skin will belong to him,

1. V. p. 635. n. I.
2. Who subsequently died without legal issue.
3. For since the proselyte died without leaving legal issue, why should the robber not acquire title to the payment due for the robbery which is in his possession.
4. For if the confession was made prior to his death the amount to be paid would have become a liability as a debt upon the robber and would thus become remitted through the subsequent death of the proselyte; cf. *supra* p. 283.
5. Lit., 'the Name'.
6. V. Men. 45b.
7. V. p. 636, n. 3.
8. Either because the term expressing 'recompense' or because the term expressing 'trespass' occurs there twice in the text (Rashi). — This solves the question propounded by R. Aaron.
9. I.e., a proselyte who died after having already come of age.
10. I.e., descendants, for his ancestors and collateral relatives are not entitled to inherit him; v. Kid. 17b.
11. V. also Sanh. 68a-69b.
12. V. p. 636, n. 3.
13. V. p. 637, n. 7.
14. On duty at the time of restoration. The priests were divided into twenty-four panels; v. I. Chron. XXIV, 1-18.
15. [For as soon as the robbery of a proselyte is placed in the charge of a particular division, all priests of that division share a title to it.]
16. [A priest may come and offer his own sacrifice at any time and retain the flesh and skin for himself without sharing it with the priests of the division on duty. Once he however gave it to another priest who hitherto had no title to it, he cannot reclaim it of him.]
17. Such as payment for a robbery committed upon a proselyte.
18. As soon as it was restored to anyone of the division.
19. As in the case where the priest himself was the robber.
20. That a priest may retain for himself the priestly portions in his possession.
21. V. p. 638, n. 8.
22. Num. V, 10. So that the right to sacrifice the trespass offering would be his. The flesh therefore consequently belongs to him, in

which case the payment for the robbery should similarly remain with him.
23. And as he is thus unable himself to sacrifice the trespass offering he cannot retain the payment.
24. V. Zeb. XII, 1; how then comes it to be stated in the text that he would be entitled to a share as soon as it was restored to any one of the division?
25. That a priest may not retain for himself the payment for a robbery he committed upon a proselyte, though he himself had a right to the sacrifice and the whole of the flesh.
26. V. p. 636, n. 3.
27. Cf. Lev. XXVII, 21.
28. 'Ar. 25b.
29. Which belonged as such to his father and was inherited by him; cf. Rashi' Ar. 25b.
30. Which he redeemed from the Temple treasury.
31. After the arrival of the jubilee.
32. Deut. XVIII, 6-7.
33. Lit., 'the reward of the service thereof'. I.e., the priestly portions thereof.
34. Num. V. 10.
35. And thus himself unable to sacrifice but able to partake of the portions in accordance with Lev. XXI, 17-22.

Baba Kamma 110a

but if he was old or infirm[1] he may give it to any priest[2] he prefers, and the fee for the operation and the skin will belong to the members of the division.[3] How are we to understand this 'old or infirm priest'? If he was still able to perform the service,[4] why should the fee for the sacrifice and the skin similarly not be his? If on the other hand he was no longer able to perform the service, how can he appoint an agent?[5] — Said R. Papa: He was able to perform it only with effort, so that in regard to the service which even though carried out only with effort is still a valid service he may appoint an agent, whereas in regard to the eating which if carried through only with effort would constitute an abnormal eating,[6] which is not counted as anything[7] [in the eyes of the law], the fee for the sacrifice and the skin must belong to the members of the division.

R. Shesheth said: If a priest [in the division] is unclean, he has the right to hand over a public sacrifice to whomever[2] he prefers.[8] but the fee and the skin will belong to the members of the division. What are the circumstances? If there were in the division priests who were not defiled, how then could defiled priests perform the service?[9] If on the other hand there were no priests there who were not defiled, how then could the fee for the sacrifice and the skin belong to the members of the division who were defiled and unable to partake of holy food?[10] — Said Raba: Read thus: '[The fee for it and the skin of it will belong] to blemished undefiled priests[11] in that particular division.' R. Ashi said: Where the high priest was an Onan[12] he may hand over his sacrifice to any priest[13] he prefers,[14] whereas the fee for it and the skin of it will belong to the members of the division. What does this tell us [which we do not already know?] Was it not taught: 'The high priest may sacrifice even while an Onan, but he may neither partake of the sacrifice, nor [even] acquire any share in it for the purpose of partaking of it in the evening'?[15] — You might have supposed that the concession made by the Divine Law to the high priest[12] was only that he himself should perform the sacrifice, but not that he should be entitled to appoint an agent; we are therefore told that this is not the case.

MISHNAH. IF ONE ROBBED A PROSELYTE AND [AFTER HE] HAD SWORN TO HIM [THAT HE DID NOT DO SO], THE PROSELYTE DIED, HE WOULD HAVE TO PAY THE PRINCIPAL AND A FIFTH TO THE PRIESTS, AND BRING A TRESPASS OFFERING TO THE ALTAR, AS IT IS SAID: BUT IF THE MAN HAVE NO KINSMAN TO RESTORE THE TRESPASS UNTO, LET THE TRESPASS BE RESTORED UNTO THE LORD, EVEN TO THE PRIEST; BESIDE THE RAM OF ATONEMENT WHEREBY AN ATONEMENT SHALL BE MADE FOR HIM.[16] IF WHILE HE WAS BRINGING THE MONEY AND THE TRESPASS OFFERING UP TO JERUSALEM HE DIED [ON THE WAY], THE MONEY WILL BE GIVEN TO HIS HEIRS,[17] AND THE TRESPASS OFFERING WILL BE KEPT ON THE PASTURE UNTIL IT

BECOMES BLEMISHED,[18] WHEN IT WILL BE SOLD AND THE VALUE RECEIVED WILL GO TO THE FUND OR FREEWILL OFFERINGS.[19] BUT IF HE HAD ALREADY GIVEN THE MONEY TO THE MEMBERS OF THE DIVISION AND THEN DIED, THE HEIRS HAVE NO POWER TO MAKE THEM GIVE IT UP, AS IT IS WRITTEN, WHATSOEVER ANY MAN GIVE TO THE PRIEST IT SHALL BE HIS.[20] IF HE GAVE THE MONEY TO JEHOIARIB[21] AND THE TRESPASS OFFERING TO JEDAIAH,[22] HE HAS FULFILLED HIS DUTY.[23] IF, HOWEVER, THE TRESPASS OFFERING WAS FIRST GIVEN TO JEHOIARIB AND THEN THE MONEY TO JEDAIAH, IF THE TRESPASS OFFERING IS STILL IN EXISTENCE THE MEMBERS OF THE JEDAIAH DIVISION WILL HAVE TO SACRIFICE IT,[24] BUT IF IT IS NO MORE IN EXISTENCE HE WOULD HAVE TO BRING ANOTHER TRESPASS OFFERING; FOR HE WHO BRINGS [THE RESTITUTION FOR] ROBBERY BEFORE HAVING BROUGHT THE TRESPASS OFFERING FULFILS HIS OBLIGATION, WHEREAS HE WHO BRINGS THE TRESPASS OFFERING BEFORE HAVING BROUGHT [THE RESTITUTION FOR] THE ROBBERY HAS NOT FULFILLED HIS OBLIGATION. IF HE HAS REPAID THE PRINCIPAL BUT NOT THE FIFTH, THE [NON-PAYMENT OF THE] FIFTH IS NO BAR [TO HIS BRINGING THE OFFERING].

GEMARA. Our Rabbis taught: The trespass:[25] this indicates the Principal; be restored: this indicates the Fifth. Or perhaps this is not so, but 'the trespass' indicates the ram, and the practical difference as to which view we take would involve the rejection of the view of Raba, for Raba said: '[Restitution for] robbery committed upon a proselyte, if made at night time does not fulfill the obligation, nor does restitution by halves, the reason being that the Divine Law termed it trespass?[26] — Since it says later 'beside the ram of atonement', you must surely say that 'the trespass' is the Principal.

Another [Baraitha]: 'The trespass' is the Principal, 'be restored' is the Fifth. Or perhaps this is not so, but 'the trespass' means the Fifth and the practical difference as to which view we take, would involve the rejection of the ruling of our Mishnah, viz. IF HE HAS REPAID THE PRINCIPAL BUT NOT THE FIFTH, THE [NONPAYMENT OF THE] FIFTH IS NO BAR', for in this case on the contrary the [non-payment of the] Fifth would be a bar?[27] — Since it has already been stated: *And he shall recompense his trespass with the Principal thereof and add unto it a Fifth thereof,*[28] you must needs say that the trespass is the Principal.

Another [Baraitha] taught: 'The trespass'[29] is the Principal, 'be restored' is the Fifth, as the verse here deals with robbery committed upon a proselyte. Or perhaps this is not so, but 'be restored' indicates the doubling of the payment, the reference being to theft[30] committed upon a proselyte? — Since it has already been stated: And he shall restore his trespass with the Principal thereof and add unto it a Fifth part thereof,[28] it is obvious that Scripture deals here with money which is paid as Principal.[31]

[To revert to] the above text. 'Raba said: [Restitution for] robbery committed upon a proselyte, if made at night time would not be a fulfillment of the obligation, nor would it if made in halves, the reason being that the Divine Law termed it trespass;' Raba further said: If [in the restitution for] robbery committed upon a proselyte there was not the value of a *perutah*[32] for each priest [of the division] the obligation would not be fulfilled, because it is written: 'The trespass be recompensed' which indicates that unless there be recompense to each priest [there is no atonement]. Raba thereupon asked: What would be the law if it were insufficient with respect to the division of Jehoiarib,[33] but sufficient

1. Competent to sacrifice but unable to partake of the portions.

2. Even of another division.
3. Men. 74a. For a transposed text cf. J. Yeb. XI, 10.
4. For priests unlike Levites do not become disqualified by age; v. Hul. 1, 6.
5. Cf. Kid. 23b.
6. Cf. however Shab. 76a and *supra* 19b.
7. Cf. Yoma 80b; and Pes. 107b.
8. For since he himself can perform the service he can hand it over to whomever he likes.
9. And since he could not perform the service he should surely be unable to transfer it to whomever he wishes.
10. V. Zeb. XII, 1.
11. V. p. 640, n. 6.
12. I.e., a mourner on the day of the death of a kinsman; V. Lev, XXI, 10-12.
13. V. p. 640, n. 8.
14. V. p. 640, n. 14.
15. Tosef. Zeb. XI, 2; cf. Yoma 13b.
16. Num. V, 8.
17. I.e., of the robber.
18. And thus unfit to be sacrificed, cf. Lev. XXII, 20.
19. Cf. Shek. VI, 5.
20. Num. V, 10.
21. I.e., to a member of the Jehoiarib division, which was the first of the twenty-four divisions of the priests; cf. I Chron. XXIV, 7.
22. I.e., to a member of the Jedaiah division, which was the second of the priestly divisions, v. ibid.
23. For the payment of the money has to precede the trespass offering.
24. For Jehoiarib had no right to accept the trespass offering before the money was paid.
25. Num. V. 8.
26. And an offering could not be sacrificed at night time. [Consequently should it be assumed that 'the trespass' denotes the ram and not the Principal Raba's ruling would be rejected.]
27. Being the trespass.
28. Num. V, 7.
29. Num. V, 8.
30. Which is subject to Ex. XXII, 3.
31. And not with double payment.
32. V. Glos.
33. Consisting of many priests.

Baba Kamma 110b

for the division of Jedaiah?[1] What are the circumstances? If we suppose that he paid it to Jedaiah during the time [of service] of the division of Jedaiah,[1] surely in such a case the amount is sufficient?[2] — No, we must suppose that he paid it to Jedaiah[1] during the time of the division of Jehoiarib. Now, what would be the law? Shall we say that since it was not in the time of his division, the restoration is of no avail, or perhaps since it would not do for Jehoiarib it was destined from the very outset to go to Jedaiah? — Let this stand undecided.

Raba again asked: May the priests set [one payment for] a robbery committed upon a proselyte against another [payment for a] robbery committed upon a proselyte? Shall we say that since the Divine Law designated it *trespass*,[3] therefore, just as in the case of a trespass offering, one trespass offering cannot be set against another trespass offering,[4] so also in the case of [payment for] a robbery committed upon a proselyte, one [payment for] robbery committed upon a proselyte cannot be set against another [payment for] robbery committed upon a proselyte[5] or perhaps [since payment for] robbery committed upon a proselyte is a matter of money, [it should not be subject to this restriction]? He however subsequently decided that [as] the Divine Law termed it trespass, [it should follow the same rule]. R. Aha the son of Raba stated this explicitly. Raba said: The priests have no right to set one [payment for a] robbery committed upon a proselyte against another [payment for] robbery committed upon a proselyte, the reason being that the Divine Law termed it trespass.

Raba asked: Are the priests in relation to [the payment for] robbery committed upon a proselyte in the capacity of heirs[6] or in the capacity of recipients of endowments? A practical difference arises where e.g., the robber misappropriated leaven and Passover meanwhile passed by.[7] If now you maintain that they are in the capacity of heirs, it will follow that what they inherited they will have,[8] whereas if you maintain that they are recipients of endowments, the Divine Law surely ordered the giving of an endowment, and in this case nothing would be given them since the leaven is considered [in the eye of the

law] as being mere ashes.[9] R. Ze'ira put the question thus: Even if you maintain that they are recipients of endowments, then still no question arises, since it is this endowment [originally due to the proselyte] which the Divine Law has enjoined to be bestowed upon them.[10] What, however, is doubtful to us is where e.g., ten animals fell to the portion of a priest as [payment for] robbery committed upon a proselyte. Is he then under an obligation to set aside a tithe[11] or not? Are they [the priests] heirs, in which case the dictum of the master applies that [where] heirs have bought animals out of the funds of the general estate they would be liable [to tithe], or are they perhaps endowment recipients in which case we have learnt 'He who buys animals or receives them as a gift is exempt from the law of tithing animals'?[12] Now, what should be the law?[13] — Come and hear: Twenty-four priestly endowments were bestowed upon Aaron and his sons. All these were granted to him by means of a generalization followed by a specification which was in its turn followed again by a generalisation[14] and a *covenant of salt*[15] so that to fulfill them is like fulfilling [the whole law which is expounded by] generalization, specification and generalization and [like offering all the sacrifices forming] the covenant of salt,[16] whereas to transgress them is like transgressing [the whole Torah which is expounded by] generalization, specification and generalization, and [all the sacrifices forming] the covenant of salt. They are these: Ten to be partaken in the precincts of the Temple, four in Jerusalem and ten within the borders [of the Land of Israel]. The ten in the precincts of the Temple are: A sin offering of an animal,[17] a sin offering of a fowl,[18] a trespass offering for a known sin,[19] a trespass offering for a doubtful sin,[20] the peace offering of the congregation,[21] the *log* of oil in the case of a leper,[22] the remnant of the Omer,[23] the two loaves,[24] the showbread[25] and the remnant of meal offerings.[26] The four in Jerusalem are: the firstling.[27] the first of the first fruits,[28] the portions separated in the case of the thank offering[29] and in the case of the ram of the Nazirite[30] and the skins of [the most] holy sacrifices.[31] The ten to be partaken in the borders [of the Land of Israel] are: *terumah*,[32] the *terumah* of the tithe,[33] *hallah*,[34] the first of the fleece,[35] the portions[36] [of unconsecrated animals], the redemption of the son,[37] the redemption of the firstling of an ass,[38] a field of possession,[39] a field devoted,[40] and [payment for a] robbery committed upon a proselyte.[41] Now, since it is here designated an 'endowment', this surely proves that the priests are endowment recipients in this respect.[42] This proves it.

BUT IF HE HAD ALREADY GIVEN THE MONEY TO THE MEMBERS OF THE DIVISION, etc. Abaye said: We may infer from this that the giving of the money effects half of the atonement: for if it has no [independent] share in the atonement, I should surely say that it ought to be returned to the heirs, on the ground that he would never have parted with the money upon such an understanding.[43] But if this could be argued, why should a sin offering whose owner died not revert to the state of unconsecration,[44] for the owner would surely not have set it aside upon such an understanding?[45] — It may however be said that regarding a sin offering whose owner died there is a *halachah* handed down by tradition that it should be left to die.[46] But again, according to your argument, why should a trespass offering whose owner died not revert to the state of unconsecration,[47] as the owner would surely not have set it aside upon such an understanding? — With regard to a trespass offering there is similarly a *halachah* handed down by tradition that whenever [an animal, if set aside as] a sin offering would be left to die, [if set aside as] a trespass offering it would be subject to the law of pasturing.[46] But still, according to your argument why should a deceased brother's wife on becoming bound to one affected with leprosy not be released [even] without the act of *halizah*,[48] for surely she would not have consented to betroth herself[49] upon this

understanding?[50] — In that case we all can bear witness[51]

1. Which consisted of not so many priests.
2. For the priests of the division; why at all consider the number of the priests of a different division?
3. V. p. 643, n. 8.
4. But each offering is distributed among all the priests of the division; v. Kid, 531 and Men. 73a.
5. But each payment would have to be shared by all the priests of the division.
6. Of the proselyte so far as this liability is concerned,
7. Rendering the leaven forbidden for any use; v. *supra* p. 561 and Pes. II. 2.
8. I.e., whether they would be able to make use of it or not.
9. Cf. Tem. VII, 5.
10. The priests could thus never be in a better position then the proselyte himself.
11. In accordance with Lev. XXVII, 32.
12. Cf, Bek. IX, 3.
13. Here where a priest received animals in payment for a robbery committed upon a proselyte.
14. V. *supra*, p. 364. [Generalization: Num. XVIII, 8, where the priestly portions are referred to in general terms; specification: verses 9-18, where they are enumerated; second generalization: verse 19, where they are again mentioned generally.]
15. Cf. Num. XVIII, 8-19.
16. Lev. II, 13.
17. Ibid. VI, 17-23.
18. Ibid. V, 8.
19. For which cf. ibid. V, 14-16; 20-26; ibid. XIX, 20-22 a.e.
20. Ibid. V, 17-19.
21. Ibid. XXIII, 19-20.
22. Ibid. XIV, 12.
23. Lit., 'Sheaf' referred to in Lev. XXIII, 10-12; the remainder of this meal offering after the handful of flour has been taken and sacrificed, is subject to Lev. VI, 9-11.
24. Referred to in Lev. XXIII, 17.
25. Dealt with in Ex. XXV, 30 and Lev. XXIV, 5-9.
26. Lev. II, 3
27. Num. XVIII, 17-18.
28. Cf. Ex. XXIII, 19 and Num. XVIII, 13; v, also Deut. XII, 17 and XXVI, 2-10.
29. Lev. VII, 11-14.
30. Num. VI, 14-20.
31. Such as of the burnt and of the sin and of the trespass offerings; for the skins of the minor sacrifices belong to the donors; v, Zeb. 103b.
32. Cf. Num. XVIII, 12; v. Glos.
33. Cf. ibid. 25-29.
34. I.e., the first of the dough; v. Num. XV, 18-21.
35. Deut. XVIII, 4.
36. Lit., 'the gifts'; v. Deut. ibid. 3.
37. Num. XVIII, 15-16.
38. Ex. XIII, 13.
39. Cf. Lev. XXVII, 16-21.
40. Num. XVIII, 14.
41. Hul. 133b. Tosef. Hal. II.
42. I.e., the payment for robbery committed upon a proselyte.
43. I.e., to obtain no atonement and yet lose the money.
44. Why then should it be destined by law to die as stated in Tem. II, 2.
45. That it should be unable to serve any purpose and yet remain consecrated.
46. No stipulation to the contrary could therefore be of any avail; cf. e.g. *Pe'ah* VI, 11 and B.M. VII, 11.
47. Why then should it be kept on the pastures until it will become blemished, as also stated *supra* p. 642.
48. I.e., the loosening of his shoe, as required in Deut. XXV, 9; cf. Glos,
49. And as the retrospective annulment of the betrothal would be not on account of the death of the husband but on account of his brother being a leper, this case, unlike that of the sin offering or trespass offering referred to above, could not be subject to *Pe'ah* VI, 11 and B.M. VII, 11.
50. I.e., to become bound to (the husband's brother who was) a leper; cf. Keth. VII, 10.
51. The brother who died but who had no deformity.

Baba Kamma 111a

that she was quite prepared to accept any conditions,[1] as we learn from Resh Lakish; for Resh Lakish said:[2] it is better [for a woman] to dwell as two[3] than to dwell in widowhood.[4]

WHERE HE GAVE THE MONEY TO JEHOIARIB AND THE TRESPASS OFFERING TO JEDAIAH, etc. Our Rabbis taught: Where he gave the trespass offering to Jehoiarib and the money to Jedaiah the money will have to be brought to [whom] the trespass offering [is due].[5] This is the view of R. Judah, but the Sages say that the trespass offering will have to be brought[6] to [whom]

the money [is due].[7] What are the circumstances? Do we suppose that the trespass offering was given to Jehoiarib during the [time of the] division of Jehoiarib and so also the money was given to Jedaiah during the [time of the] division of Jedaiah? If so, why should the one not acquire title to his and the other to his?[8] — Said Raba: We are dealing here with a case where the trespass offering was given to Jehoiarib during the [time of the] division of Jehoiarib and [so also] the money was given to Jedaiah during [the time of] the division of Jehoiarib. In such a case R. Judah maintained that since it was not [the time of] the division of Jedaiah,[9] it is Jedaiah whom we ought to penalize, and the money has therefore to be brought to the [place of the] trespass offering,[5] whereas the Rabbis maintained that as it was the members of the Jehoiarib division that acted unlawfully[7] in having accepted the trespass offering before the money,[10] it is they who have to be penalized and the trespass offering accordingly should be brought[6] to the [place where] the money [is due].[7]

It was taught: Rabbi said: According to the view of R. Judah, if the members of the Jehoiarib division had already sacrificed the trespass offering,[11] the robber would have to come again and bring another trespass offering which will now be sacrificed by the members of the Jedaiah division,[12] though the others[13] would acquire title to that which remained in their possession.[14] But I would fain ask: For what could the disqualified trespass offering have any value? — Said Raba: For its skin.[15]

It was taught: Rabbi said: According to R. Judah, if the trespass offering was still in existence, the trespass offering will have to be brought[16] to [whom] the money [is due]. But is R. Judah not of the opinion that the money should be brought to [whom] the trespass offering [is due]?[17] We are dealing here with a case where e.g. the division of Jehoiarib has already left without, however, having made any demand,[18] and what we are told therefore is that this should be considered as a waiving of their right in favor of the members of the division of Jedaiah.

Another [Baraitha] taught again: Rabbi said: According to R. Judah, if the trespass offering was still in existence, the money would have to be brought to [whom] the trespass offering [is due].[19] But is this not obvious, since this was actually his view? — We are dealing here with a case where e.g., the divisions of both Jehoiarib and Jedaiah have already left without having made any demand [on each other].[20] In this case you might have thought that they mutually waived their claim on each other.[21] We are therefore told that since there was no demand from either of them[22] we say that the original position must be restored.[23]

FOR HE WHO BRINGS [THE PAYMENT FOR] ROBBERY BEFORE HAVING BROUGHT THE TRESPASS OFFERING [FULFILLS HIS DUTY, WHEREAS HE WHO BRINGS THE TRESPASS OFFERING BEFORE HAVING BROUGHT THE PAYMENT FOR ROBBERY DID NOT FULFILL HIS DUTY]. Whence can these rulings be derived? — Said Raba: Scripture states: Let the trespass be restored unto the Lord, even to the priest, beside the ram of the atonement whereby an atonement shall be made for him,[24] thus implying[25] that the money must be paid first. One of the Rabbis, however, said to Raba: But according to this reasoning will it not follow that in the verse: Ye shall offer these beside the burnt offering in the morning[26] it is similarly implied[27] that the additional offering will have to be sacrificed first? But was it not taught:[28] Whence do we know that no offering should be sacrificed prior to the continual offering of the morning?[29] Because it is stated, And lay the burnt offering in order upon it[30] and Raba stated: 'The burnt offering'[30] means the first burnt offering?[31] — He, however, said to him: I derive it[32] from the clause:[29] 'Whereby an atonement shall be made for him' which indicates[33] that the atonement has not yet been made.

WHERE HE PAID THE PRINCIPAL BUT DID NOT PAY THE FIFTH, THE [NON-PAYMENT OF THE] FIFTH IS NO BAR.

Our Rabbis taught: Whence could it be derived that if he brought the Principal due for sacrilege,[34] but had not yet brought the trespass offering,[35] or if he brought the trespass offering but had not yet brought the Principal due for sacrilege, he did not thereby fulfill his duty? Because it says: *With the ram of the trespass offering and it shall be forgiven him*.[36] Again, whence could it be derived that if be brought his trespass offering before he brought the Principal due for the sacrilege he did not thereby fulfill his duty? Because it says, *'With the ram of the trespass,'* implying that the trespass [itself][37] has already been made good. It might be thought that just as the ram and the trespass are indispensable, so should the Fifth be indispensable? It is therefore stated: *'With the ram of the trespass offering and it shall be forgiven him*,' implying that it was only the ram and the trespass which are indispensable in [the atonement for the sacrilege of] consecrated things, whereas the Fifth is not indispensable. Now, the law regarding consecrated things[38] could be derived from that regarding private belongings[39] and that of private belongings could be derived from the law regarding consecrated things. The law regarding consecrated things could be derived from that regarding private belongings: just as 'trespass' there[39] denotes the Principal[40] so does 'trespass' here[38] denote the Principal. The law regarding private belongings could be derived from that regarding consecrated things; just as in the case of consecrated things the Fifth is not indispensable, so in the case of private things the Fifth is similarly not indispensable.

1. Regarding the state of the husband's brother,
2. Keth. 75a.
3. [H] two bodies, (Rashi); last. 'with a load of grief'.
4. So that irrespective of any undesirable consequences whatsoever it was an advantage to her to become betrothed to 'the person she hath chosen to dwell together'; cf. Rashi a.l.
5. I.e. to Jehoiarib.
6. To Jedaiah.
7. V. p. 642, n. 7.
8. At least so far as the division of Jedaiah accepting the money is concerned; why then did R. Judah order the payment to be taken away from Jedaiah and handed over to Jehoiarib?
9. That Jedaiah accepted the money.
10. V. p. 642, n. 8.
11. Before the money was paid, in which case the trespass offering becomes disqualified.
12. To whom the money was paid and not by Jehoiarib who accepted the previous trespass offering.
13. I.e., of the Jehoiarib division.
14. I.e., to the disqualified trespass offering.
15. V. p. 646, n. 16.
16. V. p. 648, n. 6.
17. V. p. 648, n. 5.
18. For the money accepted by Jedaiah.
19. To Jehoiarib.
20. Regarding the money and the trespass offering.
21. And the money should thus remain with Jedaiah.
22. Even from Jedaiah (during his time of service) for the trespass offering accepted by Jehoiarib.
23. I.e., the money will be handed over to Jehoiarib who will sacrifice the trespass offering when their time of service will come round again.
24. Num. V, 8.
25. Probably in the term 'beside'.
26. Num. XXVIII, 23.
27. In the term 'beside'.
28. Pes. 58b.
29. Cf. Num. XXVIII, 2-4.
30. Lev. VI, 5.
31. Cf. Hor, 12a.
32. Not from the term 'beside'.
33. By having the verb in the future tense.
34. Cf. Lev. V, 16.
35. In accordance with ibid. 15.
36. Ibid. 16,
37. I.e., the payment of the Principal as *supra* p. 642.
38. Lev. V, 15-16.
39. Num. V, 6-8.
40. V. p. 650, n. 14.

Baba Kamma 111b

CHAPTER X

MISHNAH. IF ONE MISAPPROPRIATED [FOODSTUFF] AND FED HIS CHILDREN OR LEFT [IT] TO THEM [AS AN INHERITANCE], THEY WOULD NOT BE LIABLE TO MAKE RESTITUTION, BUT IF THERE WAS ANYTHING [LEFT] WHICH COULD SERVE AS SECURITY THEY WOULD BE LIABLE TO PAY.

GEMARA. R. Hisda said: If one misappropriated [an article] and before the owner gave up hope of recovering it, another person came and consumed it, the owner has the option of collecting payment from either the one[1] or the other,[2] the reason being that so long as the owner did not give up hope of recovery, the misappropriated article is still in the ownership of the original possessor.[3] But we have learnt: IF ONE MISAPPROPRIATED [FOODSTUFF] AND FED HIS CHILDREN[1] [WITH IT], OR LEFT [IT] TO THEM [AS AN INHERITANCE], THEY WOULD NOT BE LIABLE TO MAKE RESTITUTION. Now, is this not a contradiction to the view of R. Hisda? — R. Hisda might say to you that this holds good only after the owner has given up hope.[4]

[IF HE] LEFT [IT] TO THEM [AS AN INHERITANCE], THEY WOULD NOT BE LIABLE TO MAKE RESTITUTION. Rami b. Hama said: This [ruling] proves that the possession of an heir is on the same footing in law as the possession of a purchaser;[5] Raba, however, said the possession of an heir is not on a par with the possession of a purchaser,[6] for here we are dealing with a case where the food was consumed [after the father's death].[7] But since it is stated in the concluding clause, BUT IF THERE WAS ANYTHING [LEFT] WHICH COULD SERVE AS SECURITY[8] THEY WOULD BE LIABLE TO PAY[9] does it not imply that even in the earlier clause[10] we are dealing with a case where the misappropriated article was still in existence?[11] Raba could however say to you that what is meant is this: If their father left them property constituting [legal] security[12] they would be liable to pay.[13] But did Rabbi not teach[14] his son R. Simeon that 'ANYTHING WHICH COULD SERVE AS SECURITY should not [be taken literally to] mean actual security, for even if he left a cow to plow with or an ass to be driven,[15] they would be liable to restore it, to save their father's good name? — Raba therefore said: When I pass away R. Oshaia will come out to meet me,[16] since I am explaining the Mishnaic text in accordance with his teaching, for R. Oshaia taught: Where he misappropriated [foodstuff] and fed his children, they would not have to make restitution. If he left it to them [as an inheritance] so long as the misappropriated article is in existence they will be liable, but as soon as the misappropriated article is no more intact they will be exempt. But if their father left them property constituting [legal] security they would be liable to pay.

The Master stated: 'As soon as the misappropriated article is no more intact they would be exempt.' Should we not say that this is a contradiction to the view of R. Hisda?[17] — R. Hisda could say to you that the ruling [here] applies subsequent to Renunciation.[18]

The Master said: 'So long as the misappropriated article is in existence they will be liable to pay.' Should we not say that this is a contradiction to the view of Rami b. Hama?[19] — But Rami b. Hama could say to you that this teaching

1. I.e., the one who robbed him.
2. I.e., the one who later on consumed the article.
3. V. J. Ter. VII, 3.
4. I.e., the foodstuff was consumed after the proprietor had resigned himself to the loss of it completely.
5. Maintaining that if after renunciation the robber died, the misappropriated article could rightly remain with the heirs, just as with

purchasers under similar circumstances; cf. *supra* p. 393, n. 5; v. also B.B. 44a.
6. The article could therefore not rightly remain with the heirs though it would have remained with a purchaser.
7. But if still intact it would go back to the proprietor.
8. Now assumed to denote garments and similar conspicuous articles, as would be the case with real property.
9. For the sake of honoring their father.
10. Which states the law in the case of inconspicuous articles such as food and the like.
11. And the heirs seem nevertheless to have the right to retain it.
12. I.e., realty.
13. For the father's realty became legally mortgaged for the liability arising out of the robbery he committed.
14. *Infra* 113a.
15. But in the case of inconspicuous things such as food and the like, the heirs would be entitled to retain them.
16. V. B.M. 62b.
17. According to whom the person who consumed the misappropriated article could also be called upon to pay.
18. I.e., the foodstuff was consumed after the proprietor had resigned himself to the loss of it completely.
19. Maintaining that if after Renunciation the robber died, the misappropriated article could rightly remain with the heirs, just as with purchasers under similar circumstances; cf. *supra* p. 652; v. also B.B. 44a.

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applies prior to Renunciation.[1]

R. Adda b. Ahabah read the statement of Rami b. Hama with reference to the following [teaching]:[2] 'If their father left them money acquired from usury they would not have to restore it even though they [definitely] know that it came from usury. [And it was in connection with this that] Rami b. Hama said that this proves that the possession of an heir is on the same footing as the possession of a purchaser,[3] whereas Raba said: I can still maintain that the possession of an heir is not on the same footing as the possession of a purchaser, for here there is a special reason, as Scripture states: Take thou no usury of him or increase but fear thy God that thy brother may live with thee[4] [as much as to say.] 'Restore it to him so that he may live with thee.' Now, it is the man himself who is thus commanded[5] by the Divine Law, whereas his son is not commanded[5] by the Divine Law. Those who attach the argument[6] to the Baraitha[7] would certainly connect it also with the ruling of our Mishnah,[8] but those who attach to our Mishnah might maintain that as regards the Baraitha[9] Rami b. Hama expounds it in the same way as Raba.[10]

Our Rabbis taught: If one misappropriated [foodstuff] and fed his children, they would not be liable to repay. If, however, he left it [intact] to them, then if they are adults they would be liable to pay, but if minors they would be exempt. But if the adults pleaded: 'We have no knowledge of the accounts which our father kept with you.' they also would be exempt. But how could they become exempt merely because they plead. 'We have no knowledge of the accounts which our father kept with you'?[11] Said Raba: What is meant is this, 'If the adults pleaded: "We know quite well the accounts which our father kept with you and are certain that there was no balance in your favor" they also would be exempt. 'Another [Baraitha] taught: If one misappropriated [foodstuff] and fed his children, they would not be liable to repay. If, however, he left it [intact] to them and they consumed it, whether they were adults or minors, they would be liable. But why should minors be liable? They are surely in no worse a case than if they had willfully done damage?[12] — Said R. Papa: What is meant is this: If, however he left it [intact] before them and they had not yet consumed it, whether they were adults or minors, they would be liable.[13]

Raba said:[14] If their father left them a cow which was borrowed by him, they may use it until the expiration of the period for which it was borrowed, though if it [meanwhile] died they would not be liable for the accident.[15] If

they were under the impression that it was the property of their father, and so slaughtered it and consumed it, they would have to pay for the value of meat at the cheapest price.[16] If their father left them property that forms a [legal] security, they would be liable to pay. Some connect this [last ruling] with the commencing clause,[17] but others connect it with the concluding clause.[18] Those who connect it with the commencing clause[17] would certainly apply it to the concluding clause[19] and thus differ from R. Papa.[20] whereas those who connect it with the concluding clause[21] would not apply it in the case of the commencing clause,[22] and so would fall in with the view of R. Papa.[20] for R. Papa stated:[23] If one had a cow that he had stolen and slaughtered it on the Sabbath,[24] he would be liable,[25] for he had already become liable for the theft[26] prior to his having committed the sin of violating the Sabbath[27] but if he had a cow that was borrowed and slaughtered it on the Sabbath, he would be exempt,[28] for in this case the crime of [violating the] Sabbath and the crime of theft were committed simultaneously.[29]

Our Rabbis taught: *He shall restore the misappropriated article which he took violently away.*[30] What is the point of the words 'which he took violently away'?[31] Restoration should be made so long as it is intact as it was at the time when he took it violently away. Hence it was laid down: If one misappropriated [foodstuff] and fed his children they would not be liable to repay.[32] If, however, he left it to them [intact], whether they were adults or minors, they would be liable; Symmachus, however, was quoted as having ruled that [only] adults would be liable but minors would be exempt. The son[33] of R. Jeremiah's father-in-law [once] bolted the door in the face of R. Jeremiah.[34] The latter thereupon came to complain about this to R. Abin,[35] who however said to him: 'Was he[36] not merely asserting his right to his own?'[37] But R. Jeremiah said to him: 'I can bring witnesses to testify that I took possession of the premises during the lifetime of the father.'[38] To which the other[39] replied: 'Can the evidence of witnesses be accepted

1. For the mere transfer of possession, if the owner has not yet given up hope, is surely of no avail.
2. Tosef. B.M. V, 8; ibid. 62a and *supra* 94b.
3. And since there was here a change of possession the heirs are under no liability.
4. Lev. XXV, 36.
5. To make restoration.
6. Between Rami b. Hamah and Raba.
7. Dealing with usury.
8. Dealing with robbery where there is no apparent reason for the exemption except the view of Rami b. Hama.
9. Dealing with usury.
10. I.e., on the strength of the inference from Lev. XXV, 36.
11. For since they know of the robbery and the liability is definite, how could they be released by a plea of uncertainty as to the payment; cf. Rashi a.l. but also B.K. X, 7.
12. In which case they are exempt; cf. *supra* 87a.
13. [Since it is in intact it is considered to be then in the possession of the owner.]
14. Cf. Keth. 34b.
15. As the liabilities of the contract do not pass to them at least so long as they have not started using it; v. however H.M. 341 where no distinction is made.
16. Which is generally estimated to be two-thirds of the ordinary price; cf. B.B. 146b; v. also *supra* p. 98.
17. Dealing with the case where the cow died of itself.
18. Stating the law where it was slaughtered and consumed by them.
19. As there is certainly more liability where they slaughtered the cow than where it died of itself.
20. Whose ruling is going to be stated soon.
21. V. p. 655, n. 8.
22. V. p. 655. n. 7.
23. Cf. Keth. 34b.
24. In violation of the Sabbath and thus became subject to capital punishment; in accordance with Ex. XXXI, 14-15; v. also *supra* p. 408
25. For fivefold payment, as prescribed in Ex. XXI, 37.
26. So far as double payment is concerned, in accordance with ibid, XXII, 3.
27. And since he had already become liable for double payment at the time of the theft, the additional threefold payment which is purely of the nature of a fine is according to this view not affected by the fact that at the time of the

slaughter he was committing a capital offence, as also explained in Keth. 34b.
28. From civil liability.
29. I.e., at the time of the slaughter when he had to become liable also for the Principal which is a purely civil obligation and which must therefore be merged in the criminal charge; v. also *supra* p. 407.
30. Lev. V, 23.
31. Is this not redundant?
32. For the foodstuff was no longer intact.
33. Who was a minor.
34. Who was desirous of taking possession of premises that belonged to his father-in-law.
35. MS.M. 'R. Abba'.
36. I.e., the son of the father-in-law.
37. In accordance with Num. XXVII, 8.
38. Who disposed of them to me; cf. B.B. III, 3.
39. I.e., R. Abin or R. Abba.

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where the other party is not present?'[1] And why not? Was it not stated: 'Whether adults or minors they would be liable'?[2] — The other rejoined: 'Is not the divergent view of Symmachus[3] under your nose?'[4] He[5] retorted: 'Has the whole world made up its mind[6] to adopt the view of Symmachus just in order to deprive me of my property? Meanwhile the matter was referred from one to another till it came to the notice of R. Abbahu[7] who said to them: Have you not heard of what R. Joseph b. Hama reported in the name of Oshaia? For R. Joseph b. Mama said that R. Oshaia stated: If a minor collected his slaves and took possession of another person's field claiming that it was his, we do not say, Let us wait till he come of age, but we wrest it from him forthwith and when he comes of age he can bring forward witnesses [to support his allegation] and then we will consider the matter? — But what comparison is there? In that case we are entitled to take it away from him because he had no presumptive title to it from his father, but in a case where he has such a presumptive title from his father, this should surely not be so.

R. Ashi[8] said that R. Shabbathai stated: [Evidence of] witnesses may be accepted even though the other party to the case is not present. Thereupon R. Johanan remarked in surprise:[9] Is it possible to accept evidence of witnesses if the other party is not present? R. Jose b. Hanina accepted from him the ruling [to apply] in the case where e.g., [either] he[10] was [dangerously] ill, or the witnesses were [dangerously] ill, or where the witnesses were intending to go abroad, and[11] the party in question was sent for but did not appear.

Rab Judah said that Samuel stated that [evidence of] witnesses may be accepted even if the other party is not present. Mar Ukba, however, said: It was explained to me in so many words from Samuel that this is so only where e.g., the case has already been opened [in the Court] and the party in question was sent for but did not appear, whereas if the case has not yet been opened [in the Court] he might plead: 'I prefer to go to the High Court of Law'.[12] But if so even after the case had already been opened why should he similarly not plead: 'I prefer to go to the High Court of Law'? — Said Rabina: [This plea could not be put forward where] e.g., the local Court is holding a writ [of mandamus] issued by the High Court of Law.

Rab said: A document can be authenticated[13] even not in the presence of the other party [to the suit], whereas R. Johanan said that a document cannot be authenticated in the absence of the other party to the suit. R. Shesheth said to R. Joseph b. Abbahu: I will explain to you the reason of R. Johanan. Scripture says: And it hath been testified to its owner and he hath not kept him in;[14] the Torah thus lays down that the owner of the ox has to appear and stand by his ox [when testimony has to be borne against it]. But Raba said: The law is that a document may be authenticated even not in the presence of the other party; and even if he protests aloud before us [that the document is a forgery]. If, however, he says, 'Give me time till I can bring witnesses, and I will invalidate the document', we have to give him time.[15] If he appears [with witnesses] well and good, but if

he does not appear we wait again over the following Monday and Thursday and Monday.[16] If he still does not appear we write a Pethiha[17] out against him to take effect after ninety days. For the first thirty days we do not take possession of his property as we say that he is busy trying to borrow money; during the next thirty we similarly do not take possession of his property as we say perhaps he was unable to raise a loan and is trying to sell his property; during the last thirty days we similarly cannot take possession of his property as we still say that the purchaser[18] himself is busy trying to raise the money. It is only if after all this he still does not appear that we write an *adrakta*[19] on his property. All this, however, is only if he has pleaded: 'I will come [and defend]', whereas if he said: 'I will not appear at all' we have to write the *adrakta* forthwith; again these rulings apply only in the case of a loan, whereas in the case of a deposit we have to write the *adrakta* forthwith.[20] An *adrakta* can be attached only to immovables but not to movables, lest the creditor should meanwhile carry off the movables and consume them so that should the debtor subsequently appear and bring evidence which invalidates the document, he would find nothing from which to recover payment. But if the creditor is in possession of immovables we may write an *adrakta* even upon movables.[21] This, however, is not correct; we do not write an *adrakta* upon movables even though the creditor possesses immovables, since there is a possibility that his property may meanwhile become depreciated in value.[22] Whenever we write an *adrakta* we notify this to the debtor, provided he resides nearby,[23] but if he resides at a distance this is not done. Again, even where he resides far away if he has relatives nearby or if there are caravans which take that route, we should have to wait another twelve months until the caravan is able to go there and come back, as Rabina waited in the case of Mar Aha twelve months until a caravan was able to go to Be-Huzae[24] and come back. This, however, is no proof for in that case[25] the creditor was a violent man, so that should the *adrakta* have come into his hand it would never have been possible to get anything back from him, whereas in ordinary cases[26] we need only wait for the usher [of the Court] to go on the third day[27] of the week and come back on the fourth day of the week so that on the fifth day of the week he himself can appear in the Court of Law. Rabina said: The usher of the Court of Law[28] is as credible[29] as two witnesses; this however applies only to the imposition of Shamta,[30] but in the case of Pethiha,[31] seeing that he[32] may be involved in expense through having to pay for the scribe,[33] this would not be so.[34]

Rabina again said: We may convey a legal summons[35] through the mouth of a woman or through the mouth of neighbors; this rule, however, holds good only where the party was at that time not in town,

1. And a minor is considered in law as absent to all intents and purposes. For a different description of the case cf. J. Sanh. III, 9.
2. To restore misappropriated articles inherited by them to the legitimate proprietor.
3. Who releases the minor heirs.
4. Lit., 'at your side'.
5. I.e., R. Jeremiah.
6. Lit., 'doubled itself'.
7. Who was the special master of R. Jeremiah, cf. B.B. 140a and Shebu. 37b; v. also B.M. 16b where R. Abbahu called him 'Jeremiah, my son.'
8. According to R. Isaiah Berlin, this must have been an earlier R. Ashi since R. Johanan refers to this statement, but, as becomes evident from J. Sanh., III. 9, the authority here mentioned was either R. Jose or more correctly R. Assi. A similar confusion is found in Ta'an. 14a. Bek. 25a a.e.
9. Cf. *supra* 76b.
10. I.e., the plaintiff; cf. H.M. 28. 16.
11. Whether 'and' or 'or' should be read here, cf. Tosaf. a.l. and on B.K. 39a; the text in J. Sanh. III. 9, however, confirms the former reading.
12. In the Land of Israel; cf. *supra* p. 67 and Sanh. 31b.
13. Either by taking oral evidence or by collating the signatures; cf. Keth. II. 3-4.
14. Ex. XXI, 29.
15. As a rule for thirty days; cf. B.M. 118a.
16. I.e., three sittings of the Court; cf. *supra* p. 466.

17. I.e., a warrant, containing also a writ of anathema. It was, besides, the opening of preliminary legal proceedings.
18. Who might perhaps have bought some of his property.
19. Lit. 'tracing and authorization', i.e., a legal order to trace the debtor's property for the purpose of having it seized and assessed to the creditor for his debt; v. B.M. (Sonc. ed.) p. 95. n. 8.
20. For the bailee has no right to detain the deposit for any period of time whatsoever.
21. For the immovable possessions of the creditor safeguard the repayment to the debtor, should occasion arise.
22. And would not suffice to meet the repayment.
23. Within ten parasangs i.e. forty *mil*, the walking distance of one day, as in M.K. 21b; see Tur, H.M. 98, 9; cf. however Maim. Yad, Malweh we-Loweh, XXII, 4.
24. [The modern Khuzistan, S.W. Persia. Obermeyer, *op. cit*. p. 200 points out that the distance between Matha Mehasia (Sura) the seat of Rabina's court, and Khuzistan could be easily covered by a caravan within a three weeks' journey, and that the twelve months allowed by Rabina was probably due to some serious obstruction that impeded progress along the caravan route.]
25. Dealt with by Rabina.
26. Lit., 'here'.
27. So Tur. *loc. cit*., but Maim. *loc. cit*. reads 'the second day'.
28. Lit., 'of our Rabbis'.
29. When stating that the party refuses to appear before the Court.
30. I.e., oral ban.
31. V. *supra* p. 659, n. 2.
32. [The recalcitrant litigant, when he wishes to have the ban lifted.]
33. [For drafting the writ of anathema.]
34. For the usher would then have to corroborate his statements by some further evidence.
35. Lit., 'give a fixed date'.

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but if he was then in town this would not be so, as there is a possibility that they[1] might not transmit the summons to him, thinking that the usher of the Court of Law will himself surely find him and deliver it to him. Again, we do not apply this rule except where the party would not have to pass by the door of the Court of Law, but if he would have to pass by the door of the Court of Law this would not be so, as they[2] might say that at the Court of Law they will surely find him first and deliver him the summons. Again, we do not rule thus except where the party was to come home on the same day, but if he had not to come home on the same day this would not be so, for we might say they would surely forget it altogether.

Raba stated: Where a Pethiha was written upon a defaulter for not having appeared before the court, it will not be destroyed so long as he does not [actually] appear before the court.[3] [So also] if it was for not having obeyed the law, it will not be destroyed until he [actually] obeys the law;[3] this however is not correct: as soon as he declares his intention to obey, we have to destroy the Pethiha.

R. Hisda said: [In a legal summons] we cite the man to appear on Monday, [then] on Thursday and [then] on the next Monday, [i.e.] we fix one date and then another date after one more date, and on the morrow [of the last day] we write the Pethiha.

R. Assi[4] happened to be at R. Kahana's where he noticed that a certain woman had been summoned to appear before the court on the previous evening, [and as she failed to appear] a Pethiha was already written against her on the following morning. He thereupon said to R. Kahana: Does the Master not accept the view expressed by R. Hisda that [in a legal summons] we cite the defendant to appear on Monday, [then] on Thursday and [then] on the next Monday? He replied: This applies only to a man who might be unavoidably prevented, through being out of town, but a woman, being [always] in town and still failing to appear is considered contumacious [after the first act of disobedience].

Rab Judah said: We never cite a defendant to appear either during Nisan,[5] or during Tishri,[5] or on the eve of a holy day or on the eve of a Sabbath. We can, however, during Nisan cite him to appear after Nisan, and so

also during Tishri we may cite him to appear after Tishri, but on the eve of the Sabbath we do not cite him to appear after Sabbath, the reason being that he might be busy[6] with preparations for Sabbath.[7] R. Nahman said: We never cite the participants of the Kallah[8] during the period of the Kallah or the participants of the Festival sessions[9] during the Festive Season.[10] When plaintiffs came before R. Nahman [and demanded summonses to be made out during this season] he used to say to them: Have I assembled them for your sake? But now that there are impostors,[11] there is a risk [that they purposely came to the assemblies to escape justice].[12]

BUT IF THERE WAS ANYTHING [LEFT] WHICH COULD SERVE AS SECURITY, THEY WOULD BE LIABLE TO PAY. Rabbi taught R. Simeon his son: The words 'ANYTHING WHICH COULD SERVE AS SECURITY' should not [be taken literally to] mean actual security, for even if he left a cow to plow with or an ass to drive after, they would be liable to restore it to save the good name of their father. R. Kahana thereupon asked Rab: What would be the law in the case of a bed upon which they sit, or a table at which they eat?[13] — He replied[14] [with the verse], Give instructions to a wise man and he will yet be wiser.[15]

MISHNAH. NO MONEY MAY BE TAKEN IN CHANGE EITHER FROM THE BOX OF THE CUSTOMS-COLLECTORS[16] OR FROM THE PURSE OF THE TAX-COLLECTORS,[16] NOR MAY CHARITY BE TAKEN FROM THEM, THOUGH IT MAY BE TAKEN FROM THEIR [OWN COINS WHICH THEY HAVE AT] HOME OR IN THE MARKET PLACE.

GEMARA. A Tanna taught: When he gives him[17] a *denar* he may receive back the balance [due to him].[18]

In the case of customs-collectors, why should the dictum of Samuel not apply that the law of the State is law?[19] — R. Hanina b. Kahana said that Samuel stated that a customs-collector who is bound by no limit [is surely not acting lawfully]. At the School of R. Jannai it was stated that we are dealing here with a customs-collector who acts on his own authority.[20] Some read these statements with reference to [the following]: No man may wear a garment in which wool and linen are mixed[21] even over ten other garments and even for the purpose of escaping the customs.[22] [And it was thereupon asked], Does not this Mishnaic ruling conflict with the view of R. Akiba, as taught: It is an [unqualified] transgression to elude the customs;[23] R. Simeon however, said in the name of R. Akiba that customs may [sometimes] be eluded[24] [by putting on garments of linen and wool]. Now, regarding garments of linen and wool I can very well explain their difference[25] to consists in this, that while one master[26] maintained that an act done unintentionally could not be prohibited,[27] the other master maintained that an act done unintentionally should also be prohibited;[28] but is it not a definite transgression to elude the customs? Did Samuel not state that the law of the State is law? — R. Hanina b. Kahana said that Samuel stated that a customs-collector who is bound by no limit [is surely not acting lawfully]. At the School of R. Jannai it was stated that we were dealing here with a customs-collector who acted on his own authority.[29]

Still others read these statements with reference to the following: To [escape] murderers or robbers or customs-collectors one may confirm by a vow a statement that [e.g.] the grain is *terumah*[30] or belongs to the Royal Court, though it was not *terumah* and though it did not belong to the Royal Court.[31] But [why should] to customs-collectors [not] apply the statement made by Samuel that the law of the State has the force of law? R. Hanina b. Kahana said that a customs-collector who is bound by no limit [is surely not acting lawfully]. At the school of R. Jannai it was stated that we were dealing here with a customs-collector who acted on his own

authority.[32] But R. Ashi said: We suppose the customs-collector[33] here to be a heathen publican[34] as it was taught: 'Where a suit arises between an Israelite and a heathen, if you can justify the former according to the laws of Israel, justify him and say: 'This is our law'; so also if you can justify him by the laws of the heathens justify him and say [to the other party:] 'This is your law'; but if this cannot be done, we use subterfuges to circumvent him.[34] This is the view of R. Ishmael, but R. Akiba said that we should not attempt to circumvent him on account of the sanctification of the Name. Now according to R. Akiba the whole reason [appears to be,] because of the sanctification of the Name, but were there no infringement of the sanctification of the Name, we could circumvent him! Is then the robbery of a heathen permissible?[35] Has it not been taught[36] that R. Simeon stated that the following matter was expounded by R. Akiba when he arrived from Zifirin:[37] 'Whence can we learn that the robbery of a heathen is forbidden? From the significant words: *After that he is sold*[38] *he may be redeemed again*,[39]

1. I.e., the women or the neighbors.
2. V. p. 660, n. 13.
3. A mere promise to appear does not suffice.
4. More correctly 'R. Ashi'.
5. On account of urgent agricultural work; cf. Ber. 35b.
6. And take no notice of the summons.
7. Cf. Shab. 119a.
8. I.e., the Assembly of Babylonian scholars in the months of Elul and Adar; v. B.M. (Sonc. ed.) p. 560, n. 6 and B.B. (Sonc. ed.) p. 60, n. 7.
9. For otherwise they may abstain from coming to the Assemblies.
10. Which commences thirty days before the festival; v. Pes. 6a.
11. Abusing this privilege.
12. And we therefore issue a summons.
13. Which is not kept so much in the eye of the public as is the case with the cow or the ass.
14. The law is exactly the same.
15. Prov. IX, 9.
16. As these are considered to act ultra vires and thus unlawfully.
17. I.e., a customs-collector or a tax-collector.
18. For otherwise he would lose it altogether.
19. V. B.B. (Sonc. ed.) p. 222, n. 6. Why then are customs collectors considered as acting unlawfully.
20. Without the authority of the ruling power.
21. Cf. Lev. XIX, 19.
22. Kil. IX, 2.
23. Cf. Sem. 11, 9 and Tosef, B.K. X, 8.
24. Where the collectors are acting unlawfully, as will soon be explained.
25. I.e., the anonymous Tanna and R. Simeon in the name of R. Akiba.
26. R. Simeon in the name of R. Akiba; cf. Tos. Zeb. 91b.
27. As also maintained by R. Simeon in the case of other transgressions; v. Shab. 41b, Keth. 5b a.e.
28. As indeed maintained by R. Judah in Shab. 41b a.e.
29. Without the authority of the ruling power.
30. V. Glos.
31. Ned. III, 4.
32. V. p. 663, n. 13.
33. In all these cases referred to above.
34. V. *supra*, p. 211, n. 6.
35. [I.e., in withholding anything to which he is entitled; v. Sanh. (Sonc. ed.) p. 388, n. 6. Graetz *MGWJ*, 1881, p. 495. shows clearly that the whole controversy whether robbery of a heathen was permissible was directed against the iniquitous Fiscus Judaicus imposed by Vespasian and exacted with much rigor by Domitian.]
36. Cf. Sifra on Lev. XXV, 48.
37. Prob. the headland of Cyprus; Zephyrium (Jast.). [Graetz, Geschichte, IV, p. 135. connects R. Akiba's visit to Zifirin with his extensive travels for the purpose of rousing the Jews against the Roman tyranny.]
38. I.e., an Israelite to a Canaanite.
39. Lev. XXV, 48.

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which implies that he could not withdraw and leave him [without paying the redemption money]. You might then say that he[1] may demand an exorbitant sum for him? No, since it says: *And he shall reckon with him that bought him*[2] to emphasize that he must be very precise in making the valuation with him who had bought him.'[3] — Said R. Joseph: There is no difficulty, here [where the exception is made it refers] only to a heathen, whereas there [is indeed no exception] in the case of a *Ger Toshab*.[4] But Abaye said to him:

Are the two of them[5] not mentioned next to one another [so that neither forms an exception in the law],[6] as it says: *'Thy brother … sell himself'*[7] [implying,] not to you but to a stranger, as it says: *'Unto the stranger'*; again, not to a *Ger zedek*[8] but to a mere *Ger Toshab*,[4] as it says *'unto a stranger-settler'*,[9] 'the family of a stranger': this denotes one who worships idols, and when it says or to an 'Eker'[10] it means that the person in question sold himself for idolatrous practices![11] — Raba therefore said: There is no difficulty, as regarding robbery there is indeed no exception, whereas regarding the cancellation of debts [a heathen might not have been included]. Abaye rejoined to him: Is not the purchase of a Hebrew slave[12] merely the cancellation of a debt, [and yet no distinction whatsoever is made as to the person of the master]? —
Raba adheres to his own view as [elsewhere] stated by Raba, that a Hebrew slave is actually owned in his body by the master.[13]

R. Bibi b. Giddal said that R. Simeon the pious stated: The robbery of a heathen is prohibited,[14] though an article lost by him is permissible. His robbery is prohibited, for R. Huna said: Whence do we learn that the robbery of a heathen is prohibited? Because it says: *'And thou shalt consume all the peoples that the Lord thy God shall deliver unto thee'*;[15] only in the time [of war] when they were delivered in thy hand [as enemies] this is permitted, whereas this is not so in the time [of peace] when they are not delivered in thy hand [as enemies]. His lost article is permissible,[16] for R. Hama b. Guria said that Rab stated: Whence can we learn that the lost article of a heathen is permissible?[17] Because it says: *And with all lost thing of thy brother's*:[18] it is to your brother that you make restoration, but you need not make restoration to a heathen. But why not say that this applies only where the lost article has not yet come into the possession of the finder, in which case he is under no obligation to look round for it, whereas if it had already entered his possession, why not say that he should return it. — Said Rabina:[19] And thou hast found it[18] surely implies that the lost article has already come into his[20] possession.

It was taught: R. Phineas b. Yair said that where there was a danger of causing a profanation of the Name,[21] even the retaining of a lost article of a heathen is a crime. Samuel said: It is permissible, however, to benefit by his mistake as in the case when Samuel once bought of a heathen a golden bowl under the assumption of it being of copper[22] for four *zuz*, and also left him minus one *zuz*. R. Kahana once bought of a heathen a hundred and twenty barrels which were supposed to be a hundred while he similarly left him minus one *zuz*[23] and said to him: 'See that I am relying upon you.'[24] Rabina together with a heathen bought a palm-tree to chop up [and divide]. He thereupon said to his attendant: Quick, bring to me the parts near to the roots, for the heathen is interested only in the number [but not in the quality].[25] R. Ashi was once walking on the road when he noticed branches of vines outside[26] a vineyard upon which ripe clusters of grapes were hanging. He said to his attendant: 'Go and see, if they belong to a heathen bring them to me,[27] but if to an Israelite do not bring them to me.' The heathen happened to be then sitting in the vineyard and thus overheard this conversation, so he said to him: 'If of a heathen would they be permitted?' — He replied: 'A heathen is usually prepared to [dispose of his grapes and] accept payment, whereas an Israelite is generally not prepared to [do so and] accept payment.

The above text [stated], 'Samuel said: The law of the State is law.' Said Raba: You can prove this from the fact that the authorities fell palm-trees [without the consent of the owners] and construct bridges [with them] and we nevertheless make use of them by passing over them.[28] But Abaye said to him: This is so perhaps because the proprietors have meanwhile abandoned their right in them.[29] He, however, said to him: If the rulings of the State had not the force of law, why should[30]

the proprietors abandon their right? Still, as the officers do not fully carry out the instructions of the ruler,[31] since the ruler orders them to go and fell the trees from each valley [in equal proportion], and they come and fell them from one particular valley, [why then do we make use of the bridges which are thus constructed from misappropriated timber?] — The agent of the ruler is like the ruler himself[32] and cannot be troubled [to arrange the felling in equal proportion], and it is the proprietors who bring this loss on themselves, since it was for them to have obtained contributions from the owners of all the valleys and handed over [the] money [to defray the public expenditure].

Raba said: He who is found in the barn must pay the king's share [for all the grain in the field].[33] This statement applies only to a partner, whereas an *aris*[34] has to pay no more than for the portion of his tenancy.[35]

Raba further said: One citizen may be pledged for another citizen [of the same town], provided however the arrears are due for follerar[36] and karga[37] of the current year, whereas if they are due for the year that has already passed [it would not be so], for since the king has already been pacified, the matter will be allowed to slide. Raba further said: In the case of those [heathens] who manure fields [for pay] and reside within the Sabbath limits[38] [round the town], it is prohibited to purchase any animal from them, the reason being that an animal from the town might have been mixed up with theirs:[39] but if they reside outside the Sabbath limits it is permitted to buy animals from them.[40] Rabina however said: If proprietors were pursuing them [for the restoration of misappropriated animals] it would be prohibited [to purchase an animal from them] even [were they to reside] outside the Sabbath limits.

Raba proclaimed or as others say, R. Huna: [Let it be known to those] who go up to the Land of Israel and who come down from Babylonia that if a son of Israel knows some evidence for the benefit of a heathen, and without being called upon [by him] goes into a heathen court of law and bears testimony against a fellow Israelite he deserves to have a Shamta[41] pronounced against him, the reason being that heathens adjudicate the payment of money

1. **The heathen master.**
2. **Ibid, 50.**
3. **Now does this not conclusively prove that the robbery of whomsoever, without any exception, is a crime?**
4. **[H], Lit., 'a stranger-settler,' a resident alien of a different race and of a different religion, since he respects the covenant of the law made by God with all the children of Noah, i.e., the Seven Commandments forming the elementary principles of civilized humanity, he is a citizen enjoying all the rights and privileges of civil law.**
5. **I.e., a *Ger Toshab* and a Canaanite.**
6. **Requiring a very accurate reckoning to repay the purchaser whether he was a *Ger Toshab* or a Canaanite.**
7. **Lev. XXV, 47.**
8. **Lit., 'a stranger (who embraced the faith) of righteousness, 1.e., a proselyte for the sake of true religion.**
9. **E.V. 'Unto the stranger or sojourner.'**
10. **E.V. 'or to the stock of', but taken here literally to denote work of destruction and uprooting; cf. Gen. XLIX, 6; Josh. XI, 6 and 9 and Eccl. III, 2.**
11. **V. B.M. (Sonc. ed.) p. 71a and notes. Now, does this not prove that nobody whatsoever, whether a resident alien or a heathen, is excepted from being protected by the law of robbery?**
12. **Having to pay redemption money, as in Lev. XXV, 50.**
13. **Kid. 16a. [To withdraw therefore the slave without payment of redemption money amounts to actual robbery.]**
14. **Cf. B.M. 87b and Bk. 13b; v. also Tosef. B.K. X, 8 where it is stated that it is more criminal to rob a Canaanite than to rob an Israelite; cf. P.M. II, 5.**
15. **Deut. VII, 16.**
16. **I.e., it is not subject to the law of lost property; Deut. XXII, 1-3. V.B.M. (Sonc. ed.) p. 149, n. 6.**
17. **Deut. XXII, 1-3.**
18. **Ibid. XXII, 3.**
19. **B.M. 2a.**
20. **I.e., the finder's.**

21. Of Israel and his God; V. The Chief Rabbi's commentary on Lev. XXII, 32.
22. Cf. however n. 9.
23. This clause is altogether missing in Alfasi and Asheri.
24. As to the number of the barrels.
25. Of the pieces.
26. According to the reading of MS.M.
27. Especially since the branches were outside the vineyard and thus probably overhanging a public road; cf. B.B. II, 14.
28. For if the rulings of the State were not binding by religious law, it would have been a sin to make use of the bridges constructed in such a way.
29. Cf. *supra* p. 382.
30. In accordance with the interpretation of Tosaf. a.l.; v. also *supra* 148; but according to Rashi read 'What effect could there be even if … 'so long as no change in possession followed.
31. Lit., 'King'.
32. Cf. Shebu. 47b.
33. So that the payment exacted is not robbery but in accordance with law; the payer will again be entitled to compel the owners of the other grain to share proportionately the payment he had to make for all of them.
34. I.e., a farmer-tenant; a field laborer who tills the owner's ground for a certain share in the produce.
35. But not for the portion of the owner.
36. [H] = *burla*, i.e., a certain Roman land tax adopted by the Persians (Jast.).
37. I.e., capitation tax; the reading of Alfasi is *gizta*, i.e., fleece.
38. I.e., two thousand cubits.
39. And it is unlawful to possess or purchase a misappropriated article even if mixed with many others; cf. Bz. 38b.
40. For since they are so far away from the town it is not likely that an animal from the town has been mixed up with theirs.
41. Oral anathema; cf. Glos.

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[even] on the evidence of one witness.[1] This holds good if only one witness was concerned but not where there were two. And even to one witness it applies only if he appeared before judges of Magista,[2] but not before the Dawar[3] where the judges similarly impose an oath upon the evidence of a single witness. R. Ashi said: When we were at R. Huna's[4] we raised the question of a prominent man who would be trusted by them as two. [Shall we say that since] money would be adjudicated on his [sole] evidence, he therefore should not bear testimony in their courts, or perhaps since he is a prominent man he can hardly escape their notice and should consequently deliver his evidence? — This question remained undecided.

R. Ashi further said: A son of Israel who sells to a heathen a field bordering on one of a fellow Israelite deserves to have a Shamta pronounced against him. For what reason? If because of the right of [pre-emption enjoyed by] the nearest neighbor to the boundary,[5] did the Master not state[6] that where he buys from a heathen or sells to a heathen the right of [pre-emption enjoyed by] the nearest neighbor to the boundary does not apply?[7] — It must therefore be because the neighbor might say to the vendor: 'You have placed a lion at my border.'[8] He therefore deserves to have a Shamta pronounced against him unless he accepts upon himself the responsibility for any consequent mishap that might result [from the sale].

MISHNAH. IF CUSTOMS-COLLECTORS TOOK AWAY A MAN'S ASS AND GAVE HIM INSTEAD ANOTHER ASS, OR IF BRIGANDS TOOK AWAY HIS GARMENT AND GAVE HIM INSTEAD ANOTHER GARMENT, IT WOULD BELONG TO HIM, FOR THE OWNERS HAVE SURELY GIVEN UP HOPE OF RECOVERING IT.[9] IF ONE RESCUED [ARTICLES] FROM A RIVER OR FROM A MARAUDING BAND OR FROM HIGHWAYMEN, IF THE OWNERS HAVE GIVEN UP HOPE OF THEM, THEY WILL BELONG TO HIM.[10] SO ALSO REGARDING SWARMS OF BEES, IF THE OWNERS HAVE GIVEN UP HOPE OF RECOVERING THEM, THEY WOULD BELONG TO HIM. R. JOHANAN B. BEROKA SAID: EVEN A WOMAN OR A MINOR[11] IS TRUSTED WHEN STATING THAT THIS SWARM STARTED FROM HERE;[12] THE OWNER [OF BEES] IS ALLOWED TO WALK INTO THE FIELD OF HIS NEIGHBOUR FOR THE PURPOSE OF RESCUING HIS SWARM,

THOUGH IF HE CAUSES DAMAGE HE WOULD HAVE TO PAY FOR THE AMOUNT OF DAMAGE HE DOES. HE MAY, HOWEVER, NOT CUT OFF HIS NEIGHBOUR'S BOUGH [UPON WHICH HIS BEES HAVE SETTLED] EDEN THOUGH WITH THE INTENTION OF PAYING HIM ITS VALUE: R. ISHMAEL THE SON OF R. JOHANAN B. BEROKA, HOWEVER, SAID THAT HE MAY EVEN CUT OFF HIS NEIGHBOUR'S BOUGH IF HE MEANS TO REPAY HIM THE VALUE.

***GEMARA*. A Tanna taught: If he was given [anything by customs-collectors] he would have to restore it to the original proprietors. This view thus maintains that Renunciation by itself does not transfer ownership[13] and consequently the misappropriated article has at the very outset come into his possession unlawfully;[14] Some, however, read: 'If he cares to give up [the article given him by the customs-collector], he should restore it to the original proprietors',[15] the reason being that Renunciation by itself transfers ownership,[16] so that it is only when [he[17] made up his mind] saying: 'I do not like to benefit from money which is not [really] mine';[18] he must restore it to the original proprietors.**

IT WOULD BELONG TO HIM FOR THE OWNERS HAVE SURELY ABANDONED IT.[19] Said R. Ashi:[20] This Mishnaic ruling applies only where the robber was a heathen,[21] but in the case of a robber who was an Israelite this would not be so, as the proprietor surely thinks: [If not to-day to-morrow] I will take him to law.[22] R. Joseph demurred to this, saying: On the contrary, the reverse is more likely. In the case of heathens who usually administer law forcibly[23] the owner need not give up hope,[24] whereas in the case of an Israelite where the judges merely issue an order to make restoration [without however employing corporal punishment][25] the owner has surely abandoned any hope of recovery. If therefore a [contrary] statement was ever made it was made only regarding the concluding clause [as follows:] IF ONE RESCUED [ARTICLES] FROM [A RIVER OR FROM] HEATHENS[26] OR FROM ROBBERS, IF THE OWNERS HAVE ABANDONED THEM THEY WILL BELONG TO HIM, Implying that as a rule this would not be so. This implication could, however, not be maintained in the case of heathens who usually administer the law forcibly,[27] whereas in the case of a robber who was an Israelite, since the judges will merely issue an order to make restoration [without however employing corporal punishment] the owner has surely abandoned any hope of recovery.

We learnt elsewhere: In the case of skins belonging to a lay owner, mere mental determination[28] [on the part of the owner] will render them capable of becoming defiled,[29] whereas in the case of those belonging to a tanner no mental determination[28] would render them capable of becoming defiled.[30] Regarding those in possession of a thief mental determination[31] will render them capable of becoming defiled,[32] whereas those in the possession of a robber no mental determination[33] will render them capable of becoming defiled.[34] R. Simeon however, says that the rulings are to be reversed: Regarding those in the possession of a robber mental determination[33] will render them capable of becoming defiled,[35] whereas those in the possession of a thief no mental determinations will render them capable of becoming defiled, as in the last case the owners do not usually abandon hope of finding the thief.[36] Said 'Ulla: This difference of opinion[37] exists only in average cases, but where Renunciation is definitely known to have taken place opinion is unanimous that Renunciation transfers ownership. Rabbah,[38] however, said: Even where the Renunciation is definitely known to have taken place there is also a difference of opinion. Abaye said to Rabbah:[38] You should not contest the statement of 'Ulla, for in our Mishnah[39] we learnt in accordance with him: … as the owners do not usually abandon hope of finding the thief. The reason is that usually the owners do not abandon hope of tracing

the thief, but where they definitely abandoned hope of doing so, the skins would have become his. He rejoined:[40] We interpret the text in our Mishnah, [to mean][41] 'For there is no Renunciation of them on the part of the owners.'[42]

We have learnt: IF CUSTOMS-COLLECTORS TOOK AWAY A MAN'S ASS AND GAVE HIM INSTEAD ANOTHER ASS OR IF BRIGANDS TOOK AWAY HIS GARMENT AND GAVE HIM INSTEAD ANOTHER GARMENT, IT WOULD BELONG TO HIM, FOR THE OWNERS HAVE SURELY ABANDONED HOPE OF RECOVERING IT. Now whose view is represented here? If we say, that of the Rabbis,[43] the ruling in the case of robbers[44] raises a difficulty.[45] Again, if that of R. Simeon, the ruling in the case of thieves[46] raises a difficulty![47] The problem, it is true, is easily solved if we accept the view of 'Ulla who stated that where Renunciation was definitely known to have taken place ownership is transferred; the Mishnaic ruling here would then similarly apply to the case where Renunciation was definitely known to have taken place and would thus be unanimous. But on the view of Rabbah who stated that even where the Renunciation is definitely known to have taken place there is still a difference of opinion,[48] with whose view would the Mishnaic ruling accord? It could neither be with that of the Rabbis nor with that of R. Simeon! — We speak here of an armed highwayman,[49] and the ruling will be in accordance with R. Simeon. But if so, is this case not identical with [that of a customs-collector acting openly like a] 'robber'?[50] — Yes, but two kinds of robbers[51] are spoken of.

Come and hear: If a thief,[52] a robber, or an *annas*[53] consecrates a misappropriated article, it is duly consecrated; if he sets aside the portion for the priest's gift,[54] it is genuine *terumah*; or again if he sets aside the portion for the Levite's gift,[55] the tithe is valid.[56] Now, whose view does this teaching follow? If [we say] that of the Rabbis, the case of robbers creates a difficulty,[57] if that of R. Simeon, the case of the thief creates a difficulty?[58] The problem, it is true, is easily solved if we accept the view of 'Ulla who stated that where Renunciation was definitely known to have taken place ownership is transferred; the Mishnaic ruling here would then similarly apply to the case where Renunciation was definitely known to have taken place, and would thus be unanimous. But if we adopt the view of Rabbah who stated that even where the Renunciation is definitely known to have taken place there is still a difference of opinion,[59] with whose view would the Mishnaic ruling accord? It could be neither in accordance with the Rabbis nor in accordance with R. Simeon? — Here too an armed highwayman is meant, and the ruling will be in accordance with R. Simeon. But if so, is this case not identical with that of 'robber'? — Yes, two kinds of robbers are spoken of. Or if you wish I may alternatively say that this teaching is in accordance with Rabbi, as taught: 'Rabbi says: A thief is in this respect [subject to the same law] as a robber',

1. Whereas according to Scripture no less than two witnesses are required; cf. Deut. XIX, 15.
2. 'Magistratus': v. Targ. II, Esth. IX, 3; also S. Krauss, Lehnworter, II, 322; 'untrained magistrates', Jast. 'a village court', Rashi a.l.
3. 'The Persian Circuit Court' (Jast.).
4. R. Kahana's according to MS.M., followed here also by Asheri a.l.
5. V. B.M. 108a.
6. Ibid. 108b.
7. For he who is outside the covenant of the law could not be compelled to abide by its principles.
8. [It was no uncommon practice for the unscrupulous heathen to interfere with the irrigation on which the life of the neighboring fields depended and then force the owners to move out and seek their existence elsewhere, v. Funk, Die Juden in Babylonien I, p. 16.]
9. And as after the Renunciation on the part of the owner there followed a change of possession, ownership was transferred to the possessor.
10. Cf. B.M. 27a.
11. Whose evidence is generally not accepted; v. Shebu. IV, 1 and *supra* p. 507.

12. And thus establish the ownership of the swarm; for the reason see the discussion *infra* in the Gemara.
13. As indeed maintained by R. Joseph *supra* p. 383, or even by Rabbah according to Tosaf. on B.K. 67b.
14. According to Tosaf. ibid, the true owner abandoned the article only after it changed hands from the customs-collector to the new possessor; the Mishnaic ruling, however, deals with another case as explained *supra* p. 670, n. 1.
15. [MSM.: 'to the customs-collector' (since he acquired it by Renunciation)].
16. V. *supra* p. 382 and Tosaf. on 67b.
17. Being scrupulous.
18. Though strict law could not enforce it in this case.
19. And as after the Renunciation on the part of the owner there followed a change of possession, ownership was transferred to the possessor.
20. 'R. Assi' according to Asheri; cf. D.S. and *supra* p. 657, n. 11.
21. In which case the person robbed might be afraid to force him to pay.
22. And thus never gives up hope of recovering the misappropriated article.
23. Lit., 'haughtily' (Rashi). Krauss, Lehnworter: lit., 'Gothism', referring to the Goths in the Roman army.
24. For the robber will be forced by the heathen judges to make restoration even upon the strength of circumstantial evidence, however slender.
25. But on the other hand take all circumstantial evidence as baseless suggestions and thus require sound testimony to be borne by truthful witnesses.
26. Who are designated in the Mishnah a troop of invaders. [MS.M. however reads here too MARAUDING BAND.]
27. V. p. 671, n. 10.
28. To use them as they are.
29. As his mental determination is final, and the skins could thus be considered as fully finished articles and thus subject to the law of defilement.
30. As a tanner usually prepares his skins for the public, and it is for the buyer to decide what article he is going to make out of them.
31. On the part of the thief to use them as they are.
32. For the skins became the property of the thief, as Renunciation usually follows theft on account of the fact that the owner does not know against whom to bring an action.
33. On the part of the robber to use them as they are.
34. For the skins did not become the property of the robber as robbery does not usually cause Renunciation, since the owner knows against whom to bring an action.
35. For the skins became the property of the robber as the owner has surely renounced every hope of recovering them for fear of the robber who acted openly.
36. V. Kel. XXVI, 8 and *supra* p. 384.
37. Between R. Simeon and the other Rabbis.
38. *Var. lec*. 'Raba'.
39. Kel. XXVI, 8 and *supra* p. 384.
40. I.e., Rabbah to Abaye.
41. Cf. Tosaf. s.v. [H]
42. Since the skins were taken away stealthily the owner will never in reality give up hope of tracing the thief and recovering them, even though they may express their despair of their return.
43. Who oppose R. Simeon.
44. I.e., the customs-collector who acts openly.
45. For according to them there is no Renunciation in the case of a robber.
46. I.e., the brigand.
47. For according to him there is no Renunciation in the case of a thief.
48. Between R. Simeon and the other Rabbis.
49. Acting openly and not stealthily; cf. *supra* 57a.
50. Why then repeat the ruling in two identical cases?
51. I.e., customs-collectors and brigands.
52. V. *supra* p. 386.
53. Lit., 'a violent man'; the same as the hamsan, who as explained *supra* p. 361, is prepared to pay for the objects which he misappropriates.
54. Cf. Num. XVIII, 11-12.
55. Cf. Num. ibid. 21.
56. For it is assumed that the proprietors are already resigned to the loss of the misappropriated articles, so that ownership has changed hands, v. *supra* 67a.
57. For according to them there is no Renunciation in the case of a robber.
58. For according to him there is no Renunciation in the case of a thief.
59. Between R. Simeon and the other Rabbis.

Baba Kamma 114b

and it is a known fact that it was to the law applicable to a robber according to R. Simeon[1] [to which a thief was made subject in this statement of Rabbi].[2]

The above text [states]: 'Rabbi says: I maintain that a thief is [in this respect subject

to the same law] as a robber.' The question was asked: Did he mean to [make him subject to the law applicable to a] robber as laid down by the Rabbis,[3] in which case ownership is not transferred, or did he perhaps mean to [make him subject to the law applicable to a] robber as defined by R. Simeon,[1] in which case the ownership is transferred? Come and hear: IF CUSTOMS-COLLECTORS TOOK AWAY A MAN'S ASS AND GAVE HIM INSTEAD ANOTHER ASS, OR IF BRIGANDS TOOK AWAY HIS GARMENT, IT WOULD BELONG TO HIM, FOR THE OWNERS HAVE SURELY ABANDONED IT. Now, with whose view does this ruling accord? If with that of the Rabbis, the case of the robber[4] raises a difficulty;[5] if with that of R. Simeon, the case of the thief[6] raises a difficulty.[7] The difficulty is easily solved if you say that Rabbi meant [to make the thief subject to the law] applicable to a robber as defined by R. Simeon,[1] in which case ownership is transferred; the ruling in the Mishnah would then be in accordance with Rabbi, as on this account ownership would be transferred. But if you say that he meant [to make him subject] to the law of robber as defined by the Rabbis,[3] in which case ownership will not be transferred, whom will the Mishnaic ruling[8] follow? It will be In accordance neither with Rabbi nor with R. Simeon nor with the Rabbis? — The robber spoken of here is an armed brigand[9] and the ruling will be in accordance with R. Simeon.[1] But if so, is this case not identical with [that of a customs-collector acting openly like a] 'robber'?[10] — Yes, two kinds of robbers[11] are spoken of.

Come and hear: If a thief, a robber or an annus consecrates a misappropriated article, it is duly consecrated; if he sets aside the portion for the priests' gift, it is genuine *terumah*; or again, if he sets aside a portion for the Levite's gift, the tithe is valid.[12] Now, with whose view does this teaching accord? If [we say] it is in accordance with the Rabbis, the case of the robber creates a difficulty?[13] If again [we say] it is in accordance with R. Simeon, the case of the thief[14] creates a difficulty.[15] The difficulty, it is true, is easily solved if you say that Rabbi meant [to make the thief subject to the same law] as robber as defined by R. Simeon in which case ownership is transferred; the ruling in this teaching would then be in accordance with Rabbi, as on this account ownership would be transferred. But if you say that he meant [to make him] subject to the law of robber as defined by the [other] Rabbis, in which case ownership will not be transferred, in accordance with whom will be this ruling?[16] — The thief here spoken of is an armed robber[17] and the ruling will thus be in accordance with R. Simeon.[18] But if so, is this case not identical with that of 'robber'?[10] Yes, but two kinds of robbers are spoken of. R. Ashi said to Rabbah: Come and hear that which Rabbi taught to R. Simeon his son: The words 'anything which could serve as security' should not [be taken literally to] mean actual security, for even if he left a cow to plow with or an ass to drive, they would be liable to restore it because of the honor of their father.[19] Now, the reason is to save the name of their father, but if not for the honor of their father it would not be so,[20] thus proving[21] that Rabbi referred in his statement to the law of a robber[22] as defined by R. Simeon. This proves it.

SO ALSO REGARDING SWARMS OF BEES. What is the point [here] of SO ALSO?[23] — It means this: Even regarding swarms of bees where the proprietorship is only of Rabbinic sanction, and therefore[24] you might have thought that since the title to them has only Rabbinic authority behind it,[25] we presume the owner generally to have resigned his right [unless we know definitely to the contrary], we are told that it was only where the proprietors have [explicitly] renounced them that this will be so,[26] but if not, this will not be so.

R. JOHANAN B. BEROKA SAID [THAT] EVEN A WOMAN OR A MINOR IS TRUSTED WHEN STATING THAT THIS

SWARM STARTED FROM HERE. Are a woman and a minor competent to give evidence?[27] — Rab Judah said in the name of Samuel: We are dealing here with a case where, e.g., the proprietors were chasing the bees[28] and a woman or a minor speaking in all innocence[29] said that this swarm started from here.

R. Ashi said: Remarks made by a person in the course of speaking in all innocence cannot be taken as evidence, with the exception only of evidence [of the death of a husband] for the release of his wife.[30] Said Rabina to R. Ashi: Is there no other case in which it would be taken as evidence? Surely in the case of a swarm of bees we deal with a remark made in all innocence?[31] The case of a swarm of bees is different, as the ownership of it has only Rabbinic sanction. But does not the same apply to ordinances based on the Written Law?[32] Did not Rab Judah say that Samuel stated[33] that a certain man speaking in all innocence declared, 'I remember that when I was a child I was once hoisted on the shoulders of my father, and taken out of school and stripped of my shirt and immersed in water[34] in order that I might partake of *terumah* in the evening,'[35] and R. Hanina completed the statement thus: 'And my comrades were kept separate from me[36] and called me, Johanan who partakes of *hallah*,'[37] and Rabbi raised him to the status of priesthood upon the strength of [this statement of] his own mouth?[38] — This was only for the purpose of eating *terumah* of mere Rabbinic authority.[39] Still, would this not apply[40] also to [prohibitions based on] the Written Law? Surely when R. Dimi arrived[41] he stated that R. Hana of Kartigna,[42] or, as others said, R. Aha of Kartigna related a certain case brought before R. Joshua b. Levi, or, as others say, before Rabbi, regarding a certain child speaking in all innocence who said, 'I and my mother were taken captive among heathens; whenever I went out to draw water I was thinking only of my mother, and when I went out to gather wood I was thinking only of my mother.' And Rabbi permitted her to be married to a priest on the strength of [the statement[43] made by] the child![44] — In the case of a woman taken captive the Rabbis were always lenient.[45]

HE MAY HOWEVER NOT CUT OFF HIS NEIGHBOUR'S BOUGH [etc.]. It was taught:[46] R. Ishmael the son of R. Johanan b. Beroka said: It is a stipulation of the Court of Law that the owner of the bees be entitled to come down into his neighbor's field and cut off his bough [upon which his bees have settled], in order to rescue his swarm of bees, while the owner of the bough will be paid the value of his bough out of the other's swarm; It is [similarly] a stipulation of the Court of Law that the owner of the wine pour out the wine [from the flask] in order to save in it the other man's honey,[47] and that he can recover the value of his wine out of the other's honey.[47] It is [again] a stipulation of the Court of Law that [the owner of the wood] should remove his wood [from his ass] and load on it the other man's flax [from the ass that fell dead], and that he can recover the value of his wood out of the other's flax; for it was upon this condition that Joshua divided the Land among the Israelites.[46]

***MISHNAH*. IF A MAN IDENTIFIES HIS ARTICLES OR BOOKS IN THE POSSESSION OF ANOTHER PERSON, AND A RUMOUR OF BURGLARY IN HIS PLACE HAD ALREADY BEEN CURRENT IN TOWN, THE PURCHASER [WHILE PLEADING PURCHASE IN MARKET OVERT] WOULD HAVE TO SWEAR HOW MUCH HE PAID [FOR THEM][48] AND WOULD BE PAID ACCORDINGLY [AS HE RESTORES THE ARTICLES OR BOOKS TO THE PLAINTIFF]. BUT IF THIS WAS NOT SO, HE COULD NOT BE BELIEVED, FOR I MAY SAY THAT HE SOLD THEM TO ANOTHER PERSON FROM WHOM THE DEFENDANT PURCHASED THEM [IN A LAWFUL MANNER].**

***GEMARA*. But even if a rumor of burglary in his place had already been current in town, why should the law be so?[49] Why not still**

suspect that it was he[50] who sold them [in the market] and it was he[50] himself who circulated the rumor? — Rab Judah said in the name of Rab: [We suppose that] e.g., people had entered his house and he rose in the middle of the night and called for help, crying out that he was being robbed. But is this not all the more reason for suspecting that he[50] was merely looking for a pretext? — R. Kahana therefore completed the statement made in the name of Rab as follows: [We suppose] e.g., that a breach was found to have been made in his house and persons who lodged in his house were going out with bundles of articles upon their shoulders so that everyone was saying that so-and-so had had a burglary.[51] But still, there might have been there only articles, but not any books! — R. Hiyya b. Abba said in the name of R. Johanan: [We suppose] that they were all saying that books also were there. But why not apprehend that they might have been little books while he is claiming big ones? — Said R. Jose b. Hanina: [We suppose] they say, Such and such a book. But still they might perhaps have been old books while he is claiming new ones? — Rab[52] said: [We suppose] they were all saying that these were the articles of so-and-so and these were the books of so-and-so. But did Rab really say so?[53] Did Rab not say[54] that if a thief entered a house by breaking in and misappropriated articles and departed with them he would be free,[55] the reason being that he acquired title to them through the risk of life [to which he exposed himself]?[56] — This last ruling that ownership is transferred applies only where the thief entered by breaking in, in which case he from the very outset exposed himself to the risk of being killed, but to those who lodged in his house, since they did not expose themselves to the risk of being killed, this ruling cannot apply. Raba said: All these qualifications apply only to a proprietor[57] who keeps his goods for sale, but in the case of a proprietor who does not keep his goods for sale,

1. Who holds that there is Renunciation in the case of a robber.
2. Maintaining that there is Renunciation both in the case of robbery and in the case of theft.
3. Who hold that there is no Renunciation in the case of a robber.
4. I.e., the customs-collector who acts openly.
5. For according to them there is no Renunciation in the case of a robber.
6. I.e., the brigand.
7. For according to him there is no Renunciation in the case of a thief.
8. Maintaining that there is Renunciation both in the case of robbery and in the case of theft.
9. Acting openly and not stealthily; cf. *supra* 57a.
10. Why then repeat the ruling in two identical cases?
11. I.e., customs-collectors and brigands.
12. For notes v. *supra* p. 674.
13. For according to them there is no Renunciation in the case of a robber.
14. I.e., the brigand.
15. For according to him there is no Renunciation in the case of a thief.
16. Maintaining that there is Renunciation both in the case of robbery and in the case of theft.
17. Acting openly and not stealthily.
18. Who maintains Renunciation in the case of a robber.
19. V. *supra* p. 653, n. 9.
20. They would thus surely be entitled to retain the misappropriated article on account of Renunciation on the part of the owner.
21. According to established *halachah* that the possession of heirs is not on the same footing in law as the possession of a purchaser, and does not therefore constitute a legal change of possession.
22. Maintaining that there is Renunciation both in the case of robbery and in the case of theft.
23. For why should a swarm of bees be taken to be different from any other kind of property?
24. For since they cannot be properly controlled, property in them is not so absolute as in other articles. V. Hul. 141b.
25. Generally conveying no right in rem and thus no legal ownership in substance.
26. I.e., that their right will come to an end.
27. As they are exempt from having to appear as witnesses, the testimony borne by them in a Court of Law is not possessed of that absolute impartiality which is the most essential feature in all evidence; cf. *supra* p. 507.
28. Even before the minor or woman made a statement to their benefit, so that the testimony is corroborated by circumstantial evidence.
29. Without any intention of giving evidence.
30. Cf. Yeb. XVI, 5-7.

31. As stated in our Mishnah here.
32. I.e., would ordinary conversation not be trusted?
33. Keth. 26a.
34. In a mikweh to become levitically clean; cf. Kid. 80a.
35. As in Ber. I, 1.
36. Not to cause defilement.
37. Which is the first of the dough and is on a par with *terumah*; v. Num. XV, 19-21.
38. Though a prohibition of the Written Law was involved and the man was talking in all innocence.
39. For Rabbi lived after the destruction of the Temple when (according to some authorities) all *terumah* was of mere Rabbinic sanction; cf. Pes. 44a.
40. I.e., would ordinary conversation not be trusted?
41. From Palestine to Babylon; v. Rashi M.K. 3b.
42. I.e., Carthage rebuilt under the Roman Empire on the northern coast of Africa.
43. From which it appeared that no immoral act was committed upon the mother.
44. Keth. 27b. Though the prohibition involved was Biblical, for according to Lev. XXI, 7, a priest may not marry a woman who had immoral intercourse.
45. On account of the immoral act being a matter of mere apprehension; cf. Keth. 23a.
46. *Supra* 81b.
47. Cf. Mishnah *infra* 115a.
48. Cf. the oath *in Litem* administered by the Romans though in different circumstances; v. Dig. 12, 3. Cod. 5, 33; 8, 4, 9; cf. also *supra* p. 359 and Shebu. VII, 1-3.
49. I.e., to force the possessor to make restoration.
50. The plaintiff.
51. There is thus some circumstantial evidence to corroborate the plaintiff's allegations.
52. More correctly Abbahu as in MS.M.
53. V. p. 679. n. 4.
54. Sanh. 72a.
55. From pecuniary liability.
56. According to Ex. XXII, 1, and since at the time of breaking in the offence was capital, all civil liabilities merge in it; v. *supra* p. 192, n. 8. [Consequently the purchaser could not be forced to make restoration seeing that the thief himself is exempt.]
57. Lit., 'house-owner'.

Baba Kamma 115a

it would not be necessary to be so particular.[1] But he might perhaps have been in need of money and thus compelled to sell [some of his articles]? — Said R. Ashi: There is the fact that a rumor of burglary in his place had been current in town.[2]

It was stated: Where articles were stolen and sold by the thief who was subsequently identified, Rab in the name of R. Hiyya said that the owner would have to sue the first,[3] whereas R. Johanan in the name of R. Jannai said that he would have to sue the second.[4] R. Joseph thereupon said: There is no conflict of opinion:[5] in the one case where the purchase took place before Renunciation[6] he could sue the second,[7] whereas in the other, where it took place after Renunciation[8] he would have to sue the first;[3] and both of them[9] adopt the view expressed by R. Hisda.[10] Abaye said to him: Do they[9] indeed not differ? Is the case of endowments to priests[11] not on a par with [a purchase taking place] before Renunciation[12] and there is nevertheless here a difference of opinion? For we learnt: If one asked another to sell him the inside of a cow in which there were included priestly portions he would have to give it to the priest without deducting anything from the [purchase] money; but if he bought it from him by weight he would have to give the portions to the priests and deduct their value from the [purchase] money.[13] And Rab thereupon said that the [last] ruling could not be explained except where it was the purchaser who weighed it for himself, for if the butcher[14] weighed it for him, the priest would have to sue the butcher![15] — Read: 'He can sue also the butcher,'[16] for you might have thought that priestly portions are not subject to the law of robbery;[17] we are therefore told [here that this is not so]. But according to Abaye who stated that there was a difference of opinion between them,[18] what is that difference? — Whether or not to accept the statement of R. Hisda.[19] R. Zebid said: [They differed in regard to a case] where, e.g., the proprietor abandoned hope of recovering the articles when they were in the hands of the purchaser, but did not give up hope so long as they were in the hands of the thief, and the point at issue between them was that while one master[20] maintained that it was

only Renunciation followed by a change of possession that transfers ownership,[21] whereas if the change of ownership has preceded Renunciation[22] no ownership is thereby transferred,[23] the other master[24] maintained that there is no distinction.[25] R. Papa said: Regarding the garment itself[26] there could be no difference of opinion at all, as all agree that it will have to be restored to the proprietor.[27] Where they[28] differ here is as to whether the benefit of market overt[29] is to be applied to him. Rab in the name of R. Hiyya said that he[30] has to sue the first; i.e., the claim of the purchaser for recovery of his money is against the thief, as the benefit of market overt does not apply here,[31] whereas R. Johanan stated in the name of R. Jannai that he[30] may sue the second, i.e., the claim of the purchaser for repayment should be against the proprietors since the benefit of market overt does apply also here.[31] But does Rab really maintain that the benefit of market overt should not apply here?[31] Was R. Huna not a disciple of Rab[32] and yet when Hanan the Wicked[33] misappropriated a garment and sold it and was brought before R. Huna, he said to the plaintiff, 'Go forth and redeem your pledge [in the purchaser's hand]'?[34] — The case of Hanan the Wicked was different, for since it was impossible to get any payment from him, it was the same as where the thief was not identified at all. Raba said: 'Where the thief is notorious, the benefit of [a purchase in] market overt would not apply.[35] But was Hanan the Wicked not notorious, and yet the benefit of [a purchase in] market overt still applied? — He was only notorious for wickedness, but for theft he was not notorious at all.

It was stated: If a man misappropriated [articles] and paid a debt [with them], or if he misappropriated [them] and paid for goods he received on credit, the benefit of [a purchase in] market overt will not apply, for we are entitled to say,[36] 'Whatever credit you gave him was not in return for these stolen articles.' If he pledged them for a hundred, their value being two hundred, the benefit of [a purchase in] market overt would apply. But if their value equaled the amount of money lent on them, Amemar said that the benefit of market overt would not apply[37] whereas Mar Zutra said that the benefit of [a purchase in] market overt should apply. (The established law is that the benefit of a purchase in market overt should apply.)[38] In the case of a sale, where the money paid was the exact amount of the value of the goods, the benefit of [a purchase in] market overt would certainly apply. But where goods of the value of a hundred were bought for two hundred R. Shesheth said that the benefit of [a purchase in] market overt should not apply,[39] whereas Raba said that the benefit of [a purchase in] market overt should apply. The established law in all these cases, however, is that the benefit of [a purchase in] market overt should apply, with the exception of the cases where one misappropriated [articles] and paid a debt with them, and where one misappropriated them and paid for goods received on credit.[40]

Abimi[41] b. Nazi, the father-in-law of Rabina had owing to him four *zuz*[42] from a certain person. The latter stole a garment and brought it to him [as a pledge] and borrowed on it four further *zuz*. As the thief was subsequently identified, the case came before Rabina[43] who said: Regarding the former [four *zuz*] it is a case of a thief misappropriating articles and paying a debt [with them] in which case the plaintiff has to pay nothing whatsoever,[44] whereas regarding the latter four *zuz* you can demand your money and [then] return the garment. R. Cohen demurred: Why not say that the garment was delivered in consideration of the first four *zuz* [exclusively], so that it would thus be a case of misappropriating articles and paying [with them] a debt, or misappropriating articles and paying [with them] for goods [received] on credit, whereas the further advance of the last four *zuz* was a matter of mere trust,[45] just as he trusted him at the very outset? After being referred from one authority to another, the matter reached

the notice of R. Abbahu who said that the law was in accordance with R. Cohen.

A Narashean[46] misappropriated a book and sold it to a Papunian[47] for eighty *zuz*, and this papunian went and sold it to a Mahozean[48] for a hundred and twenty *zuz*. As the thief was subsequently identified Abaye said that the proprietor of the book could come and pay the Mahozean eighty *zuz*[49] and get his book back, and the Mahozean would be entitled to go and recover the other forty *zuz*[50] from the papunian.[51] Raba demurred saying: If in the case of a purchase from the thief himself the benefit of market overt applies should this not be the more so in the case of a purchase from a purchaser?[52] — Raba therefore said: The proprietor of the book can go and pay the Mahozean a hundred and twenty *zuz*[53] and get back his book, and the proprietor of the book is [then] entitled to go and recover forty *zuz* from the papunian[51] and eighty *zuz* from the Narashean.[54]

***MISHNAH*. IF ONE MAN WAS COMING ALONG WITH A BARREL OF WINE AND ANOTHER WITH A JUG OF HONEY, AND THE BARREL[55] OF HONEY HAPPENED TO CRACK, AND THE OTHER ONE POURED OUT HIS WINE AND RESCUED THE HONEY INTO HIS [EMPTY] BARREL,**

1. **According to Rashi, as to require evidence regarding the identity of the books; but according to Maim. all the other circumscriptions are similarly dispensed with (Wilna Gaon).**
2. **So that there is some circumstantial evidence to corroborate the plaintiff's allegations.**
3. **I.e., the thief.**
4. **I.e., the purchaser.**
5. **I.e., between Rab and R. Johanan.**
6. **In which case the sale is of no validity at all.**
7. **I.e., the purchaser who would have to restore the articles without any payment at all.**
8. **Where the purchase is valid since Renunciation was followed by change of possession.**
9. **I.e., Rab and R. Johanan.**
10. ***Supra* p. 652, that where a robber misappropriated an article and before Renunciation on the part of the owner it was consumed by another one, the plaintiff has the option of making either of them responsible.**
11. **Dealt with in Deut. XVIII, 3.**
12. **For the priests have surely never abandoned their right.**
13. **Hul. X, 3.**
14. **I.e., the vendor.**
15. **Now, we are dealing here with a case where there was no Renunciation (v. p. 681, n. 12); why then does Rab maintain that the priest would have to sue the butcher and not the Purchaser?**
16. **Having the option to sue either the butcher (who is the vendor) or the purchaser, for the reason stated *supra* p. 681, n. 10.**
17. **For since they are endowments by Divine Law they always remain priestly property wherever they are, so that even where the vendor has personally delivered them to the purchaser it should be the latter alone who would be responsible to the priest.**
18. **Rab and R. Johanan.**
19. **V. *supra* p. 681, n. 10.**
20. **I.e., R. Johanan.**
21. **To the last possessor, I.e. the purchaser.**
22. **As was the case here where the Renunciation took place when the articles were already in the hands of the purchaser.**
23. **To the purchaser who would thus have to restore the articles without any payment at all.**
24. **I.e., Rab.**
25. **As in both these cases the ownership is transferred to the purchaser who may thus retain the articles, while the original owner could have a claim only against the thief.**
26. **Which has been misappropriated.**
27. **As the purchaser acquired no title to it if he bought it before Renunciation.**
28. **I.e., Rab and R. Johanan.**
29. **[H], Lit., 'the ordinance of the market' which provides, in the case of sales made bona fide in open market, for the return of the purchased article to the owner who would have to pay the purchaser the price he had paid as stated in our Mishnah. The ordinance was enacted in the interest of trade, for unless so protected people would be afraid to buy goods for fear lest they are stolen. V. Jung, M. The Jewish Law of Theft, pp. 91 ff. Cf. also pp. 15ff.]**
30. **The purchaser.**
31. **Where the theft has definitely been established.**
32. **Cf. Sanh. 6b.**
33. **Also mentioned *supra* p. 205.**
34. **Proving thus that the plaintiff would have to pay the purchase money even where the theft was definitely established.**
35. **For the purchaser should not have bought the articles from him.**

36. To the purchaser.
37. For as it is unusual that the value of the pledge should not exceed the amount of the loan, it is probable that the loan was not based on the security of the pledge.
38. [The bracketed passage is deleted by Rashal and rightly so, since the very contrary fixed ruling is given *infra*.]
39. For since he paid twice the value the transaction resembles rather a gift than a purchase.
40. Cf. n. 2.
41. According to Alfasi 'Abaye'.
42. V. Glos.
43. 'Rabbanai' according to Hyman, Toledoth, 88; for similar deviations, cf. *supra* 113b with B.M. 2a.
44. As decided *supra*, this page.
45. And if so, the plaintiff should be entitled to recover the garment without any payment whatsoever.
46. I.e., a person of Naresh near Sura in Babylonia.
47. I.e., a person of Papunia, [between Bagdad and Pumbeditha, Obermeyer, *op. cit*., p 242].
48. I.e., a person of Mahoza, a trading town on the Tigris.
49. I.e., the original sum for which the thief sold it.
50. He paid to the first purchaser who was his vendor.
51. I.e., the first purchaser who sold it to the second and made a profit of forty *zuz*.
52. Who bought it from a thief as was the case here.
53. I.e., the purchase money he paid.
54. I.e., the thief who sold the book for this amount.
55. As to the substitution of 'barrel' for 'jug' v. *supra* p. 142.

Baba Kamma 115b

HE WOULD BE ABLE TO CLAIM NO MORE THAN THE VALUE OF HIS SERVICES;[1] BUT IF HE SAID [AT THE OUTSET], 'I AM GOING TO RESCUE YOUR HONEY AND I EXPECT TO BE PAID THE VALUE OF MY WINE,' THE OTHER HAS TO PAY HIM [ACCORDINGLY]. SO ALSO IF A RIVER SWEPT AWAY HIS ASS AND ANOTHER MAN'S ASS, HIS ASS BEING ONLY WORTH A *MANEH*[2] AND HIS FELLOW'S ASS TWO HUNDRED *ZUZ*,[2] AND HE LEFT HIS OWN ASS [TO ITS FATE], AND RESCUED THE OTHER MAN'S ASS, HE WOULD BE ABLE TO CLAIM NO MORE THAN THE VALUE OF HIS SERVICES; BUT IF HE SAID TO HIM [AT THE OUTSET], 'I AM GOING TO RESCUE YOUR ASS AND I EXPECT TO BE PAID AT LEAST THE VALUE OF MY ASS,' THE OTHER WOULD HAVE TO PAY HIM [ACCORDINGLY].

GEMARA. But why [should the rescuer] not be entitled to say, 'I have acquired title to the rescued object[3] as it became ownerless'?[4] Was it not taught [in a Baraitha]: 'If a man carrying pitchers of wine and pitchers of oil noticed that they were about to be broken, he may not say, "I declare this *terumah*[5] or tithe with respect to other produce which I have at home," and if he says so, his statement is of no legal validity'?[6] — As R. Jeremiah said in another connection, 'Where the bale[7] of the press-house was twined around it [it would not become ownerless]';[8] so also here in the case of the barrel [we suppose] the bale of the press-house was twined around it.[9] [Still, how does the Baraitha state:][10] 'And if he says so, his statement is of no legal validity'? Surely it was taught: If a man was walking on the road with money in his possession, and a robber confronted him, he may not say, 'The produce which I have in my house[11] shall become redeemed[12] by virtue of these coins,'[13] yet if he says so, his statement has legal validity?[14] — Here [in the latter case] we suppose that he was still able to rescue the money.[15] But if he was still able to rescue the money why then should he not be allowed to say so[16] even directly? — We suppose he would be able to rescue it with [some] exertion. But still even where there is likely to be a loss,[17] why should he not be allowed to say so[16] even directly?[18] Surely it was taught: If a man has ten barrels[19] of unclean *tebel*[20] and notices one of them on the point of becoming broken or uncovered,[21] he may say, 'Let this be the *terumah* [portion] of the tithe[22] with respect to the other nine barrels,' though in the case of oil he should not do so as he would thereby cause a great loss to the priest?[23] — Said R. Jeremiah: [In this case we suppose that] the bale of the press-house was still twined around it.[24] This is a sufficient reason in the

case where the barrel broke, as [the wine remaining] is still fit to be used, but in the case where the barrel became uncovered, for what use is the wine fit any more? For should you argue that[25] it is still fit for sprinkling purposes, was it not taught: Water which became uncovered should not even be poured out on public ground, and should neither be used for stamping clay, nor for sprinkling the house,[26] nor for feeding either one's own animal or the animal of a neighbour?[27] — He may make it good by using a strainer, in accordance with the view of R. Nehemiah as taught: A strainer[28] is subject to the law of uncovering;[29] R. Nehemiah, however, says that this is so only where the receptacle underneath was uncovered, but if the receptacle underneath was covered, though the strainer on top was uncovered the liquid [strained into the receptacle beneath] would not be subject to the law of uncovering as the venom of a serpent resembles a fungus and thus remains floating in its previous position.[30] But was it not taught[31] in reference to this that R. Simeon said in the name of R. Joshua b. Levi that this ruling applies only if it has not been stirred, but if it had been stirred it would be forbidden?[32] — Even there it is possible [to rectify matters by] putting some [cloth] on the mouth of the barrel and straining the liquid gently through. But if we follow R. Nehemiah, is it permitted to make unclean produce *terumah* even with respect to other unclean produce? Surely it has been taught: It is permitted to make unclean produce *terumah* with respect to other unclean produce, or clean produce with respect to other clean produce, but not unclean produce with respect to clean produce,[33] whereas R. Nehemiah said that unclean produce is not allowed to be made *terumah*[34] even with respect to unclean produce except in the case of *demai*![35] — Here also[36] we are dealing with a case of *demai*.

The Master stated: 'Though in the case of oil he should not do so as he would thereby cause a great loss to the priest'. But why is oil different? Surely because[37] it can be used for lighting; cannot wine[37] similarly be used for sprinkling purposes?[38] And should you argue that sprinkling is not a thing of any consequence, did Samuel not say[38] in the name of R. Hiyya that for drinking purposes one should pay a *sela'* per *log* [of wine], whereas, for sprinkling purposes, two sela's[39] per *log*? We are dealing here with fresh wine.[40] But could it not be kept until it becomes old? — He may happen to use it for a wrong purpose.[41] But why not also in the case of oil apprehend that he may happen to use it[42] for a wrong purpose? — We suppose he keeps it in a filthy receptacle.[43] But why not keep the wine also in a filthy receptacle?[43] — Since it is needed for sprinkling purposes,[44] how could it be placed in a filthy receptacle?

The apprehension of illicit use[41] is in itself a point at issue between Tannaim, as taught: If a barrel of *terumah* wine became unclean, Beth Shammai maintain

1. But not for the value of the wine. For a different view cf. *supra* p. 679 and Tosef, B.K. X, 13.
2. V. Glos.
3. I.e., the honey by receiving it in my receptacle.
4. For when the jug cracked and the loss of the honey became imminent there is implied Renunciation on the part of the owner; v. also *supra* p. 670 and B.M. 22a.
5. V. Glos.
6. For when the loss of the wine and oil becomes imminent the ownership comes to an end; Tosef. M.Sh. I, 6.
7. V. Sanh. (Sonc. ed.) p. 151, n. 6.
8. For the liquid would then merely leak out drop by drop, but not be lost instantly.
9. And since the honey would not flow out straight away there is no immediate lapse of ownership.
10. Where the bale of the press-house was not twined around it.
11. And which was set aside as a second tithe, cf. Lev. XXVII, 30.
12. In accordance with ibid. 31 and Deut. XIV, 25.
13. Which were about to be misappropriated by the robber.
14. And the produce in his house would become redeemed. This contradicts the former Braitha.
15. From being taken away by the robber.

16. That the produce should be redeemed by the coins.
17. [I.e., where he is able to rescue with some exertion.]
18. Some authorities, however, read thus: 'But still even where there is a definite loss why should his statement be of no legal validity?' V. Tosaf. a.l. but also Rashi and BaH.
19. Of wine.
20. I.e., produce prior to the separation of the priestly and levitical portions as required by law.
21. And will thus become forbidden for use, for fear that a venomous snake partook of the liquid and injected there poison, v. Ter. VIII, 4-7.
22. I.e., the tithe of the tithe mentioned in Num. XVIII, 26.
23. The difference between oil and wine is that, since the produce was already defiled, in the case of wine the priest would in any case be unable to make any use of it, whereas in the case of oil he can use it for the purposes of heating and lighting; v. Ter. XI, 10. [Now assuming that the loss involved in the case of the wine, being small (v. *infra*), is to be compared with a loss that is not definite, does this not prove that where there is only likely to be a loss, the relevant declaration may be made directly?]
24. In which case the loss is insignificant.
25. Though it is no more good as a drink.
26. For the venom which it might contain might injure persons walking there barefooted.
27. Tosef Ter. XVII, and A.Z. 30b.
28. I.e., liquid poured therein to be strained.
29. For the venom, if any, will pass through the strainer.
30. In the strainer without passing on to the receptacle underneath (Tosef. Ter. ibid. 14.)
31. Cf. J. Ter. VIII, 5.
32. [Here likewise, since he cannot avoid stirring the wine while pouring it from the barrel into the strainer, the venom will pass into the receptacle.]
33. Cf. Ter. II, 2, and Yeb. 89a.
34. For the setting aside of *terumah* must be in such a way as to enable it to be given to a priest whilst clean.
35. I.e., produce bought from a person who could not be trusted to have set aside the necessary tithes. V. Glos. (cf. Ter. II, 2, and Yeb. 89a).
36. Regarding the ten barrels of unclean *tebel*.
37. When unclean and thus unfit for consumption by the priest.
38. Cf. Pes. 20b.
39. As wine for sprinkling is more useful than for drinking.
40. Which is not fit for sprinkling.
41. For through keeping it for some time he might inadvertently partake of it; it should therefore be forbidden to keep it at all.
42. As he keeps it for heating and lighting.
43. As a safeguard against partaking of it.
44. And thus dependent upon its odor.

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that the whole of it must immediately be poured out, whereas Beth Hillel maintain that it could be used for sprinkling purposes. R. Ishmael b. Jose[1] said: I will suggest a compromise: [If it was already] in the house it might be used for sprinkling purposes, but [if it was still] in the field it would have to be poured out entirely,[2] or as some say: If it was old it might be used for sprinkling purposes, but if it was fresh it should be poured out entirely. They rejoined to him:[3] A compromise based on an independent[4] reasoning cannot be accepted.[5]

BUT IF HE SAID [AT THE OUTSET], I AM GOING TO RESCUE YOUR HONEY AND I EXPECT TO BE PAID THE VALUE OF MY WINE, THE OTHER HAS TO PAY HIM [ACCORDINGLY]. But why should the other party not say to him [subsequently], 'I am merely jesting with you'?[6] Surely it was taught: If a man running away from prison came to a ferry and said to the boatman, 'Take a *denar* to ferry me across,' he would still have to pay him not more than the value of his services.[7] This shows that he is entitled to say, 'I was merely jesting with you'? Why then also here should he not be entitled to say to him, 'I was merely jesting with you'? — The comparison is rather with the case dealt with in the concluding clause: But if he said to him, 'Take this *denar* as your fee for ferrying me across,' he would have to pay him the sum stipulated in full. But why this difference between the case in the first clause and that in the second clause? — Said Rami b. Hama: [In the second clause] the other party was a fisher catching fishes from the sea in which case he can surely say to him, 'You caused me to lose fish amounting in value to a *zuz*.'[8]

SO ALSO IF A RIVER SWEPT AWAY HIS ASS AND ANOTHER MAN'S ASS, HIS ASS BEING WORTH A MANE HAND THE OTHER'S ASS TWO HUNDRED *ZUZ*, etc. [Both cases] had to be [stated]. For had we only the former case,[9] we might think that it was only there where a stipulation was made that the payment should be for the whole value [of the wine], since its owner sustained the loss by direct act of his own hands,[10] whereas here[11] where the loss came of itself[12] it might have been said that [in all circumstances] he would have no more than the value of his services. So also if we had had only the second case, we might have thought that it was only here,[11] where no stipulation was made, that he would have no more than the value of his services, since the loss came of itself,[12] whereas in the other case,[13] where the loss was sustained through his own act,[10] I might have said that even where no stipulation was made the payment would have to be for the whole value [of the honey]. It was therefore necessary [to state both cases].

R. Kahana asked Rab: What would be the law if the owner [of the inferior ass] went down to rescue the other's ass [with the stipulation of being paid the value of his own ass], and it so happened that his own ass got out by itself? — He replied: This was surely an act of mercy towards him on the part of Heaven.[14] A similar case happened with R. Safra when he was going along with a caravan. A lion followed them[15] and they had every evening to abandon to it [in turn] an ass of each of them which it ate. When the turn[16] of R. Safra came and he gave it his ass, the lion did not eat it. R. Safra immediately hastened to take possession of it. Said R. Aha of Difti to Rabina: Why was it necessary for him to take possession of it again? For though he had [implicitly] abandoned it, he surely had abandoned it only with respect to the lion, whereas with respect to anybody else in the world he certainly had not abandoned it at all.[17] He replied: R. Safra did it as an extra precaution.[18]

Rab asked Rabbi: What would be the law where he went down to rescue [the more valuable ass] but did not succeed in rescuing it? — He replied: Is this a question? He would surely have no more than the value of his services. An objection was raised: 'If a laborer was hired

1. **Who lived in a much later period than Shammai and Hillel; Rashi, Pes. 20b.**
2. **For while bringing it home it might inadvertently be partaken of.**
3. **I.e., his contemporaries; Rashi, Pes. ibid.**
4. **Lit., 'third'.**
5. **Having no basis in either of the conflicting views, but constituting an opinion by itself, and thus being in principle opposed to both of them. V. Pes. 21a.**
6. **To urge you to help.**
7. **Yeb. 106a.**
8. **I.e., the *denar* you offered me; in the case in the Mishnah the same argument holds good, hence the same ruling.**
9. **Regarding the wine and honey.**
10. **As he directly spilt his wine.**
11. **In the case of the two asses.**
12. **I.e., his ass was drowned by accident.**
13. **Regarding the wine and honey.**
14. **Which should therefore not affect in any way the stipulation made that the full amount be paid.**
15. **To guard them against robbers and beasts.**
16. **Lit., time.**
17. **Why then was it necessary for him to take possession of it again? The ass would in any case have remained his.**
18. **So that there should be no argument in the matter.**

Baba Kamma 116b

to bring cabbage or *damascene*[1] plums for a sick person, and by the time he arrived he found him already dead or fully recovered, his hire[2] would have to be paid in full'?[3] — He replied: What comparison is there? In that case the messenger performed his errand,[4] whereas here the messenger did not perform his errand.[5]

Our Rabbis taught: If a caravan was travelling through the wilderness and a band of robbers threatened to plunder it, the

contribution to be paid by each [for buying them off] will be apportioned in accordance with his possessions [in the caravan,] but not in accordance with the number of persons there.[6] But if they hire a guide to go in front of them, the calculation will have to be made also[7] according to the number of souls in the caravan,[8] though they have no right to deviate from the general custom of the ass-drivers.[9] The ass-drivers are entitled to stipulate that one who loses his ass should be provided with another ass.[10] [If, however, this was caused] by negligence, they would not have to provide him with another ass; where this was done without any negligence [on his part], he is provided with another ass. If he said: Give me the money for the ass and I will [buy it myself and][11] in any case guard the asses,[12] we do not listen to him.[13] Is this not obvious? — No; this is a case where he possesses another ass, and where therefore I might have said that since he has in any case to guard it[14] [his request should be complied with]: we are therefore told that there is a difference between guarding one and guarding two.[15]

Our Rabbis taught: If a boat was sailing on the sea and a gale arose threatening to sink it so that it became necessary to lighten the cargo, the apportionment [of the loss of each passenger] will have to be made according to the weight of the cargo[16] and not according to the value of the cargo, though they should not deviate from the general custom of mariners.[9] The mariners are entitled to stipulate that one who loses his boat should be provided with another boat. If this was caused by his fault, they would not have to provide him with another boat, but if without negligence he is provided with another boat. So also if he sailed to a place where boats should not go [and thus lost his boat] they would not have to provide him with another one.[17] But is this not obvious? — No; [there may be a place where] during Nisan[18] they generally sail one rope's length away from the shore, whereas during Tishri[18] they sail two ropes' length away from the shore,[19] and it so happened here that during Nisan[20] he sailed in the place fit for sailing during Tishri.[21] In this case it might be argued that [as] he took his wanted course in sailing,[22] [he should still be provided with another boat]; we are therefore told [that this is not the case].

Our Rabbis taught: If a caravan was travelling in the desert and a band of robbers threatened to plunder it, and one member of the caravan rose and rescued [some of their belongings], whatever he rescued will go to the respective owners,[23] whereas if he said at the beginning, 'I am going to rescue for myself', whatever he rescued would belong to himself.[24] What are the circumstances? If [the other owners were] able to rescue their belongings,[25] why even in the second case should the rescued belongings not go to the respective owners?[26] If on the other hand no [other owner was] able to rescue [anything],[27] why even in the first case should they not belong to the man himself?[28] — Said Rami b. Hama: We are dealing here with partners, and [in an emergency] like this,[29] a partner may dissolve partnership even without the knowledge of his fellow: so that where he made a stipulation [as in the concluding clause], the partnership has been dissolved,[30] whereas if no stipulation was made [as in the first clause] the partnership has not yet been dissolved.[31] Raba, however, said that we are dealing here with labourers,[32] and the ruling follows the view of Rab, for Rab said that a labourer[33] is entitled to withdraw even in the middle of the day.[34] Hence so long as he did not withdraw, [whatever he rescues is regarded] as being in the possession of the employer, whereas after he had already withdrawn it is a different matter altogether,[35] as it is written: For unto me the Children of Israel are servants; they are my servants,[36] but not servants to servants.[37] R. Ashi said: [We are dealing here with a case] where [any other owner would be] able to rescue [the property] only with great difficulty, so that where he [the one who did the work of rescue] declared his intention,[38] the belongings rescued will go to him, whereas

where he did not declare his intention they will go to their respective owners.[39]

MISHNAH. IF A MAN ROBBED ANOTHER OF A FIELD AND BANDITTI [MASSIKIN][40] CONFISCATED IT, IF THIS BLOW BEFELL THE WHOLE PROVINCE[41] HE MAY SAY TO HIM, 'HERE IS THINE BEFORE THEE'; BUT IF IT WAS CAUSED THROUGH THE ROBBER HIMSELF HE WOULD HAVE TO PROVIDE HIM WITH ANOTHER FIELD.

GEMARA. R. Nahman b. Isaac said: One who reads here MASSIKIN[42] is not in error, while one who reads 'Mezikin' is similarly not in error: One who reads 'Mezikin' is not in error as it was written:[43] In the siege and mazok [straitness];[44] so also he who reads MASSIKIN is not in error as it is written: The locust [shall] consume,[45] which is translated,[46] 'The sakkah [sack-carrier][47] shall inherit[48] it.'

BUT IF IT WAS CAUSED THROUGH THE ROBBER HIMSELF, HE WOULD HAVE TO PROVIDE HIM WITH ANOTHER FIELD. How are we to understand this? If only this field was confiscated, while all the other fields were not confiscated, could this not be derived from the earlier clause which says: IF THIS BLOW BEFELL THE WHOLE PROVINCE [HE MAY SAY TO HIM 'HERE IS THINE BEFORE THEE'], which implies that if this was not so, the ruling would be otherwise? — No; it is necessary to state the law where he [did not actually misappropriate the field but merely] pointed it out[49] [to the banditti to confiscate it]. According to another explanation we are dealing here with a case where e.g. heathens demanded of him[50] with threats to show them his fields and he showed them also this field among his own. A certain person showed [to robbers] a heap of wheat that belonged to the house of the Exilarch. He was brought before R. Nahman and ordered by R. Nahman to pay. R. Joseph happened to be sitting at the back of R. Huna b. Hiyya, who was sitting in front of R. Nahman. R. Huna b. Hiyya said to R. Nahman: Is this a judgment or a fine? — He replied: This is the ruling in our Mishnah, as we have learnt: IF IT WAS CAUSED THROUGH THE ROBBER HIMSELF HE WOULD HAVE TO PROVIDE HIM WITH ANOTHER FIELD, which we interpreted to refer to a case where he showed [the field to bandits]. After R. Nahman had gone, R. Joseph said to R. Huna b. Hiyya: 'What difference does it make

1. [G]; Lat. 'Damascina'.
2. Which owing to the need of the occasion was above the ordinary; cf. Tosaf. a.l.
3. Tosef. B.M. VII 2. Does this not prove that even where the efforts proved unsuccessful the payment must still be in full?
4. As he indeed fetched the required objects.
5. For he did not rescue the ass.
6. For the robbers came originally for the possessions and not necessarily for souls.
7. 'Also' is missing in J. B.M. VI, 4.
8. For a guide is vital also to safeguard life; as to possessions cf. the difference in reading between the text here and J. B.M. VI, 4.
9. Tosef. B.M. VII; cf. B.B. 7b, 8b.
10. I.e., a kind of insurance.
11. [So MS.M.]
12. In accordance with the custom that each ass-driver had in turn to look after all the asses together with his own.
13. For he might not buy another ass and thus have no longer any interest in looking after the other asses. Tosef. B.M. XI.
14. Together with the asses of the other drivers.
15. As when he has two asses of his own among those of the other drivers he will put more heart into his work.
16. Though one might be asked to throw away gold and another a similar weight of copper.
17. Tosef. B.M. XI, 12.
18. V. p. 25, nn, 6-7.
19. On account of the shallowness of the water soon after the hot summer period.
20. When there is an abundance of water in the river.
21. I.e., far away from the shore; for a transposed text v. Shittah Mekubezeth.
22. He should not be considered careless.
23. Lit., 'to the common fund' which will indeed be so according to the interpretation of Rami b. Hama which follows on.
24. Tosef. B.M., VIII.
25. In which case they certainly did not give them up.
26. For how did he acquire title to them.

27. In which case they surely gave up any hope of retaining their belongings and thus abandoned them, as *supra* p. 686.
28. As he became possessed of ownerless property.
29. Where a loss of property is imminent.
30. He may thus retain the property he rescued to the extent of his part.
31. And whatever he rescued will go to the common fund.
32. Who were hired by the caravan and who rescued the threatened property.
33. I.e., a day laborer.
34. B.M. 10a.
35. For then he works for himself and since the owners were unable to rescue their property it became abandoned so that when rescued by the laborer he acquired title to it.
36. Lev. XXV, 55.
37. Unlike in the case of the Hebrew servant of Ex. XXI, 2 the employer has no right in rem with reference to his laborers; cf. Kid. 16a and also 22b.
38. I.e., that he does it for himself; and as the owner who was present there neither contradicted him nor made any exertion to rescue it, the property became ownerless.
39. For under such circumstances there could not be traced there any implied Renunciation on their part.
40. [H] V. B.M. (Sonc. ed.) p. 576, n. 5.
41. I.e., they confiscated other's fields too.
42. Cf. *supra* p. 694, n. 12.
43. Deut. XXVIII, 57.
44. I.e., oppression.
45. Ibid. 42.
46. In *Targum Onkelos* a.l.; cf. however Rashi there.
47. So Jast. The name of a locust or a beetle; v. Ta'an. 6a; according however to R. *Tam* it refers to the enemy.
48. V. Isa. XXXIV, 11.
49. Lit., 'showed it'.
50. I.e., of an actual robber.

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whether it is a judgment or a fine?' — He replied: If it is a judgment we may derive other cases from it,[1] whereas if it is a fine[2] we would be unable to derive other cases from it. But what is your ground for saying that from a matter of [mere] fine we cannot derive any other case? — As it was taught: 'Originally it was said that [liability will attach] for defiling [*terumah*][3] or for vitiating [wine],[4] but it was subsequently laid down that [it will also attach] for mixing[4] [common grain with *terumah* grain].'[5] Now, this is so only because it was so laid down subsequently, whereas had it not been so laid down subsequently this would not have been so. Is the reason for this not because liability here is a [matter of mere] fine, [thus proving that] we cannot derive anything from a fine?[6] — No, originally it was thought[7] that it is only where a great loss[8] is involved that we have to be on our guard,[9] whereas where only a small loss[10] is involved, we need not be particular, whereas subsequently it was decided that even in the case of a small loss[10] we should be particular. But this is not so![11] For the father of R. Abin[12] learnt: Originally it was said that [liability will attach] for defiling [*terumah*] or for mixing[13] [it with unconsecrated grain], but it was subsequently laid down that it will also attach for vitiating [wine]. Now, this is so [only] because it was so laid down subsequently, whereas had it not been so stated subsequently this would not have been so. Is the reason for this not because we are unable to derive anything from a matter of mere fine? — No: originally the view of R. Abin was taken,[7] but subsequently the view of R. Jeremiah was adopted. 'Originally the view of R. Abin was taken,' — for R. Abin said: If one shot an arrow[14] from the beginning to the end of a space of four cubits[15] and it cut through some silk in its passage, he would be exempt,[16] for the outset [of the motion] was subservient to its termination, for which he is liable to capital punishment;[17] but subsequently it was decided in accordance with R. Jeremiah, for R. Jeremiah said: From the moment the defendant lifted up the wine[18] it entered into his possession,[19] and he thus became liable to make pecuniary compensation[19] whereas he does not become liable to capital punishment until the very moment of the [idolatrous] libation.[20]

Happening to be at Be-Ebyone[21] R. Huna b. Judah visited Raba who said to him: Has any case [about which you are in doubt] recently been decided by you? — He replied: I had to

decide the case of an Israelite whom heathens forced to show them another man's possessions and I ordered him to pay. He, however, said to him: Reverse the judgment in favor of the defendant, as taught: An Israelite who was forced by heathens to show them another man's possessions is exempt, though if he personally took it and gave it [to the heathens] with [his own] hand, he would be liable. Rabbah[22] said: If he showed it on his own accord it is the same [in law] as if he personally took it and gave it to the robber with [his own] hand.

A certain man was forced by heathens to show them the wine of Mari the son of R. Phinehas[23] the son of R. Hisda. The heathens then said to him, 'Carry the wine and bring it along with us,' so he carried it and brought it along with them. When he was brought before R. Ashi he exempted him. The Rabbis said to R. Ashi: Was it not taught: 'If he personally took it and gave it to the heathens with [his own] hand, he would be liable'? — He said to them: This ruling applies only where the heathens were not standing near it,[24] whereas where they stood near it is the same [in the eye of the law] as if it had already been burnt.[25] R. Abbahu[26] raised an objection to [the explanation of] R. Ashi [from the following]: 'If a ruffian said[27] to him, "Hand me this bunch of sheaves or this cluster of grapes," and he handed it to him, he would be liable'?[28] [No,] we are dealing here with a case where they were standing on two banks of a river.[29] That this was the case could also be proved from the use of the word 'hand' instead of 'give'.[30] This indeed proves it.

Two persons were quarrelling about a certain net. One said, 'It is mine', and the other said, 'It is mine.' One of them eventually went and surrendered it to the Parangaria[31] of the King [for confiscation]. Abaye thereupon said that he should be entitled to plead: 'When I surrendered the article it was my own property that I surrendered.' Said Raba to him: 'Why [should he be] believed [if he says so]?' Raba therefore said: We would have to impose a Shamta[32] upon him until he brings back [the net][33] and appears before the Court.

A certain man who was desirous of showing another man's straw [to be confiscated] appeared before Rab, who said to him: 'Don't show it! Don't show it!' He retorted: 'I *will* show it! I *will* show it!' R. Kahana was then sitting before Rab, and he tore [that man's] windpipe out of him. Rab thereupon quoted: *Thy sons have fainted, they lie at the heads of all the streets as a wild bull in a net*;[34] just as when a *'wild bull'* falls into a *'net'* no one has mercy upon it, so with the property of an Israelite, as soon as it falls into the hands of heathen oppressors no mercy is exercised towards it.[35] Rab therefore said to him: 'Kahana, until now the Greeks[36] who did not take much notice of bloodshed were [here and had sway, but] now the persians[37] who are particular regarding bloodshed are here, and they will certainly say, "Murder, murder!";[38] arise therefore and go up to the Land of Israel but take it upon yourself that you will not point out any difficulty to R. Johanan[39] for the next seven years. When he arrived there he found Resh Lakish sitting and going over[40] the lecture of the day for [the younger of] the Rabbis.[41] He thereupon said to them: 'Where is Resh Lakish?'[42] They said to him: 'Why do you ask?' He replied: 'This point [in the lecture] is difficult and that point is difficult, but this could be given as an answer and that could be given as an answer.' When they mentioned this to Resh Lakish, Resh Lakish went and said to R. Johanan: 'A lion[43] has come up from Babylon; let the Master therefore look very carefully into tomorrow's lecture.' On the morrow R. Kahana was seated on the first row of disciples before R. Johanan, but as the latter made one statement and the former did not raise any difficulty, another statement, and the former raised no difficulty, R. Kahana was put back through the seven rows until he remained seated upon the very last row. R. Johanan thereupon said to R. Simeon b. Lakish: 'The lion you mentioned turns out to be a [mere] fox.'[44] R. Kahana thereupon[45] whispered [in prayer]:

'May it be the will [of Heaven] that these seven rows be in the place of the seven years mentioned by Rab.' He thereupon immediately stood on his feet[46] and said to R. Johanan: 'Will the Master please start the lecture again from the beginning.' As soon as the latter made a statement [on a matter of law], R. Kahana pointed out a difficulty, and so also when R. Johanan subsequently made further statements, for which he was placed again on the first row. R. Johanan was sitting upon seven cushions. Whenever he made a statement against which a difficulty was pointed out, one cushion was pulled out from under him, [and so it went on until] all the cushions were pulled out from under him and he remained seated upon the ground. As R. Johanan was then a very old man and his eyelashes were overhanging he said to them, 'Lift up my eyes for me as I want to see him.' So they lifted up his eyelids with silver pincers. He saw that R. Kahana's lips were parted[47] and thought that he was laughing at him. He felt aggrieved and in consequence the soul of R. Kahana went to rest.[48] On the next day R. Johanan said to our Rabbis, 'Have you noticed how the Babylonian was making [a laughing-stock of us]?' But they said to him, 'This was his natural appearance.' He thereupon went to the cave [of R. Kahana's grave] and saw

1. By means of analogy.
2. Imposed for that particular occasion on account of some aggravation of the offence; cf., e.g., *supra* p. 561.
3. V. Glos.
4. Cf. *supra* p. 14.
5. Git. 53a.
6. For if not so, why was it necessary to state explicit liability to the new case.
7. Lit., 'maintained'.
8. Such as defiling *terumah*, vitiating wine and the like.
9. And impose a penalty for preventive purposes.
10. Such as in the case of mixing, [where the loss is small, as the mixture can still be sold to priests though at a somewhat reduced price].
11. That the law in another case could be derived from a ruling merely imposing a fine.
12. V. Sanh. 51b.
13. Cf. Git. 53a.
14. In a public thoroughfare on the Sabbath day, thus committing a capital offence; v. Shab. XI, 1-3.
15. I.e., passing through a distance of not less than four cubits which is the minimum required to make him liable for the violation of Sabbath; v. *supra* p. 138.
16. From civil liability for the silk.
17. Into which all civil offences committed at that time merge (Keth. 31a); v. *supra* 192; no civil liability was therefore maintained in the case of vitiating wine by idolatrous libation which is a capital offence; cf. Sanh. VII, 4-6.
18. I.e., before he ever started to commit the idolatrous libation.
19. In the capacity of robbery.
20. Git. 52b. And since the civil liability is neither for the same act nor for the same moment which occasions the liability for capital punishment, each liability holds good.
21. Lit., 'poor-house', but according to Rashi 'a proper name of a place.' [Funk, *Monumenta Talmudica*, I, 290, identifies it with a locality Abjum, N. of Mosul on the Tigris; Goldschmidt renders: in an Ebionite town.]
22. 'Raba' according to MS.M.
23. But according to MS.M. 'R. Mari and R. Phineas, the sons of …' The fact, however, that R. Ashi was a contemporary is rather in favor of the reading in the text; but cf. also Alfasi and Asheri.
24. I.e., where they have not yet become possessed of it; cf. Rashi and the Codes.
25. The defendant could thus be made liable neither for the act of showing, for at that time he did not handle the wine, nor for the act of carrying which was after the wine had virtually entered the possession of the heathens.
26. More probably 'R. Abba' [since R. Abbahu lived much earlier than R. Ashi; v. D.S.]. Asheri: 'Rabina', Alfasi: 'R. Kahana'.
27. [[H] another term for '*massik*' of the Mishnah. Klein, NB. p. 14, n. 11.]
28. Is this not a case where the ruffian had already been standing nearby the misappropriated article?
29. Which separates the robber from the articles he intended to misappropriate.
30. Cf. 'A.Z. 6b.
31. I.e., the office of public service; cf. B.M. 83b.
32. A ban.
33. Cf. MS.M. and also Alfasi and Asheri a.l.
34. Isa. LI, 20.
35. More correctly perhaps, 'towards him', referring thus to the Israelite; v. Ab. II, 2, also Asheri B.K. X, 27; the act of R. Kahana was in this way vindicated.

36. So MS.M.; cur. edd.: Persians. [The reference is to the Parthians whose sway over Babylon came to an end in 266, when they were defeated by the Sassanians.]
37. So MS.M.; curr. edd.: Greeks. [Ardeshir, the first of the Sassanian kings, deprived the Jews of the right they had hitherto exercised under the Parthians of inflicting capital punishment, v. Funk, *Die fuden in Babylonien*, I, 68.]
38. [Or 'Rebellion '; v. B.M. (Sonc. ed.) p. 235, n. 7.]
39. V. Hul. 95b.
40. [So Rashi. Kaplan, J. *The Redaction of the Babylonian Talmud*, p. 206, explains the phrase [H] as referring to a particular kind of lecture, devoted to the defining of the terse conclusions reached during the day in the academy.]
41. Cf. B.M. 84a; also Sanh. 24a.
42. MS.M. adds, 'and R. Kahana did not know that it was Resh Lakish (who was repeating the other lecture).'
43. Cf. Ab. IV, 15, and B.M. 84b.
44. V. p. 699, n. 9.
45. MS.M.: 'he went out of the college.'
46. This is missing in MS.M. according to which it was on another day when R. Johanan made new statements that R. Kahana said so.
47. A physical defect owing to an accidental wound.
48. V. B.M. 84a regarding R. Johanan and Resh Lakish.

Baba Kamma 117b

a snake coiled round it. He said: 'Snake, snake, open thy mouth[1] and let the Master go in to the disciple.' But the snake did not open its mouth. He then said: 'Let the colleague go in to [his] associate!' But it still did not open [its mouth, until he said,] 'Let the disciple enter to his Master,' when the snake did open its mouth.[2] He then prayed for mercy and raised him.[3] He said to him, 'Had I known that the natural appearance of the Master was like that, I should never have taken offence; now, therefore let the Master go with us.' He replied, 'If you are able to pray for mercy that I should never die again [through causing you any annoyance],[4] I will go with you, but if not I am not prepared to go with you. For later on you might change again.' R. Johanan thereupon completely awakened and restored him and he used to consult him on doubtful points, R. Kahana solving them for him. This is implied in the statement made by R. Johanan: 'What[5] I had believed to be yours[6] was In fact theirs.'[7]

There was a certain man who showed a silk[8] ornament of R. Abba [to heathen ruffians]. R. Abbahu and R. Hanina b. Papi and R. Isaac the Smith were sitting in judgment with R. Elai sitting near them. They were inclined to declare the defendant liable, as we have learnt: Where a judge in deciding [on a certain case], declared innocent the person who was really liable, or made liable the person who was really innocent, declared defiled a thing which was [levitically] clean, or declared clean a thing which was really defiled, his decision would stand, but he would have to make restitution out of his own estate.[9] Thereupon Elai said to them: Thus stated Rab: provided the defendant[10] actually took and gave it away with his own hand.[11] They therefore said to the plaintiff: Go and take your case to R. Simeon b. Eliakim and R. Eleazar b. Pedath who adjudicate liability for damage done by Garmi.[12] When he went to them they declared the defendant liable on the strength of our Mishnah: IF THIS WAS CAUSED THROUGH THE ROBBER HE WOULD HAVE TO PROVIDE HIM WITH ANOTHER FIELD, which we intrepreted[13] to refer to a case where he showed [the field to oppressors].

A certain man had a silver cup which had been deposited with him, and being attacked by thieves he took it and handed it over to them. He was summoned before Rabbah[14] who declared him exempt. Said Abaye to Rabbah: Was this man not rescuing himself by means of another man's money?[15] R. Ashi said: We have to consider the circumstances. If he was a wealthy man,[16] the thieves came [upon him] probably with the intention of stealing his own possessions, but if not, they came for the silver cup.

A certain man had a purse[17] of money for the redemption of captives deposited with him.

Being attacked by thieves he took it and handed it over to them. He was thereupon summoned before Raba[18] who nevertheless declared him exempt. Said Abaye to him: Was not that man rescuing himself by means of another man's money? — He replied: There could hardly be a case of redeeming captives more pressing than this.[19]

A certain man managed to get his ass on to a ferry boat before the people in the boat had got out on to shore.[20] The boat was in danger of sinking, so a certain person came along and pushed that man's ass over in to the river, where it drowned. When the case was brought before Rabbah[21] he declared him exempt. Said Abaye to him: Was that person not rescuing himself by means of another man's money? — He, however, said to him: The owner of the ass was from the very beginning in the position of a pursuer.[22] Rabbah follows his own line of reasoning, for Rabbah [elsewhere] said: If a man was pursuing another with the intention of killing him, and in his course broke utensils, whether they belonged to the pursued or to any other person, he would be exempt, for he was at that time[22] incurring capital liability.[23] If, however, he who was pursued broke utensils, he would be exempt only if they belonged to the pursuer, whose possessions could surely not be entitled to greater protection than his body,[24] whereas if they belonged to any other person he would be liable, as it is forbidden to rescue oneself by means of another man's possessions. But if a man ran after a pursuer with the intention of rescuing [some one from him] and [in his course accidentally] broke utensils, whether they belonged to the pursued or to any other person he would be exempt; this,[25] however, is not a matter of [strict] law, but is based upon the consideration that if you were not to rule thus,[26] no man would ever put himself out to rescue a fellow-man from the hands of a pursuer.[27]

***MISHNAH*. IF A RIVER FLOODED [A MISAPPROPRIATED FIELD, THE ROBBER] IS ENTITLED TO SAY TO THE OTHER PARTY, 'HERE IS YOURS BEFORE YOU'.[28]**

***GEMARA*. Our Rabbis taught: If a man robbed another of a field and a river flooded it, he would have to present him with another field. This is the opinion of R. Eleazar[29] but the Sages maintain that he would be entitled to say to him: 'Here is yours before you.'[30] What is the ground of their difference? — R. Eleazar expounds [Scripture] on the principle of amplifications and limitations.[31] [The expression,] *And lie unto his neighbour*,[32] is an amplification;[33] *In that which was delivered him to keep …*[32] constitutes a limitation;[34] *Or all that about which he hath sworn falsely*[35] forms again an amplification;[33] and where an amplification is followed by a limitation which precedes another amplification,[35] everything is included. What is thus included? All articles. And what is excluded?[34] Bills.[36] But the Rabbis expound [Scripture] on the principle of generalization and specification,[31] [thus: The expression,] *and lie*[37] is a generalisation;[38] *In that which was delivered him to keep …*[37] is a specification;[39] *Or all that [about which he has sworn falsely]*[40] is again a generalisation;[40] and where a generalization is followed by a specification that precedes another generalisation[40] you surely cannot include anything save what is similar to the specification.[41] So here, just as the specification is an article which is movable and of which the intrinsic value lies in its substance, you include any other matter which is movable and of which the intrinsic value lies in its very substance. Land is thus excluded[42] as it is not movable; so also are slaves excluded[42] as they are compared [in law] to lands,[43] and bills are similarly excluded,[42] for though they are movables, their substance does not constitute their intrinsic value. But was it not taught: If one misappropriated a cow and a river swept it away, he would have to present him with another cow,[44] according to the opinion of R. Eleazar, whereas the Sages maintain that he would be entitled to say to him: 'Here is yours before you'?[44] Now in what principle did they**

differ there [in the case of the cow]?[45] — Said R. papa: We are dealing there with a case where, e.g., he robbed a man of a field on which

1. [The snake holds its tail in its mouth. MS.M. reads 'open the door'.]
2. Cf. B.M. 84b; Hill. 7b.
3. Cf. Ber. 5b.
4. So Rashi a.l.
5. I.e., the knowledge of the law.
6. I.e., the Palestinian scholars'.
7. I.e., the Babylonians'; v. Suk. 44a.
8. [G].
9. Bek. IV, 4; v. *supra* p. 584. Thus proving that for a mere utterance that caused a loss there is liability to pay.
10. I.e., the judge.
11. Cf. *supra* p. 585, Bek. 28b and Sanh. 33a.
12. I.e., a direct cause; for the difference between Gerama and Garmi, viz. between an indirect and direct cause, v. Asheri, B.B. II, 17.
13. *Supra* p. 695.
14. MS.M.: Raba.
15. V. *supra* p. 351 and Sanh. 74a.
16. Cf. *supra* p. 360.
17. [G] (Krauss, *Lehnworter*, II, 133.)
18. 'Rabbah' according to Asheri.
19. For even if the depositee was not poor, since at that time he had nothing else with which to rescue himself from the thieves, he was allowed to do so; v. Tosaf. a.l.
20. So MS.M.; curr. edd.: 'had embarked on the ferry boat'.
21. MS.M.: 'Raba'.
22. I.e., of threatening to endanger human life, which involves even a capital liability during the continuance of the threat; v. Ex. XXII, I, and Sanh. VIII, 7
23. V. *supra* p. 680, n. 7.
24. Cf. *infra* p. 713.
25. I.e., the latter ruling.
26. But make him liable.
27. Sanh. 74a.
28. Cf. *supra* p. 694.
29. I.e., b. Shamua'; MS.M.: Eliezer [b. Horkenos]; as also in Shebu. 37b; v. D.S. n. 2.
30. Shebu. 37b.
31. Cf. Shebu. (Sonc. ed.) p. 12, n. 3; and *supra* 54b.
32. Lev. V, 21.
33. Including all matters.
34. By the fact that it specifies certain transactions.
35. Ibid. 24.
36. As their intrinsic value does not lie in their substance; v. also *supra* p. 364.
37. V. p. 703, n. 9.
38. V. p. 703, n. 10.
39. V. p. 703, n. 11.
40. V. p. 703, n. 12.
41. V. *supra* p. 364.
42. From the general law of robbery.
43. Cf. Lev. XXV, 46 and *supra* p. 364.
44. V. p. 569, n. 2.
45. Which is certainly subject to the law of robbery.

Baba Kamma 118a

a cow was lying,[1] and a river [subsequently] flooded it, R. Eleazar following his line of reasoning,[2] while the Rabbis followed their own view.[3]

***MISHNAH*. IF A MAN HAS ROBBED ANOTHER, OR BORROWED MONEY FROM HIM, OR RECEIVED A DEPOSIT FROM HIM[4] IN AN INHABITED PLACE, HE MAY NOT RESTORE IT TO HIM[5] IN THE WILDERNESS;[6] [BUT IF THE TRANSACTION WAS ORIGINALLY MADE] UPON THE STIPULATION THAT HE WAS GOING INTO THE WILDERNESS, HE MAY MAKE RESTORATION EVEN WHILE IN THE WILDERNESS.**

***GEMARA*. A contradiction could be raised [from the following:] 'A loan can be paid in all places, whereas a lost article [which was found], or a deposit cannot be restored save in a place suitable for this'?[7] — Said Abaye: What is meant[8] is this: 'A loan can be demanded in any place, whereas a lost article [which was found] or a deposit cannot be demanded save in the proper place.'**

[BUT IF THE TRANSACTION WAS ORIGINALLY MADE] UPON THE STIPULATION OF HIS GOING INTO THE WILDERNESS, etc. Is this ruling not obvious? — No, for we have to consider the case where he said to him, 'Take this article in deposit with you as I intend departing to the wilderness,' and the other said to him, 'I similarly intend departing to the wilderness, so that if you want me to return it to you there,[9] I will be able to do so.

MISHNAH. IF ONE MAN SAYS TO ANOTHER, 'I HAVE ROBBED YOU, I HAVE BORROWED MONEY FROM YOU, I RECEIVED A DEPOSIT FROM YOU BUT I DO NOT KNOW WHETHER I HAVE [ALREADY] RESTORED IT TO YOU OR NOT,' HE HAS TO MAKE RESTITUTION. BUT IF HE SAYS, 'I DO NOT KNOW WHETHER I HAVE ROBBED YOU, WHETHER I HAVE BORROWED MONEY FROM YOU, WHETHER I RECEIVED A DEPOSIT FROM YOU,' HE IS NOT LIABLE TO MAKE RESTITUTION.

GEMARA. It was stated:[10] [If one man alleges:] 'You have a *maneh*[11] of mine,'[12] and the other says, 'I am not certain about it,'[13] R. Huna and Rab Judah hold that he is liable,[14] but R. Nahman and R. Johanan say that he is exempt.[15] R. Huna and Rab Judah maintain that he is liable, because where a positive plea is met by an uncertain one, the positive plea prevails, but R. Nahman and R. Johanan say that he is exempt, since money [claimed] must remain in the possession of the holder.[16] We have learnt: BUT IF HE SAYS, 'I DO NOT KNOW WHETHER I HAVE BORROWED MONEY FROM YOU,' HE IS NOT LIABLE TO MAKE RESTITUTION. Now, how are we to understand this? If we say that there was no demand on the part of the plaintiff, then the first clause must surely refer to a case where he did not demand it, [and if so] why is there liability? It must therefore refer to a case where a demand was presented and it nevertheless says in the concluding clause,[17] 'HE IS NOT LIABLE to PAY'![18] — No, we may still say that no demand was presented [on the part of the plaintiff], and the first clause is concerned with one who comes to fulfill his duty towards Heaven.[19] It was indeed so stated: R. Hiyya b. Abbah said that R. Johanan stated: If a man says to another, 'You have a *maneh* of mine,' and the other says, 'I am not certain about it,' he would be liable to pay[20] if he desires to fulfill his duty towards Heaven.[21]

MISHNAH. IF A MAN STOLE A SHEEP FROM THE HERD AND PUT IT BACK [THERE], AND IT SUBSEQUENTLY DIED OR WAS STOLEN, HE WOULD STILL BE RESPONSIBLE FOR IT. IF THE PROPRIETOR KNEW NEITHER OF THE THEFT NOR OF THE RESTORATION, BUT COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE, [THE THIEF WOULD BE] EXEMPT [IN REGARD TO ANY SUBSEQUENT MISHAP].

GEMARA. Rab said: If the proprietor knew [of the theft], he has similarly to know [of the restoration]; where he had no knowledge [of the theft] his counting exempts [the thief]; and the words [HE] COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE, refer [only] to the concluding clause.[22] Samuel, however, said: Whether the proprietor knew, or had no knowledge [of it], his counting would exempt [the thief], and the words: [IF HE] COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE [THE THIEF WOULD BE] EXEMPT, refer to all cases.[23]

R. Johanan moreover said: If the proprietor had knowledge [of the theft], his counting will exempt [the thief], whereas if he had no knowledge [of it], it would not even be necessary to count,[24] and the words, [HE] COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE, refer [exclusively] to the first clause.[25] R. Hisda, however, said: Where the proprietor had knowledge [of the theft], counting will exempt [the thief], whereas where he had no knowledge [of the theft], he would have to be notified [of the restoration], and the words, [HE] COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE, refer [only] to the first clause.[25]

Raba said:

1. But the robber did not actually take possession of the cow in any other way, e.g., by 'pulling it'.
2. That the field entered into the possession of the robber, as would be the case with any other misappropriated object, so that by virtue of his becoming possessed of the field, the cow is supposed to have similarly entered into his

possession in accordance with Kid. I, 5 and *supra* p. 49
3. That land is not subject to the law of robbery and does not enter into the possession of a robber, and as no independent act was done to take possession of the cow he could not be held responsible in any way regarding it.
4. Lit., 'He (i.e. the latter) deposited with him.'
5. Against his will.
6. On account of the insecurity there.
7. Is this not against the teaching of the Mishnah?
8. By the passage quoted.
9. Which prima facie means 'if you will be in need of money there;' it was therefore made known in the Mishnah that he may compel the creditor to accept payment there.
10. Keth. 12b; B.M. 97b and 116b.
11. A hundred *zuz*; v. Glos.
12. I.e., 'You have to restore me a *maneh* which you borrowed from me' or 'which was deposited with you'.
13. I.e., 'whether you lent me' or 'deposited with me anything at all'.
14. To pay the *maneh*.
15. He would only have to swear to confirm his plea that he is not certain about it (Rashi).
16. I.e., the defendant.
17. Where the doubt was not as to payment but as to the initial liability.
18. Is this not in conflict with the view of R. Huna and Rab Judah?
19. And since he is certain about the initial liability and only in doubt as to whether it was cancelled by payment, he is liable to make restoration for Heaven's sake even though there was no demand on the part of the plaintiff, whereas in the second clause where the doubt was regarding the initial liability it would not be so; cf. B.M. 37a and *supra* p. 600.
20. Provided there was a demand, for otherwise it would not be so since the initial liability is in doubt.
21. Though he cannot be forced by civil law to do so according to the view of R. Johanan himself.
22. Where the proprietor had no knowledge of the theft.
23. Whether the proprietor had knowledge of the theft or not.
24. Cf. however *supra* 57a.
25. Dealing with a case where the proprietor most probably knew of the theft.

Baba Kamma 118b

The reason of R. Hisda is because [living things] have the habit of running out[1] into the fields.[2] But did Raba really maintain this? Has not Raba said: If a man saw another lifting up a lamb of his herd and picked up a clod to throw at him and did not notice whether he put back the lamb or did not put it back, and [it so happened that] it died or was stolen [by somebody else], the thief[3] would be responsible for it. Now, does this ruling not hold good even where the herd had subsequently been counted?[4] No, only where the proprietor had not yet counted it.

But did Rab really make this statement?[5] Did not Rab Say: If the thief restored [the stolen sheep] to a herd which the proprietor had in the wilderness, he would thereby have fulfilled his duty![6] — Said R. Hanan b. Abba: Rab would accept the latter ruling in the case of an easily recognizable lamb.[7]

May we say that they[8] differed in the same way as the following Tannaim: If a man steals a lamb from the herd, or a *sela'*[9] from a purse, he must restore it to the same place from which he stole it. So R. Ishmael, but R. Akiba said that he would have to notify the proprietor.[10] Now, it was presumed that both parties concurred with the statement of R. Isaac who said[11] that a man usually examines his purse at short intervals. Could it therefore not be concluded that they[12] referred to the case of a *sela'* the theft of which is known to the proprietor[13] so that they[12] differed in the same way as Rab[14] and Samuel?[15] — No, they referred to the case of the lamb the theft of which is probably unknown to the owner[16] and they[12] thus differed in the same way as R. Hisda[17] and R. Johanan.[18]

R. Zebid said in the name of Raba: Where the article[19] was stolen from the actual possession of the proprietor, there is no difference of opinion between them[20] as in such a case they would adopt the view of R. Hisda;[21] but here they[20] differ on a case where a bailee misappropriated [a deposit] in his own possession and subsequently restored it to the place from which he misappropriated it, R. Akiba holding that [when he misappropriated

the deposit] the bailment came to an end,[22] whereas R. Ishmael held that the bailment did not [thereby] come to an end.[23]

May we still say that [whether or not] counting exempts is a question at issue between Tannaim; for it was taught: If a man robbed another but made [up for the amount by] inserting it in his settlement of accounts, it was taught on one occasion that he thereby fulfilled his duty, whereas it was taught elsewhere that he did not fulfill his duty.[24] Now, as it is generally presumed that all parties concur with the dictum of R. Isaac who said that a man usually examines his purse from time to time, does it not follow [then] that the two views differ on this point, viz., that the view that he fulfilled his duty implies that counting secures exemption, whereas the view that he did not fulfill his duty implies that counting does not secure exemption? — It may however be said that if they were to accept the saying of R. Isaac they would none of them have questioned that counting should secure exemption; but they did in fact differ regarding the statement of R. Isaac, the one master[25] agreeing with the statement of R. Isaac and the other master[26] disagreeing. Or if you wish I may alternatively say that all are in agreement with the statement of R. Isaac, and still there is no difficulty, as in the former statement[25] we suppose the thief to have counted the money and thrown it into the purse of the other party,[27] whereas in the latter statement[28] we suppose him to have counted it and thrown it into the hand of the other party.[29] Or if you wish, I may alternatively still say that in the one case[28] as well as in the other[30] the robber counted the money and threw it into the purse of the other party,[27] but while on the latter case[28] we suppose some money[31] to have been in the purse,[32] the former[30] deals with a case where no other money was in the purse.

MISHNAH. IT IS NOT RIGHT TO BUY EITHER WOOL OR MILK OR KIDS FROM THE SHEPHERDS,[33] NOR WOOD NOR FRUITS FROM THOSE WHO ARE IN CHARGE OF FRUITS.[33] IT IS HOWEVER PERMITTED TO BUY FROM HOUSE-WIVES WOOLLEN GOODS IN JUDEA,[34] FLAXEN GOODS IN GALILEE OR CALVES IN SHARON,[35] BUT IN ALL THESE CASES, IF IT WAS STIPULATED BY THEM THAT THE GOODS ARE TO BE HIDDEN, IT IS FORBIDDEN [TO BUY THEM]. EGGS AND HENS MAY, HOWEVER, BE BOUGHT IN ALL PLACES.

GEMARA. Our Rabbis taught: It is not right to buy from shepherds either goats or kids or fleeces or torn pieces of wool, though it is allowed to buy from them made-up garments, as these are certainly theirs.[36] It is Similarly allowed to buy from them milk and cheese in the wilderness[34] though not in inhabited places.[37] It is [also] allowed to buy from them four or five sheep,[38] four or five fleeces, but neither two sheep nor two fleeces. R. Judah Says: Domesticated animals may be bought[39] from them but pasture animals may not be bought from them. The general principle is that anything the absence of which, if it is sold by the shepherd, would be noticed by the proprietor, may be bought from the former, but if the proprietor would not notice it, it may not be bought from him.[40]

The Master stated: 'It is [also] allowed to buy from them four or five sheep, four or five fleeces.' Seeing that it has been said that four may be bought, is it necessary to mention five? — Said R. Hisda: Four may be bought out of five.[41] Some however say that R. Hisda stated that four may be bought out of a small herd and five out of a big herd. But the text itself seems to contain a contradiction. You say: 'Four or five sheep, four or five fleeces', implying that only four or five could be bought but not three, whereas when you read in the concluding clause: 'But not two sheep', is it not implied that three sheep may be bought? — There is no contradiction, as the latter statement refers to fat animals[42] and the former to lean ones.[43]

'R. Judah Says: Domesticated animals may be bought from them but pasture animals may not be bought from them.' It was asked: Did R. Judah refer to the opening clause[44] in which case his ruling would be the stricter,[45] or perhaps to the concluding clause,[46] in which case it would be the more lenient?[45] Did he refer to the opening clause[44] and mean to be more stringent, so that when it says, 'it is allowed to buy from them four or five sheep,' the ruling is to be confined to domesticated animals, whereas in the case of pasture animals even four or five should not be bought? Or did he perhaps refer to the concluding clause[46] and mean to be more lenient, so that when it says 'but neither two sheep nor two fleeces', this ruling would apply only to pasture animals, whereas in the case of domesticated animals even two may be bought? — Come and hear: R. Judah Says: Domesticated animals may be bought from them whereas pasture animals may not be bought from them, but in all places four or five sheep may be bought from them.[47]

1. So that where the proprietor did not know of the theft he should be notified about the restoration so as to take more care of his sheep.
2. Cf. *supra* 57a.
3. Who first lifted up the lamb.
4. Thus proving that counting is not sufficient to exempt the thief where the owner had knowledge of the theft.
5. That where the proprietor knew of the theft he has similarly to know of the restoration, and where he had no knowledge of the theft counting at least would be required.
6. Is this ruling not in conflict with the statement made above by Rab?
7. Lit., spotted'. I.e., the presence of which is conspicuous, so that the shepherd who was looking after the flock in the wilderness would surely notice its restoration.
8. I.e., Rab and Samuel.
9. A coin; v. Glos.
10. B.M. 40b.
11. Ibid. 21b.
12. I.e., R. Ishmael and R. Akiba.
13. For he had most probably meanwhile examined his purse and found a *sela'* short; the same was the case regarding the lamb of the theft of which the proprietor had knowledge.
14. Who was thus preceded by R. Akiba.
15. Who was on the other hand preceded by R. Ishmael.
16. And so was the case regarding the *sela'*.
17. V. *supra* p. 707.
18. R. Johanan following R. Ishmael, and R. Hisda following R. Akiba.
19. According to cur. edd. the reading is 'the bailee was stealing'; v. however Rashi whose amendment is followed.
20. V. p. 708, n. 10.
21. That he must (in all cases) notify the proprietor for the reason that living things have the habit of running out into the fields.
22. So that the restoration must be made to the proprietor himself; cf. also *supra* 108b.
23. And the restoration is therefore legally valid.
24. B.M. 64a.
25. Taking the restoration to be good.
26. Maintaining that the duty of restoration has not been fulfilled.
27. Who surely counted it before long.
28. V. p. 709, n. 8.
29. Who might not have counted it at all.
30. V. p. 709, n. 7.
31. Of uncertain amount.
32. In which case the proprietor even after counting the money could hardly have realized the restoration.
33. As we apprehend that these articles were not their own but were misappropriated by them.
34. As they were authorized there to do so.
35. The name of the plain extending along the Mediterranean coast from Jaffa to Carmel; cf. Men. 87a. [The sheep there were plentiful and cheap owing to the rich pasturage.]
36. For even if the wool was not theirs ownership was transferred by the change in substance.
37. Where they are supposed to bring the dairy produce to the proprietors.
38. As the absence of so many is too conspicuous and the shepherd would hardly rely upon the allegation of accidental loss occasioned by beasts.
39. As the proprietor knows the exact number of such animals.
40. Tosef. B.K., XI.
41. I.e., the proportion should be as four to five; MS.M. adds: five may be bought even out of a large herd.
42. In which case the absence of even three will be noticed by the proprietor.
43. Where the absence of three might not be noticed.
44. I.e., that four or five sheep may be bought.
45. The explanation follows presently.
46. That two may not be bought.
47. V. p. 710, n. 13.

Baba Kamma 119a

Now since he says 'in all places' we may conclude that he referred to the concluding clause[1] and took the lenient view. This proves it.

NOR WOOD NOR FRUITS FROM THOSE IN CHARGE OF FRUITS. Rab[2] bought bundles of twigs from an *aris*.[3] Abaye thereupon said to him: Did we not learn, NOR WOOD NOR FRUITS FROM THOSE IN CHARGE OF FRUITS? — He replied: This ruling applies only to a keeper in charge who has no ownership whatsoever in the substance of the land, whereas in the case of an *aris* who has a part in it,[4] I can say that he is selling his own goods.

Our Rabbis taught: It is allowed to buy from those in charge of fruits while they are seated and offering their wares, having the baskets before them and the scales[5] in front of them, though in all cases if they tell the purchaser to hide [the goods purchased], it is forbidden. So also it is allowed to buy from them at the entrance of the garden though not at the back of the garden.

It was stated: In the case of a robber, when would it be allowed to buy[6] [goods] from him? — Rab said: Only when the majority [of his possessions] is his, but Samuel said: Even when only the minority [of them] is his. Rab Judah instructed Adda the attendant[7] [of the Rabbis] to act in accordance with the view that even where [only] a smaller part [of his possessions] is his [it is already permitted to deal with him].

Regarding the property of an informer, R. Huna and Rab Judah are divided: One said that it is permitted to destroy it directly[8] whereas the other one said that it is forbidden to destroy it directly. The one who stated that it is permitted to destroy it directly [maintains that an offence against] the property of an informer could surely not be worse than [one against] his body,[9] whereas the one who held that it is forbidden to destroy it maintains that the informer might perhaps have good children, as written, He, the wicked, may prepare it but the just shall put it on.[10]

R. Hisda had [among his employees] a certain *aris*[11] who weighed and gave,[12] weighed and took[13] [the produce of the field]. He thereupon dismissed him and quoted regarding himself: *And the wealth of the sinner is laid tip for the just*.[14]

For what is the hope of the hypocrite though he hath gained when God taketh away his soul.[15] R. Huna and R. Hisda differed as to the interpretation of this verse; One said that it referred to the soul of the robbed person, the other one said that it referred to the soul of the robber: The one said that it referred to the soul of the robbed person, for it is written: *So are the ways of every one that is greedy of gain; which taketh away the life of the owners thereof*,[16] whereas the other said that it referred to the soul of the robber because it is written: *Rob not the poor, because he is poor; neither oppress the afflicted in the gate. For the Lord will plead their cause and spoil the soul of those that spoiled then*.[17] But what then does the other make of the words: *Which taketh away the life of the owners thereof*? — By *'the owners thereof'* is meant the present possessors thereof.[18] But what then does the other make of the words: *And [he will] spoil the soul of those that spoiled them*? — The reason [of the punishment] is here given: The reason that He will spoil those that spoiled them is because they had spoiled life.[19]

R. Johanan said: To rob a fellow-man even of the value of a *perutah*[20] is like taking away his life[21] from him, as it says: So cite the ways of every one that is greedy of gain; which taketh away the life of the owners thereof, and it is also written: And he shall eat up thine harvest and thy bread [which] thy sons and thy daughters [should eat],[22] and it is again said: For hamas [the violence] against the children of Judah because they have shed innocent blood in their land,[23] and it is said further: It

is for Saul and for his bloody house because he slew the Gibeonites.[24] But why cite the further statements? Because you might say that this applies only to his own soul but not to the soul of his sons and daughters. Therefore come and hear: The flesh of his sons and his daughters. So also if you say that these statements apply only where no money was given[25] whereas where money was given, this would not be so,[26] come and hear: 'For hamas[27] [the violence] against the children of Judah because they have shed innocent blood in their land.' Again, should you say that these statements refer only to a case where a robbery was directly committed by hand whereas where it was merely caused indirectly this would not be so, come and hear: 'It is for Saul and for his bloody house because he slew the Gibeonites'; for indeed where do we find that Saul slew the Gibeonites? It must therefore be because he slew Nob,[28] the city of the priests, who used to supply them with water and food,'[29] Scripture considers it as though he had slain them.

IT IS HOWEVER PERMITTED TO BUY FROM HOUSEWIVES. Our Rabbis taught:[30] It is permitted to buy from housewives woolen goods in Judea and flaxen goods in Galilee, but neither wine nor oil nor flour; nor from slaves nor from children. Abba Saul says that a housewife may sell the worth of four or five[31] *denarii* for the purpose of making a hat for her head. But in all these cases if it was stipulated that the goods should be hidden it is forbidden [to buy them]. Charity collectors may accept from them small donations but not big amounts. In the case of oil pressers it is permitted to buy from them [their housewives][32] olives by measure and oil by measure,[33] but neither olives in a small quantity nor oil in a small quantity. R. Simeon b. Gamaliel however says: In Upper Galilee[34] it is permitted to buy from housewives olives [even] in small quantities,[35] for sometimes a man is ashamed to sell them at the door of his house and so gives them to his wife to sell.

Rabina came once to the city of Mahuza,[36] and the housewives of Mahuza came and threw before him chains and bracelets, which he accepted from them.[37] Said Rabbah[38] Tosfa'ah to Rabina: Was it not taught: Charity collectors may accept from them small donations but not big amounts? He, however, said to him: These things are considered with the people of Mahuza[39] as small amounts.

MISHNAH. SHREDS [OF WOOL] WHICH ARE TAKEN OUT BY THE WASHER BELONG TO HIM[40] BUT THOSE WHICH THE CARDER REMOVES BELONG TO THE PROPRIETOR.[41] THE WASHER MAY REMOVE THE THREE THREADS AT THE EDGE] AND THEY WILL BELONG TO HIM, BUT ALL OVER AND ABOVE THAT WILL BELONG TO THE PROPRIETOR, THOUGH IF THEY WERE BLACK UPON A WHITE SURFACE, HE MAY REMOVE THEM ALL[42] AND THEY WILL BELONG TO HIM. IF A TAILOR LEFT A THREAD SUFFICIENT TO SEW WITH, OR A PATCH OF THE WIDTH OF THREE [FINGERS] BY THREE [FINGERS], IT WILL BELONG TO THE PROPRIETOR.[41] WHATEVER A CARPENTER REMOVES WITH THE ADZE BELONGS TO HIM,[43] BUT THAT WHICH HE REMOVES BY THE AXE BELONGS TO THE PROPRIETOR.[44] IF, HOWEVER, HE WAS WORKING ON THE PROPRIETOR'S PREMISES,[45] EVEN THE SAWDUST BELONGS TO THE PROPRIETOR.

GEMARA. Our Rabbis taught:[46] It is allowed to buy shreds [of wool] from the washer, as they are his.[43] The washer may remove the two upper threads and they will belong to him.

1. V. p. 711, n. 8.
2. 'Raba' according to MS.M.; Alfasi: 'Rabbah'.
3. I.e., a tenant who tills the owner's ground for a certain share in the produce.
4. I.e., in the produce.
5. [G] 'trutina'.
6. *Var. lec*. 'to collect a debt' or 'to derive a benefit'.
7. Lit., 'one who pours water over another person's hands' (Jast.).

8. Lit., 'with the hand'.
9. Which may be incapacitated to any extent for the sake of public safety; v. A.Z. 26b, also Sanh. 74a and *supra* p. 703.
10. Job XXVII, 17. [The words 'the wicked' do not occur in the Massoretic texts. It is more than probable that it is an explanatory gloss inserted by the Talmud; v. marginal glosses and cf. Sanh. (Sonc. ed.) p. 698, n. 8.]
11. V. Glos.
12. To R. Hisda half of the produce instead of two-thirds.
13. For himself half of the produce instead of a third; or he was over-careful in weighing.
14. Prov. XIII, 22. [He felt glad that he got rid of him.]
15. Job XXVII, 8.
16. Prov. 1, 19.
17. Ibid. XXII, 22-23.
18. I.e., the robber.
19. I.e., the life of those who were robbed by them.
20. Which is the minimum of legal value; v. Glos.
21. Lit., 'Soul'.
22. Jer. V, 17.
23. Joel IV, 19.
24. II Sam. XXI, 1.
25. By the robber for the misappropriated article.
26. Though the whole transaction was by threats and violence.
27. Implying a purchase by threats and violence as *supra* p. 361.
28. I.e., its inhabitants; v. I Sam. XXII, 11-19.
29. For the Gibeonites were employed there by the priests as hewers of wood and drawers of water; v. Josh. IX, 27.
30. Cf. Tosef. B.K. XI.
31. 'Foot or' missing in Tosef.
32. [So Rashi, supported by reading in MSS.: others; one may buy from oil-pressers.]
33. For since it is done publicly and in a big way they were surely authorized to do so.
34. Where oil was expensive (Rashi).
35. 'In small quantities' is missing in Tosef. ibid.
36. A large trading town on the Tigris.
37. For charity purposes.
38. MS.M.; 'Raba'.
39. Who were of substantial means; cf. Ta'an. 26a.
40. As the proprietor does surely not care about them.
41. As they are of some importance to him.
42. As they spoil the appearance of the garment.
43. V. p. 715, n. 9.
44. V. p. 715, n. 10.
45. As a daily employee.
46. Cf. Tosef. XI.

Baba Kamma 119b

[The carder] must not use [of the cloth for stretching and hackling] more than three widths of a seam. He should similarly not comb the garment towards the warp but towards its woof.[1] He may straighten it out lengthways but not breadthways. If he wants, however, to straighten it out up to a handbreadth he may do so.

The Master stated: 'Two threads.' But did we not learn, THREE'? — There is no difficulty, as the former statement applies to thick threads and the latter to thin ones.

'He should similarly not comb the garment towards the warp but towards its woof.'[1] But was it not taught to the contrary? — There is no difficulty, as the latter statement refers to an everyday garment whereas the former deals with a best cloak [used very seldom].

'[He must] not use [of the cloth for stretching or hackling] more than three widths of a seam.' R. Jeremiah asked: Does [the preliminary drawing of the] needle to and fro count as one stitch, or does it perhaps count as two stitches? — Let it stand undecided. 'He may straighten it out lengthways but not breadthways.' But was it not taught to the contrary? — There is no difficulty, as the former statement refers to a garment and the latter refers to a girdle.[2]

Our Rabbis taught: It is not allowed to buy hackled wool from the carder as it is not his, but in places where it is customary for it to belong to him, it is allowed to buy it. In all places, however, it is allowed to buy from them a mattress full of stuffing and a cushion full of stuffing,[3] the reason being that these articles had [in any case] been transferred to them through the change [which the stuffing underwent].

Our Rabbis taught:[3] It is not right to buy from a weaver either remnants of woof or of warp or threads of the bobbin or remnants of coils. It is however allowed to buy from him

[even] a checkered web,[4] [and] woof and warp if they are spun and woven. I would here ask: [Since it is] now stated that 'if spun' it may be accepted from them, what necessity was there to say 'woven'?[5] — What is meant by 'woven' is merely 'twisted' [without first having been spun].

Our Rabbis taught:[3] 'It is not right to buy from a dyer either test pieces,[6] or samples[7] or torn pieces of wool. But it is allowed to buy from him a colored garment,[8] yarn, and ready-made garments'.[9] But [since it has] now been stated that yarn may be accepted from him, what doubt could there be regarding ready-made garments?[10] — What is meant by 'ready-made garments' is felt spreadings.[11]

Our Rabbis taught: 'If skins have been given to a tanner the [part] trimmed off and the [pieces of hair] torn off will belong to the proprietor, whereas what comes up by the rinsing in water would belong to him.[12]

IF THEY WERE BLACK UPON A WHITE SURFACE HE MAY REMOVE THEM ALL AND THEY WILL BELONG TO HIM. Rab Judah said: A washer is named Kazra,[13] and he takes the Kazre.[14] Rab Judah again said: All the [three] threads can be reckoned for the purpose of tekeleth[15] though Isaac my son is particular about them.[16]

IF A TAILOR LEFT A THREAD SUFFICIENT TO SEW WITH. How much is SUFFICIENT TO SEW WITH? — Said R. Assi: The length of a needle and beyond the needle. The question was raised: [Does this mean] 'the length of a needle and as much again as the length of the needle,' or perhaps 'the length of the needle and anything beyond the needle'? Come and hear: If a tailor left a thread which is less than sufficient to sew with or a patch less than the width of three [fingers] by three [fingers], if the proprietor is particular about them they would belong to the proprietor, but if the proprietor is not particular about them they would belong to the tailor.[17] Now, there is no difficulty if you say that 'the length of a needle and beyond the needle' means as much again as a needle, for a thread less than that can still make a clip;[18] but if you say that 'the length of a needle and anything beyond the needle' for what purpose could a thread which is less than this be fit? — We may therefore conclude from this that it means 'the length of a needle and beyond the needle as much again as the length of the needle.' This proves it.

WHATEVER A CARPENTER REMOVES WITH THE ADZE BELONGS TO HIM, BUT THAT WHICH HE REMOVES BY THE AXE BELONGS TO THE PROPRIETOR. A contradiction could be raised from the following: Whatever a carpenter removes with the adze or cuts with his saw belongs to the proprietor, for it is only that which comes out from under the borer or from under the chisel or is sawed with the saw that belongs to [the carpenter] himself![19] — Said Raba: In the place where our Tanna [of the Mishnah lived] two kinds of implements were used, the larger called 'axe' and the smaller called 'adze', whereas in the place of the Tanna of the Baraitha there was only one implement [i.e., the larger] and they still called it 'adze'.[20]

IF HOWEVER HE WAS WORKING ON THE PROPRIETOR'S PREMISES EVEN THE SAWDUST BELONGS TO THE PROPRIETOR. Our Rabbis taught: Workmen chiseling stones do not become liable for robbery [by retaining the chips in their possession]. Workmen who thin trees or thin vines or trim shrubs or weed plants or thin vegetables, if the proprietor is particular [about the waste materials] become liable for robbery, but if the proprietor is not particular about them they will belong to the employees.[21] Rab Judah said: Also cuscuta[22] and lichen[23] are [under such circumstances] not subject to the law of robbery, though in places where proprietors are particular they would be subject to the law of robbery. Rabina thereupon said: Matha Mehasia[24] is a

place[25] where the proprietors are particular about them.[26]

1. **[Where greater importance is attached to appearances, which may be improved by combing towards the woof, than to durability.]**
2. **[Of which only the ends hanging down are visible and these alone require straightening out.]**
3. **V. p. 716, n. 4.**
4. **Lit., 'garment'. [Although it apparently consists of remnants of different materials which he might have acquired unlawfully, for even so the ownership of them was transferred to him by the change in substance.]**
5. **For if it is woven it had surely been previously spun; cf. Bek. 29b.**
6. **I.e., pieces cut off to test the color.**
7. **Specimens of color.**
8. **Tosef. B.K. XI: 'wool' instead of 'garment'.**
9. **Tosef. ibid. 'warp and woof' instead of 'ready-made garments'; so also MS.M.**
10. **For these were surely first spun; v. Bek. 29b.**
11. **Which were never spun.**
12. **[Being negligible, v. Tosaf. ibid.]**
13. **Lit., 'shortener'.**
14. **Lit., 'the shortening'; i.e., that which resulted from the garment having become shorter.**
15. **Lit., 'blue' riband to be put among the zizith (the 'fringes') on the borders of garments in accordance with Num. XV, 38; if the three threads were not taken away by the washer, they need not be removed for the sake of Zizith as they will be included in the measure of the first joint of the thumb required to be between the hold and the edge of the garment, for which v. Men. 42a.**
16. **To cut them off.**
17. **Tosef. B.K. XI.**
18. **Lit., 'is fit as a pin' (fast.) as in the case of a seam.**
19. **Tosef. B.K. XI. This ruling, that whatever he removes with the adze belongs to the proprietor, thus contradicts the Mishnah which roles that it belongs to the carpenter.**
20. **But was in fact the 'axe' of which it is mentioned in the Mishnah that whatever be removed by it belongs to the proprietor.**
21. **Tosef. ibid.**
22. **I.e., cucumbers or melons in an early stage when they are pubescent' (Jast.).**
23. **Young green cereal.**
24. **I.e., the city of Mehasia or Mahesia; a suburb of Sora. V. B.B. (Sonc. ed.) p. 10, n. 1.**
25. **Abundant in cattle; Rashi a.l. and Rashbam, B.B. 36a; and thus in great need of fodder.**
26. **V. Hor. 12a.**