

CHAPTER II.

LAWS RELATING TO FOUND ARTICLES, WHICH MAY OR MAY NOT BE KEPT WITHOUT PROCLAMATION, AND HOW FOUND ARTICLES SHALL BE CARED FOR, ETC.

MISHNA I.: There are found articles which belong to the finder without any proclamation; namely, scattered fruits or scattered money in a public thoroughfare, small sheaves, strings of pressed figs, bread of a baker (as all bread of the baker is alike; home bread, however, differs, and is recognizable), strings of fish, pieces of meat, and shorn wool from the country where it was shorn, cleansed flax, and stripes of scarlet wool--all these belong to the finder (when it was found in such a place where people pass). So is the decree of R. Meir. R. Jehudah, however, maintains: If there is a change in the found article, which usually ought not to be, as, *e.g.*, he found a fragment of a clay vessel in pressed figs, or he found a coin in a loaf of bread, he must proclaim. R. Simeon b. Elazar says: All stew vessels which are for sale he need not proclaim.

GEMARA: How much of the scattered fruit belongs to him without proclaiming? Said R. Itzhak: "If in a distance of four ells there were scattered fruits the measure of kab." Let us see in what condition did he find it. If it was placed in such a way as dropped unintentionally, why only a kab? Even if there are more, it should be his; and if it was placed in such a manner that it can be supposed they were placed intentionally, even less he should proclaim. Said R. Uqba bar Hama: "It treats of a place where the grain is gathered from the barns, and if he found the size of one kab scattered within four ells, which it is too much trouble to gather, the owner of it usually would not take such trouble and renounce his ownership, but if it were scattered within a shorter distance, he may think, 'I will take the trouble to pick it up afterwards,' and he does not renounce his ownership." It was taught: "The renouncing of hope in regaining a lost article, which it is not yet certain is lost (*i.e.*, the article was found before the loss was known to the owner, but usually, becoming aware of its loss, he will not try

to regain it). According to Abayi such must not be taken in consideration, and Rabha, however, maintains it may." They, however, do not differ when the article has a mark that in such a case it must be supposed that when he will become aware of it, he will not renounce his hope to regain it because of the mark; and even if thereafter it was heard that he had renounced his hope, still the finder has not acquired title, because at the time he found it, it cannot be considered that the hope should be renounced when the owner becomes aware of its loss, because there is a mark, and he will certainly think, "I will try to search for it by identifying the mark." The same also do not differ when the article was found at the seashore or near a waterfall, that it belongs to him, even if it has a mark, because the law allows it, as will be explained further on; the point of their difference, however, is in case the article has no mark. Abayi is of the opinion that the finder cannot acquire title to it, because the owner is not yet aware of his loss. Rabha, however, maintains that he does, because it is certain when the owner becomes aware of it that he will renounce his hope. Come and hear. Our Mishna states: "Scattered fruit, it is his." Although he

did not know whose it was? Said R. Uqba: b. Hama: "The Mishna means a case in the season of gathering the grain from the threshing floor, which is considered an intentional loss." Come and hear. Scattered money belongs to him, and certainly the loser of it was not aware when he lost it (as if he were, he certainly would pick it up), and nevertheless it belongs to the finder. This can be explained as R. Itzhak said elsewhere: "Usually a man inspects his purse frequently (and the loss of his money was already known to him when the finder picked it up)." Come and hear the other part of the Mishna: "*Pressed figs and bread of a baker, it is his.*" Why, the owner was not aware of it? It also can be said because such are of great value he must have been aware of the loss. [The same was objected to, based on further expression of our Mishna, "Stripes of scarlet wool," and the answer was the same as above.] Come and hear (another objection). "χασσια which were found in a public thoroughfare, although they were near the field where they grew, and also a fig tree the branches of which were bent toward the street, and one found figs beneath, the people are allowed to eat these, and it is not considered robbery; they are free from tithe." Now the Boraitha would not contradict Abayi, as the cassia are of great value, and it is known where the fruit of the

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fig tree would drop; but the latter part of the same Boraitha states that if it were an olive tree or carob, it is prohibited. Would not this be a contradiction of Rabba's statement? Said R. Abbahu: "It is different with an olive tree, as the color of the olives is the same as that of the tree, and they can be recognized wherever they are found 1 (and therefore the owner of them does not renounce his ownership, thinking that any one will recognize that they are his). If so, why should it be the same with the fig tree mentioned above? Said R. Papa: When figs drop, they become soiled (therefore their owner does not care for them any more). Come and hear. A thief or a robber who took an article from one and gave it to another, or an article falls into the Jordan and is washed up at another place, and some one Picked it up, the latter is entitled to it. Now this would be correct concerning a robber or the Jordan, where the owner sees his article lost, and renounces his hope of regaining it; but with the case of a thief, has then the owner seen him, that he should renounce his hope? R. Papa interprets the Boraitha, saying that it treats of an armed robber; but is it not the same as a robber, which case has already been mentioned? It treats of two kinds of robbers. Come and hear: "If the river has flooded one's beams, wood, or stones, and carried them away to another field, the latter may use them, because their owner has lost his hope." We see that the reason is because it was certain that the one had renounced his hope already, but when uncertain it is not to be used (and this would contradict Rabba). The case was that the owners could have saved the articles; if so, how is the latter part of the same to be understood? If the owner came to get them, he is obliged to return them. Now, why going to get them? If he could save them he should be obliged to return, even if he had not come to get them, etc. The case was that he could save them with great trouble. If he came to get them, we see that he had not renounced his hope; and if not, it is to be supposed that hope is renounced. Come and hear (another objection). How can a case be where one shall separate heave-offering without the knowledge of its owner, and nevertheless the heave-offering

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shall be valid? Thus, if one goes to the field of his neighbor and gathers grain, and has separated the heave-offering without knowledge of the owner, if robbery can be suspected, the heave-offering is not valid; and if not, it is; and how does he know that there is no robbery? When the owner appears while his neighbor is on his field engaged in the above-stated work, and said to

him, You should separate for the priest from the better ones; then, if better ones are found, the heave-offering is valid, but if not it is invalid (because the remark of the owner was but ironical, as there *were* no better ones). If, however, the owner had added to the heave-offering, it is valid, although better ones were not to be found. We see, then, if there were better ones the heave-offering is valid, though the separator did not know of it while doing so (let it be the same with regard to renouncing hope, that, even when it comes afterwards, the finder shall acquire title even before the renouncing was known?). Rabha explained this in order that the Boraitha shall agree with Abayi's theory: "The owner, with his remark, appoints his neighbor to be his messenger." (Said the Gemara:) It seems that Rabha's explanation is correct, for if he would not become his messenger, how can his act be of any value? Is it not written [Numb. xviii. 28]: "Thus shall ye also offer," etc., and from the word "also," which is superfluous, it is declared that it includes a messenger, and it is also declared there that as the word "ye" means "it shall be done intentionally," so also if this is done by the messenger the intention is necessary? (hence we see that only a messenger has the right to separate heave-offering), and the above Boraitha must therefore be explained that he appointed him as a messenger, saying, "Go and separate"; but he did not determine of which grain he should separate. And usually the owners separate from the middle one; the messenger, however, does so from the better one; now when the owner comes and says, "Why did you not separate from the better one?" if there is to be found still better than he had separated, his act is valid; but if not, the saying of the owner must be considered ironical, and the messenger's act is of no avail.

Amaimar, Mar Zutra, and R. Ashi happened to be in the garden of Mari bar Issak, and the gardener placed before them dates and pomegranates. Amaimar and R. Ashi partook. Mar Zutra, however, did not; meanwhile the host came and said to his gardener: "Why did you not serve the rabbis with the best

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ones?" Said both Amaimar and R. Ashi to Mar Zutra: "Why does the master not partake of it now? Have we not learned if better ones are to be found the heave-offering is valid?" And he answered: "So said Rabha, that this expression is to be cited in case of heave-offerings only, because it is a meritorious act, and it may be assumed that the owner made his remark with good intentions; but here, it can be said that he said so to the gardener only not to be ashamed (to be considered niggardly)." Come and hear. R. Johanan said in the name of R. Ishmael b. Jehouzadok: "Whence do we know that a lost article, which was flooded, is allowed to be used by one? Because it is written [Deut. xxii. 3]: 'In like manner shalt thou do with his ass, and in like manner shalt thou do with his raiment, and in like manner shalt thou do with every lost thing of thy brother's which may have been lost by him, and which thou hast found.' From which it is deduced that when it is lost to him, but not to others; exclude, then, the flooded article, which is lost to him and also for every one; and as in the case of flooding the article is allowed for use, no matter whether it had a mark or not, the same is the case with an article which is not allowed for use, when it is not certain that the owner of it has renounced his hope. No matter whether the article has a mark or not, it is prohibited, even in case where the hope would be renounced by the owner immediately after he became aware of his loss." Hence Rabha's statement is objected to, and the Halakha prevails according to Abayi, as this is one of the six things. (See Baba Kama, p. 163.) 1 Said R. Achi' the son of Rabha to R. Ashi: "Now as it is decided that Rabha's statement is objected to, how then do we eat dates which the wind blows away to the highway?" And he answered: "Because there are insects which consume them; the owners of the dates therefore renounce their hope of such." The former questioned again: "In case the trees belong to orphans, who are disqualified to renounce their hope, let therefore all

fallen dates not be used." And he rejoined: "Must we then consider that the whole valley belongs to orphans?" The former said again: "But if it be known that such is the case, how is the law?" And he rejoined: "Then it is prohibited."

"*Small sheaves*," etc. If the mark on the article in question

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was of such a nature that it could be effaced by stepping on it, Rabba said: "That such a mark is not to be considered." Rabha, however, said: "It is." An objection was raised from our Mishna. Small sheaves in public thoroughfare may be used without proclamation, but if they were found on private ground he may take it provided he proclaims. Now how was the case?

If it treats of such that have not a mark, what shall he proclaim? We must, therefore, assume that although they have a mark they are his if found in public thoroughfares, because the mark is usually effaced by stepping upon it; hence it is an objection to Rabha. He may say that the Mishna treats of such that have not a mark, and your question, What shall he proclaim if on private ground? is to be answered that he shall proclaim the place where it was found, as it was taught that both sages mentioned above differ concerning the place. Rabha maintains that it is a mark, and Rabba says it is not. [1](#)

Said R. Zbid in the name of Rabha: "The rule concerning a lost article is this, as soon as the owner exclaims, 'Woe, the damage I have had!' he does not care to search for it any more (it is considered renouncing of hope, etc.)." The same said again, in the name of the same authority: "The Halakha prevails that sheaves on public ground belong to the finder in all cases; however, in private thoroughfares, if it was found in such a manner indicating that it was dropped, it can be used, and if indicating that it was placed so intentionally, he may take it providing he proclaims; and in both cases it is only when it has no distinguishing mark; but if there were, no matter in which place, and how they were placed, he must proclaim."

"*Strings of fish*," etc. Why? Let the knot be the required mark? It means, *i.e.*, that it was found in the way as fishermen usually tie it; but let the number be the required mark. Such a number is used by all fishermen.

R. Shesheth was questioned whether a number is considered a distinguishing mark or not, and he answered: "We have learned this in the following: 'If one found silver or copper vessels, a cassiteron of tin, or any other metal vessel, the finder need not return it, unless the owner of it identify it by a mark

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or the exact weight of it.' Now, as the weight is a mark, the same is the case with the size and number."

"*And pieces of meat*," etc. Why let the weight be a mark? when the weight was as customary with all butchers. But let the kind of the piece be a mark, *e.g.*, leg or shoulder, etc. Have we not learned in the following Boraitha: If one found pieces of fish or a bitten fish, he must proclaim;

barrels of wine, oil, grain, dry figs, and olives are his? It treats of a case when there was a distinguishing mark in cutting it, as Rabba bar R. Huna used to cut it in the form of a triangle. It is so also to be inferred from the statement "a bitten fish" (and this is certainly a distinguishing mark, so also pieces of fish mean which were cut differently). The master says barrels of wine, etc.; but have we not learned in a Mishna further on: Pitchers of wine or oil he must proclaim? Said R. Zeira in the name of Rabh: "The Mishna treats of a case when the pitchers were sealed and marked. If it is so, then the Boraitha treats of a case when they were found open: must it not be considered an intentional loss (*i.e.*, when open it would be spoiled by reptiles, vermin, etc.)?"

Said R. Houshea: "It treats of a case when it was covered with a cork, and not smeared with clay." [1](#) Abayi, however, said: "It may treat also of sealed ones, and nevertheless it does not contradict the Mishna, as the Mishna speaks of a case when the market for wine was not yet opened, and the barrel found was of one who had sealed it with a mark which could be recognized. The Boraitha, however, speaks of a case after the market was opened, and usually the marks on the barrels were all alike, and could not be distinguished from each other, as it happened with Jacob bar Abba, who found a barrel of wine after the market was open, and he questioned Abayi and was told that he may keep it for himself."

R. Bibi questioned R. Na'hman: "Is the place (where it was found) considered a mark or not?" And he answered: "This we have learned in the above Boraitha: 'If one found barrels of wine, etc., they are his'; now if the place would be considered a mark, then why should he not proclaim the *place*?" R. Zbid, however, said: "This is no support, as it may treat

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of a case that when he found it on a dock where many barrels were placed."

R. Mari said: "The reason why the sages decided that the place is not to be considered as a mark, was because it can be said to him who claims that the article was lost by him in this place, that there were men passing the same, and another one may have lost it there."

It happened that one found unripe dates [1](#) near the winepress room, and questioned Rabh, and was told that he may keep it for himself; the man, however, hesitating, and Rabh said to him: "You may give a part of it to my son, Hyah." Shall we assume that Rabh holds that a place is not to be considered as a mark?

Said R. Abba: "Rabh's reason was, it was seen on this article that the owner had renounced his hope in it, as it was already mouldy."

"*R. Simeon b. Elazar said,*" etc. What does he mean by the expression new vessels? Said R. Jehudah in the name of Samuel: "By the word new he means that the eye was not acquainted with it." How was the case if the vessels had a mark? What is it if the eye *was* not yet acquainted with them, and if there was no mark? What use is it that the eye should be acquainted with them? It can be used to return it to a young scholar who claims that he recognized them by seeing. If the eye was acquainted with them, we do so; if not, we do not. As R. Jehudah said in the name of Samuel in the following three things. The rabbis 'hesitate to tell the truth when being questioned in a tractate (*e.g.*, if some one asked, can you repeat the tractate so and so by heart, they answer no, although it is not true, out of modesty), and in conversation between him

and his wife, and also about the hospitality of a private one, they usually answer in the negative, although it is not so (because people should not abuse his liberality and bring the man to poverty). And when it was questioned to what purpose did Samuel declare the above, Mar Zutra answered: "It was said with regard to returning a lost thing to one of the rabbis, if he recognized it with his eye, if we know that only in the

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above three things he hesitates to tell the truth, but in all other things he speaks the truth, then the article in question is to be returned to him, but not otherwise."

It happened that a silver goblet was stolen from Mar Zutra the pious, when he was in a *hospes*; in the mean time he saw a young man who dried his hands, after washing, with the garment of another, and he thought, this man does not care for his neighbor's money, and he accused him until he confessed that he stole the goblet. We have learned in a Boraitha: R. Simeon b. Elazar admits that new vessels, in case the eye was familiar with them, that he must proclaim them; however, the following new vessels which were not familiar to the eye he need not: namely, strings of needles, spinning instruments, and strings of hooks, but only when he found single strings; if, however, he found a pair of each, he must proclaim. The same R. Simeon used to say: "If one saved something from a lion, a bear, a tiger, or a bardalas, or from the sea, or if he found it on a dock or in one of the great markets, and in any place where it is crowded, he may keep it for himself, as the owner of it has surely renounced hope. ¹ It happened that one found four zuz tied up in a rag, and was dropped in the river Biron, and he came before R. Jehudah and was told to proclaim. Why so; is it not equal to the depth of a sea, as stated above? With the river Biron is different, because it was frequently cleaned, and there were stones and fences for fishing, the loser may not renounce his hope in regaining it; furthermore that the majority of the fishers and the cleaners of that river were Israelites, and the loser may think that in case an Israelite finds it he may return it.

R. Jehudah was walking behind Mar Samuel in the market, where wheat prepared for fermenting was sold, and R. Jehudah questioned him: How would be the case if some one should find a purse here? And he answered: It would belong to the finder. But how if an Israelite would come and give the mark of it? (the former questioned again). And Mar Samuel answered, then he would be obliged to return. The former rejoined: Are not the two decisions contradictory? And he answered: I mean not according to the exact law, but by moderating the

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same, as it happened to my father, who found certain asses in a desert and returned them to the owner after an elapse of twelve months; though he was not obliged to do so in accordance with the strict law, he nevertheless did so by moderating the same. Rabha happened to walk behind R. Na'hman in the market of tanners, according to others in the market where the rabbis used to assemble, and he questioned him: How if one would find here a purse? And he answered: It would belong to him. And how if an Israelite would claim that it is his by giving a mark? And he answered it counts for nothing; but if he claims with a certainty that it is surely his, Rabha said again. And the latter rejoined, it would be equal to him who cries for his collapsed house or for his sunken ship (as the ownership of it is lost with the losing).

There was a vulture which captured meat in the market, and put it between the trees of Bar Marian, and when Bar Marian came to question Abayi, he was told to keep it for himself. Although the majority of the inhabitants were Israelites, hence infer from this that the Halakha prevails in accordance with R. Simeon b. Elazar of our Mishna, even in case the majority are Israelites? With the vulture it is different, as it may be just as the depth of the sea. But did not Rabh declare that meat which was hidden from the eye must not be eaten for fear it is not legally slaughtered? It may be said that Bar Marian saw the vulture taking it from a place where legal meat was sold. R. Hanina found a slaughtered goat on the way from Tiberias to Ziporus, and he was allowed to use it. Said R. Ami: It was allowed as a found article in a crowded place, in accordance with R. Simeon b. Elazar; and also as a legal slaughter in accordance with R. Hananiah b. R. Jose the Galilean of the following Boraitha: If one has lost his goats or hens, and thereafter he found them slaughtered, R. Jehudah prohibited their use, and R. Hananiah b. R. Jose the Galilean allowed it. Said Rabbi: It seems that the opinion of R. Jehudah is correct when he found it in rubbish, and the opinion of R. Hananiah is correct when he found it in a house. Infer from all this that if one finds an article in a crowded place it is his, even when the majority of the inhabitants are Israelites. Said Rabha: Such meat may be used even when the majority of the inhabitants are heathen, but the majority of the butchers are Israelites. R. Ami found slaughtered pigeons on the way from Tiberias to Ziporus, and he questioned R. Assi, according to others R.

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Johanah, and according to still others he questioned the college, and was told to keep it for himself. R. Itzhak of Naph'ha found a ball of cord, of which nets were made, and he came before R. Johanah or in the college, and was told to keep it for himself.

MISHNA II.: The following articles he must proclaim: When he found a vessel containing fruit or an empty one, money in a purse or an empty one, heaps of fruit or heaps of money, or even three coins which were one upon another, sheaves in private ground and bread made in a household, and shorn wool which looks as if it was already in the hand of a master, pitchers of wine or oil, all these he must proclaim.

GEMARA: The Mishna treats of a case when the fruit was found *in* the vessel, and the money *in* the purse; but how is it if the vessel was empty and fruit was scattered near by, or the purse was empty and the money was near it? It would be his without any proclamation, and the rabbis taught the same plainly in a Boraitha, with the addition that if a part of it was in the vessel or in the purse, and another part on the ground near by, he must proclaim. Does this not contradict the following: If one has found an article which has no mark, near an article which has a mark, he must proclaim; and if the owner comes declaring the mark, and takes the article, he is also entitled to the other one which was without a mark (hence the vessel and the fruit in question should be proclaimed)? Said R. Zbid: This presents no difficulty. The Boraitha which states it is his treats of, *e.g.*, an empty vat and near it flax (it is not to be supposed that the flax fell out of the vat, as some would remain there, and the same is the case with an empty purse and money near it), and the Boraitha which states it should be proclaimed treats of an empty basket, and fruit which is supposed to have fallen out of the basket. R. Papa, however, maintains that both Boraithas may treat of a basket and fruit, but one speaks of a case where some was left in the basket, and the other one treats when it was entirely empty; and if you wish, it may be said that both treat of a case when nothing was left, but in one case the face of the vessel was turned toward the fruit, and in the other case the vessel was with a rim (so if the fruit which was found

near it would fall from the vessel, some of it would remain there because of the rim).

"*Heaps of fruit*," etc. Infer from this that the number is a mark? Perhaps the plurality stated in the Mishna is not

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correct, as it ought to be singular. If so, infer from it that "place" is a mark? Perhaps the plurality is correct. [1](#)

"*Three coins one upon the other*," etc. Said R. Itzhak of Magdahl: [2](#) Only when they were like a steeple. The same we have learned in the following Boraitha: If one found scattered coins, they are his; if, however, they were lying in a steeple-like manner, he must proclaim. And what is to be understood as steeple-like manner? Where three coins were lying one upon another.

Does not the Boraitha contradict itself? It begins "scattered money," of which it is to be inferred that if it was not entirely scattered, but in the condition where a part overlapped another, and the other part was on the ground, it must be proclaimed; and immediately after it states that it was in a steeple-like manner, etc., of which it is to be inferred that if they were not so but overlapped, it is his? The Tana is of the opinion that if they were not placed in a steeple-like manner it is considered scattered.

Said R. Hanina: "The case in question speaks of coins of three different rulers; but if they were of the: very same, ruler, they are his." How is this to be understood? If they were placed in a steeple-like manner, he must certainly proclaim, no matter of what ruler they are; and if scattered, even if they are from three rulers; what is it? Therefore if the statement was made by R. Hanina, it is as follows: The case is only when the three coins were placed as if they were of three rulers: viz., the larger one at the bottom, the middle one, which was a little smaller, upon it, and the third, a still smaller one, on the top, which indicates that some one placed it so intentionally; but if the coins were of one ruler and of one kind, that all were alike, even if they were one upon the other, it is his, as it may happen that they were lost by the owner in such a manner. R. Johanan, however, is of the opinion that even if they were from one ruler he must proclaim.

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What shall he proclaim? If the number, why then three; even two should be the same. Said Rabbina: He proclaims the kind of coin. R. Ashi questioned: If they were placed like the stones of *Markullus* (an idol of ancient times which was worshipped by putting stones one upon the other), what is the law? Come and hear. There is a Boraitha: Scattered money, it is his; however, like the stones of Kullis, he must proclaim. And how were the above stones placed? Two on either side and one on top of both. The rabbis taught: If one finds a sala in the market, and his neighbor claims it is his, giving a mark that it is new, it is a coin of Nero or of another ruler, he says nothing; and even if he says my name is written upon it, it counts for nothing, because on a coin no mark is to be considered, as he may nevertheless have given it away to some one and it was lost by the latter.

MISHNA III.: If one found under a wooden wall, or a brick one, pigeons tied one to the other, or

if they were placed on a thoroughfare of a private field, he must not touch them. The same is the case with a covered vessel found in rubbish; if, however, it was uncovered, he may take it and proclaim.

GEMARA: Why shall it not be touched? Because it may be that some one has hid it, but it has no mark on it (so if it would be taken away he could not regain it), therefore it must be left until the owner will come and take it. But why should not the tying be a distinguishing mark? Said R. Abba b. Zabda in the name of Rabh: It means that they were tied, as usually, at the wings, but let then the place be a mark. Said R. Uqba bar Hama: When they were jumping; if jumping, then it may be that they were coming from some other place, and should be allowed. Yea, it may be so, and it may be also that one hid them purposely, and in such a doubtful case R. Abba. b. Zabda declared, in the name of Rabh, that it should not be taken from the very first; but if one nevertheless took it, he is not to be compelled to return it.

"*If he found a covered vessel,*" etc. This contradicts the following: If he found a vessel hidden in rubbish, he may take it and proclaim, because usually the rubbish will be removed and some one else may take possession of the vessel (hence you see that he may take it, and our Mishna states it shall not be touched?). Said R. Zbid: This presents no difficulty. The Mishna treats of Kuva and Goblets, and the Boraitha treats of small knives and double-pronged zincked forks which were mixed

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unintentionally with the rubbish. R. Papa, however, says: In both, goblets were meant, but the Mishna treats of rubbish which is not to be removed, and the Boraitha of that which is to be; but if it is to be removed, the article which is there was certainly put there intentionally (it means that the owner does not intend to make use of it any more), therefore we must say that the rubbish in question was of a kind which is not to be removed, but afterwards it was decided that it should be. According to R. Papa's theory it is correct what the Boraitha adds, "as usually rubbish will be removed," but according to R. Zbid's theory, how is this additional expression to be understood? Read "as usually small vessels are thrown away with rubbish."

MISHNA IV.: If one found anything in a heap of rubbish or in an old brick wall, it is his; if, however, in a new wall, in the outer part, it is his; if in the inner part, it belongs to the owner. If, however, the house was rented, if even he found it in the *house* it is his.

GEMARA: It was learned that the reason was that the finder may say, that this article was hidden by the Amorites. But only the Amorites hide things, and the Israelites not? It means when the vessel seemed to be antique.

"*If it was a new one,*" etc. Said R. Ashi: If the article was a knife, and the handle was from the outside, it is supposed it was placed there by some stranger; and if it was from the inside, it is to be supposed that it was put there by the owner of the house. The same is the case with a purse: it must be investigated whether the opening of the purse is outside or inside. If so, why does our Mishna state, "if from the outside it is his," without any distinction whether the handle or the opening of the purse was placed outside or inside? Our Mishna treats of round or roundish articles, which on all sides are alike. There is a Boraitha in addition to it, that if the articles were found on both sides, they are to be divided between the finder and the owner.

"If it was rented," etc. Why so? Let us see who was the last tenant. Said Resh Lakish in the name of Bar Kapara: It speaks of a case when it was rented to three men. Infer from this that the Halakha prevails in accordance with R. Simeon b. R. Elazar stated above, page [51](#). Therefore, said R. Menashia bar Jacob, it speaks when it was an inn with three heathen. R. Na'hman in the name of Rabba b. Abuhu, how.

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ever, said: "There is no difference who the guests were, even Israelites, if one of them lost something, he may say, 'There were no others, but my two neighbors. If they found it they would return it to me, as I had mentioned several times to them that such a thing was lost by me; and when they did not return it, it indicates that they would steal it, and there is no use arguing with them.'" (Consequently he renounced his hope of regaining it.) And R. Na'hman said, in accordance with his theory elsewhere, as follows: "If one has seen that a sala was dropped by one of two who were standing there (but he does not know to which of the two it must be returned). Why so? Because only two of them occupied the place, and the loser will think, 'As there was no other besides my neighbor, I will tell him, Only you could have found it, and you must return.' But if there were two others besides him, the finder of the sala may keep it for himself, as the loser would think, 'My sala is lost at any rate. If I claim it of one of my neighbors he would deny, and so, too, would say the other one' (consequently the hope of regaining is renounced)." Said Rabha: "If there were three, he must not return it only in case the coin has not the value of one *perutha*; but if it has the value of two *peruthas*, he must return. Why so? Perhaps they are partners, and one of them relinquishes his share to the other without renouncing any hope." The same said again: "If one has seen a sala dropped, and he took it before the owner renounced his hope, with the intention to rob it, he transgresses the three following commandments: [Lev. xix. 13] 'Nor rob him,' [Deut. xxii. 1] 'Thou shalt surely bring them back again,' etc., and [ibid., ibid. 3] 'Thou art not at liberty to withdraw thyself'; and even if reconsidering, he returned it, it is considered a gift; the transgression, however, remains. If, however, he took it with the intention of returning it, and after the owner renounced his hope he reconsidered to rob it, he transgresses the second commandment mentioned above. But if he was waiting until the owner renounced his hope, and then took it, he transgresses only the commandment of the last verse stated above." He said again: "If one has seen money dropped in sand, and afterwards found and took it, he is not obliged to return it, although the loser sifted the sand; for it may be supposed that the purpose of sifting the sand was because he thought, as it happened to me it also may happen to some one else, and perhaps I might find, if not mine, something of another loser."

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MISHNA V.: If one found something in a store, it is his; if, however, between the counter and the storekeeper, it belongs to the latter; if before a money changer, it is his; if, however, between the chair where he usually sits and the table, it belongs to the money changer; if one has bought fruit or one sent him such, and he found money in it, it is his; if, however, he found it tied in a package he may take it, but proclaim.

GEMARA: Said R. Elazar: "Not only on the ground before the money changer, but even if he found it on the table, it is his." Whence did the same get such a law? Said Rabha: "From the expression of the Mishna, 'between the chair and the table,' etc.; let it state even on the table, or

if he finds in the table, as it states in the first part. If he found in the store? Infer from this that even the money was on the table (and the money changer being absent), it is his (as it may be supposed some one else forgot it, as the money changer is usually very careful)."

"*If one has bought fruit,*" etc. Said Resh Lakish in the name of R. Janai: "It treats of a case where he bought of a merchant, but if of a private person, he must return; and so also taught a scholar in the presence of R. Na'hman. Said the latter to him: Did, then, the private person thresh it himself (though the expression in the Mishna is *fruit* it means also *grain*)? and the former answered, Then ignore the Boraitha. Rejoined R. Na'hman: It is not necessary to ignore it, as it could be explained that the case was where the owner threshed it by means of his male or female heathen slave (and if even they lost the money in question, it belongs nevertheless to the owner)."

MISHNA VI.: A garment is also included (in the verses concerning lost articles). Why, then, is it mentioned separately? To teach that all other articles should be equal to it; as a garment usually has marks and claimants, so also any article which has marks and claimants, he must proclaim.

GEMARA: In what verse is it included? Said Rabha: "In [Deut. xxii. 3] 'With *every* lost thing.'" He said again: To what purpose does the Scripture mention ox, ass, sheep, and a garment separately? (Is it not included in the cited verse above?) They are all needed, for if the Scripture would mention the garment only, one might say that it must be returned when witnesses testify that it belongs to the claimant, or when the claimant gives the mark which is on the material of it; but

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if, *e.g.*, an ass, and witnesses or marks can be given of the saddle only, the ass is not to be returned; therefore ass is mentioned, and ox was also necessary to signify that a mark indicating that its tail was cut was sufficient, and the same is with sheep, that the mark, the wool shorn, suffices. But would it not be sufficient if the ox only, without the sheep, were mentioned, as it would be self-evident that the wool of sheep which was shorn is a sufficient sign for returning, as the same is the case with an ox with its tail cut? The answer to this (see Baba Kama, p. 127, the quotation *if an ox fall in* at the end).

The rabbis taught: It is written [ibid., ibid.], "Which may be lost to him," means to exclude a loss which has not the value of a *perutha*. R. Jehudah, however, says: "The words further on, 'which thou hast found,' signify this."

The schoolmen propounded a question: The returning, according to marks given, is biblically or rabbinically. What is the difference? Regarding the returning of a written divorce, by proclaiming the marks on it, if it is biblically, it must certainly be returned; if, however, rabbinically, it may be said that the sages made their enactment concerning money matters, but not concerning a biblical prohibition (for if an error would occur in such a case, a married woman would be allowed to marry again). Shall we assume that the Tanaim of the following Boraitha differ in that case; namely, testimony of witnesses must not be accepted on suppositions (*e.g.*, if witnesses came to testify that they suppose, by seeing the body of so and so, that he was killed, unless they testify that they had seen his face and his nose attached). Elazar b. Mahbai, however, said: "It may." Should we not assume that the point of their

difference is that the first Tana holds that signs are rabbinical, and Elazar holds that they are biblical? Said Rabha: "All agree that signs are biblical, and the point in which they differ is, one holds that the suppositions of such a case by his comrade may be relied upon, and one holds it may not (because an error may occur also in a case of a comrade)." He said again: "The fact that we return lost articles according to signs given, proves that it is biblically; for if not, how could the sages make such an enactment in a case of doubtful money? Should we assume that the finder is pleased to return the article according to signs, only because if it should happen that he himself lost an article, the same would be done to him?" Said R. Saphra to him: "What do we care for the pleasure of the finder, when the loser

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is not pleased (*e.g.*, the man who claims and gives signs, and yet it is not the real ones)? Is it, then, usual that one should desire to do good to himself *in futuro* (which it is doubtful if it will happen) with money which does not belong to him?" Therefore said Rabha: 1 "All the losers would be pleased by giving signs that the articles should be returned to them, as they know that witnesses are not always to be found; and, on the other hand, the signs on the articles are not known to every one who would like to claim them, and only the loser, who knows the exact mark, will proclaim them and come in possession thereof" (and therefore it is possible that such an enactment was made by the sages, and it is not biblically). Finally said Rabha: "That the marks in question are biblically is to be deduced from the following verse [Deut. xxii. 2]: 'And it shall remain with thee until thy brother inquire after it.' Could, then, one bear in mind that it should be returned before it is inquired about? We must, therefore, say that the inquirer must be examined whether he is not a swindler, and by what means he can be identified if not by the exact marks; hence infer from this that they are biblically." He says again: "If it is your decision that the marks in question are biblically." "[If it is your decision." Did not Rabha just deduce it from averse? Yea, but still one can say that the examination mentioned above should be by means of witnesses.] If there were two persons who gave the very same marks, it must be reserved (until proper evidence is brought); if there were marks and witnesses contradicting each other, the witnesses have the preference. If there were marks and marks from two parties, and there was a third one who brought one witness, the third one must not be taken in consideration, and the article must be kept in reserve. If there were witnesses testifying that the ownership of the article by this man was when it was woven, and other witnesses the ownership of another man when it was lost, the latter has the preference, as it may be that the first one sold it and it was lost by the buyer. If one party testifies to the length, and another

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party to the width, the length has preference, as the width can be assumed by seeing the article when it was used. If one testifies to the length and the width, and another one testifies to the square, the former has the preference; the square and the weight, the latter has the preference. If the husband claims that the written divorce was dropped by him before it was delivered to his wife, and proclaims certain marks, and she claims it was dropped by her after she received it (consequently she is single and can marry), she has the preference (because if she had not received it, how could she know the marks?). However, the marks must be not in length and width, as she could see it before it was given to her, but a mark such as a hole in such and such letter of it. If the marks were the very same given by him and her concerning the length of the thread upon which the divorce was put, she has the preference. If both claim that it was in the $\chi\alpha\psi\alpha$ (a kind of small case), he has the preference, because it is well known to her that the

entire contents of it he has placed there.

MISHNA VII.: Until what time is he obliged to proclaim? Until his neighbors are aware of it; so is the decree of R. Meier. R. Jehudah, however, says: "All the three festivals (Passover, Pentecost, and Tabernacles), and after the latest festival seven days, that the loser should be able to go home three days and return three days, and one day for the proclaiming of his loss."

GEMARA: A Boraitha in addition to the Mishna, which states "the neighbors of the lost article." How is it to be understood? Does it mean that the neighbors knew who lost the article? Let them go and return. Therefore it must be said that it means the neighbors of the place where the lost thing was found.

"R. Jehudah said," etc. There is a contradiction in the following: On the third of Mar Cheshvan they pray for rain. R. Gamaliel said: "On the seventh of it, which is the fifteenth after the festival, for the purpose that the last of the inhabitants of Palestine shall have reached Euphrates."

(Hence we see that *seven* days were needed for each tour.) Said R. Joseph: "This presents no difficulty. The cited Boraitha speaks of the first temple, of which it is written [I Kings, iv.]: 'Judah and Israel were numerous as the sand which is by the sea in multitude,' then fifteen days were needed; in the second temple, however, of which it is written [Ezra, ii. 64]: 'The whole congregation together was forty and two thousand

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three hundred and sixty,' etc., seven days are sufficient." Said Abayi to him: "Is it not written [Nehemiah, vii. 73]: 'So the priests and the Levites,' etc., and also [Ezra, ii. 70]: 'And the singers and the gatekeepers . . . in their cities'? and as it was so, the reverse of your theory should be held. In the first temple, then the people were very numerous, and caravans were going to and fro, day and night; not so much time was necessary as in the second temple, when caravans were not so frequently travelling and not in night-time." Said Rabha: "There is no difference between the first and second temple concerning a lost thing. The rabbis did not like to cause too much trouble to anyone." Said Rabbina: "Infer from this that the finder must proclaim the kind of the garment he has found, for if he has only to proclaim a lost article, one day would be added to the loser for searching for his garments, to see what was missing. Infer from this that so it is." Rabha, however, says: "Nothing is to be inferred from this. The rabbi did not like to cause too much trouble, as stated above." The rabbis taught: "The first festival, the proclaimer must say: This is the first feast for my proclamation, and on the second he must say this is the second, and on the third he need say nothing (and this will mark that it is the third time)." The rabbis taught: "Formerly each finder used to proclaim on all three festivals, etc., as stated above; however, since the destruction of the Temple [which we hope will be rebuilt soon in our days], the sages enacted that it shall be proclaimed in the synagogues and houses of learning, and since oppressors have increased, it was ordered that the finder should notify his neighbors and friend, and he is quit." What is to be understood by the expression "oppressors"? They who claim that all lost articles belong to the government.

R. Ami happened to find a purse with dinars in the presence of a Roman, and he was afraid to take it. The Roman, however, said to him, You may take it for yourself; we are not Persians,

who say that a lost article belongs to the government. The rabbis taught: "A certain stone was in Jerusalem, and every one who had lost anything would go there, and the same did the finders. The one used to proclaim, and the loser would give the marks of the article lost, and if correct, he took it; and this is what we have learned in Tract Taanith concerning Chouna, who said, Go and see if the certain stone is covered by rain.

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MISHNA VIII.: If one identifies the article, but not its marks, it must not be delivered to him; and if the claimant is known to be a swindler, even if he gives marks, as it is written [Deut. xxii. 2], "until thy brother inquire after it," which means until you shall investigate whether he is thy brother or a swindler.

GEMARA: It was taught: R. Jehudah said: An article, but not the kind of it, must be proclaimed, as swindle is to be feared. R. Na'hman, however, said: He proclaims also the kind of article, for if swindle is to be feared, there will be no end of the matter. An objection was raised from our Mishna, which states, "if he identifies the article without its marks," etc.; this would be correct if an article but not the kind is proclaimed. Then the Mishna comes to teach that even if he identified the article, it must nevertheless not be delivered until he gives the marks; but if, as you say, he proclaims the kind of article, is it not self-evident that without given marks it would not be returned? Said R. Saphra: "It may be said that he proclaims the kind of article, and the claimant gives marks, but not the essential marks, it is not to be returned, and the Mishna with the expression 'marks' means the essential ones."

"*And he who is known as a swindler,*" etc. The rabbis taught: Formerly, if one lost an article he would give the marks and it was delivered to him. But since swindlers have increased, it was enacted that the claimant was obliged to bring witnesses that he was not a swindler; as it happened with the father of R. Papa, who lost an ass and thereafter found it at some one's place. When the case came before Rabba bar Huna, he said to him, Bring witnesses that you are not a swindler; and he did so, and Rabba questioned them: Do you know that this man is a swindler? And he answered: Yea. Said the claimant: *I am a swindler?* The witnesses rejoined: We meant to say you are not, and Rabba decided that it be returned, because one would not bring witnesses who would testify against him.

MISHNA IX: If the found article is of such a kind that it labors for its food, it shall be fed and labored with; and if of such a kind which does not labor and must be fed, it shall be sold, as it is written [ibid., ibid.]: "And then thou shalt restore it," which means, deliberate how the restoration should be made. But what shall be done with the money? According to R. Tarphon he may use it, and therefore if he loses it, he is responsible. According to R. Aqiba, however, it must not be used, and therefore if it is lost, he is not responsible.

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GEMARA: (The Mishna does not state any definite time.) Is it for eternity? Said R. Na'hman in the name of Samuel: "It means until twelve months have elapsed. We have learned the same in the following Boraitha: Each article which is subject to labor for its food, as, *e.g.*, a cow or an ass, he may keep it until twelve months have elapsed, and when this time has passed it may be appraised and the value of it deposited. Calves and colts he may keep three months, geese and hens thirty days, and after this time has elapsed it should be appraised," etc. R. Na'hman bar

Itzhak, however, says: "A hen (which lays eggs) should be kept twelve months (as it is equal to a cow which labors for its food), and the same is plainly stated in a Boraitha."

"*And if of such a kind which does not labor,*" etc. The rabbis taught: "It is written: 'Thou shalt restore it to him,' which means you must see that the restoration is made; viz., if you have found several calves, colts, geese, or hens, you must not sell one of them for the purpose of feeding the remainder (for if so, it can happen that all of them should be sold for their food), but sell all at once and deposit the money."

"*But what shall be done with the money,*" etc. We see that the sages mentioned in the Mishna differ only in case where the money was used, but if it was not, and it was lost, all agree that he is free. Shall we assume that our Mishna is an objection to R. Joseph's statement, who said (Baba Kama, p. 134): "That the bailee of a lost thing is equal to a bailee for hire"? R. Joseph may say that when the article was stolen or lost (by carelessness), all agree that he is responsible, and the point of their difference is, it was lost through an accident for which only a borrower is responsible. According to R. Tarphon, who permits the money to be used, he is considered a borrower, and is responsible; and according to R. Aqiba, who does not permit the use of it, he is not considered a borrower, and therefore not responsible for an accident. If so, to what purpose does R. Aqiba use the expression "therefore"? He did it because R. Tarphon used the same expression, and with him it was necessary, as he meant to teach thus: As the use of the money was permitted, although he did not, he is nevertheless responsible, because he is considered a borrower. But does not R. Tarphon say it was lost, which means even if not accidentally? As Rabba said elsewhere: "That where the expression 'it was stolen' occurs, it means by an armed robber; and where the

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expression 'lost' occurs, it means accidentally, as, *e.g.*, the ship sunk in the sea, so also is to be explained here." Said R. Jehudah in the name of Samuel: "The Halakha prevails in accordance with R. Tarphon. Bid Ra'hba was in the possession of money belonging to orphans, and he questioned R. Joseph whether he may use it, and he answered: "So R. Jehudah declared in the name of Samuel, that the Halakha prevails in accordance with R. Tarphon." Said Abayi to him: "But was it not taught in addition: R. Helba in the name of R. Huna said that the case holds only with money obtained for a found article, he may use it for his trouble; but if the money was found, of which he had no trouble, it must not be used; and this money of the orphans which is in possession of the questioner came to him without any trouble?" R. Joseph said to the questioner: "Go, people do not allow I shall permit you." [1](#)

MISHNA X.: If one found books, then he may read them once within thirty days; if he is unable to read, then he must unroll them once in thirty days (to air them). He is, however, not allowed to study in them for the first time; and, furthermore, no other one shall assist him. If the article was a garment, it must be shaken once within thirty days, and he may spread it out for its own sake, but not for his honor. Vessels of silver and copper may be used if for the sake of the articles, but not so often that they may become worn. If, however, the utensils are of gold or of glass, they must not be touched until Elijah will come. If, however, the article found was unfit for the finder to carry, he may leave it.

GEMARA: Samuel said: "He who finds Tephilin (Phylacterien) in market, he may appraise their value and use them immediately." Rabbina objected from our Mishna: "If one found books. . . .

he may unroll," etc.; hence it is not mentioned that he may appraise and use them. Said Abayi: "With Tephilin it is different, as they are always to be found for sale at the scribe's, as, *e.g.*, Bar Habu; written books, however, are very seldom articles which can be bought." The rabbis taught: "One who borrows the Holy Scrolls of his neighbor, must not lend them to another; he may open and

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read in them provided he does not begin to study in them for the first time, and also he must not invite another to study with him. The same is the case if one deposits Holy Scrolls at his neighbor's: the bailee must unroll them (for airing) once in twelve months, and in the meantime he may read in them; he must not, however, open them for the purpose of reading only." Symmachus, however, says: "If they were new ones, he may air them once in a month; and if old, once in twelve months." R. Elazar b. Jacob says: "It makes no difference, once in twelve is sufficient."

The master said: "He must not lend them to another." Does this law apply only to Holy Scrolls? Is it not the same with anything else? Did not Resh Lakish say (in regard to a Mishna in Tract Gittin): Here taught Rabbi that a borrower must not lend an article to another, and the same is the case with a hirer? Lest one say that usually one is pleased that a meritorious deed be done with his property, he comes to teach us that he must not do so, even with the Holy Scrolls without permission. To what purpose, then, does the master teach, He opens them, etc.? Is this not self-evident, as for this purpose they were borrowed? Because he means to tell that he must not begin his study for the first time, etc., he mentioned also the above. 1 But how is to understand the latter part? R. Elazar b. Jacob says: "Once in twelve." Is it not the same as the first Tana said? Read, R. Elazar b. Jacob said in both cases they must be unrolled once in thirty days.

"*To study in them*," etc. There is a contradiction in the following: "One shall not read a paragraph and repeat it or translate it into another language; he must not open more than three folios of them, and three men must not read in one and the same volume." Is it not to be understood from this that three must not, but two may? Said Abayi: "This presents no difficulty. In one and the same paragraph even two are not allowed, but in two different paragraphs each of them may read separately."

"*If the article was a garment*," etc. Is it, then, good for the garment to shake it frequently? Did not R. Johanan say that whoever has a specialist weaver in his house (who may weave for him new garments), may shake his garments every day; hence we see that frequent shaking spoils the garment?

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[paragraph continues] Yea. Every day it would spoil it, but once in thirty days is good for it; and if you wish, it may be said that R. Johanan treats of a woollen garment (which can be torn by shaking), and the Mishna treats of linen ones.

R. Johanan said: 1 "It is better to drink a goblet from the hand of a witch than to drink a goblet of lukewarm water when the goblet is of metal, and was not boiled previously, and it is ordinary

water without any spices in it." He also said: "He to whom his father bequeathed too much money, and he desires to lose it, shall dress himself in Roman linen garments (which are very dear and are spoiled in a short time), and shall use glass utensils of great value, and shall hire others to do the work necessary in his vineyards while he is absent."

"*Vessels of silver and copper,*" etc. The rabbis taught: "If one finds wooden vessels, he may use them in order that they may not decay. Copper ones he may use for warm liquids, but not put them on the fire, because the vessels may be worn off; silver ones he may use for cold liquids, but not for warm, for they may lose their brightness; spades or axes he may use for soft materials, but not for hard, for they may be diminished; however, golden ones or glass ones must not be touched until Elijah will come. The same law applies also to deposited articles. If so, to what purpose was it deposited? Said R. Ada b. Hama in the name of R. Shesheth: "It was deposited for saving only, as, *e.g.*, the owners had departed for the sea-countries."

"*If, however, the article found, . . . he may leave it.*" Whence do we deduce it? From that which the rabbis taught: "It is written [Deut. xxii. 1]: 'And withdraw thyself from them,' which means that there are cases in which you may withdraw, and others in which you may not. How so? If, *e.g.*, he was a priest, and the found article was on a cemetery, or he was a sage, and it is not fit for him to carry the found article, or if his labor at that time should have more value than the value of the found article, he may leave it, as in such cases the verse cited above applies." Let us see in what case the above verse is needed. If to a priest who saw a found article in a cemetery, is then a verse needed? Is it not self-evident, as there is a negative and positive commandment concerning a priest, who must not defile himself by the dead [Lev. xxi. 1],

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and the positive commandment, "Ye shall be holy" [ibid. xix. 2], and to return a lost thing is one positive commandment only; and aside from this it must not be ignored, a bodily prohibition for money matter even if it is meritorious, and if the above-cited verse is needed, because his loss of time has more value than the lost article. This is also inferred from the saying of R. Jehudah in the name of Rabh, as follows: "It is written [Deut. xv. 4]: 'There shall be no needy man among thee,' 1 which signifies that yours has preference over that of another; it must therefore be said that the verse in question is needed for the case of a sage, for whom the found article is unfit for his honor." Rabba said: "If he has seen an animal, and struck it (and it ran away), he must return it." It happened that Abayi was sitting in the presence of Rabba, and goats came near him, and he took a clot of dirt and threw it at them, and they ran away. Said Rabba to him: "If they will be lost You will be responsible; go and bring them back to the owner."

The schoolmen propounded a question: If the man is so respected that in the city it is not nice for him to drive cattle, but in the field he usually does so, what is the law? If he has seen his neighbor's cattle astray in the field, must he return them to the city only, or, as the Scripture requires that they shall be returned to their proper place, and as it is not fit for him to lead them in the city, he need not do so even in the field? On the other hand, it may be said because it is fit for him to do it in the field, it is his duty to lead them to the city, and when it is already there return them to the proper place. This question remains unanswered. Rabba said: "(This is the rule.) If it would be his own article, he would trouble himself to put it in the proper place; then he must do the same with that of others. The same is the case with loading and unloading a wagon. If he is accustomed to do so for himself, he must do so for another if he is in need [Ex. xxiii. 5]."

R. Ismail b. Jose was on the road, and met a man carrying a bundle of wood, who put it down to take a rest; thereafter he asked R. Ismail to help him lift it on his shoulder, and he asked him the value of it, and the man answered a half zuz. R. Ismail then bought it for a half zuz, and renounced his ownership to it. The man, however, had acquired title to it by drawing it. Then R. Ismail bought it from him again by adding

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another half zuz, and renounced his ownership again. When he had seen that the man intended to draw it again to acquire title again, he said: "I have released my ownership for the whole world, but not for you." And was not R. Ismail a sage for whom it was not fit to do such a thing? He was acting to moderate the law, as R. Joseph taught: It is written [Ex. xviii. 20]: "And thou shalt make them know," etc. "To make them know" means how to make a living; "the way" means bestowing of favors; "wherein they must walk" signifies to visit the sick and bury the dead; "and the work" means the exact law; "they must do" means to moderate the law. The master says: Wherein they must walk to visit the sick. Is this not included in bestowing of favors? It was necessary to name this separately, in case when the sick one was his comrade, and the master says elsewhere that by visiting a sick one, if he is his comrade, a sixtieth part of the sickness goes over to him, and notwithstanding this he must do so. But is not the burying of the dead included in bestowing of favors? It was necessary to teach that even if he was a sage, and it is beyond his dignity, he must nevertheless do so in such a case. "To moderate the law," as R. Johanan said that Jerusalem was destroyed because they used the exact law only and never moderated it.

MISHNA XI.: What is to be considered a lost thing? *E.g.*, if he found an ass or a cow feeding in a public thoroughfare, it is not to be considered a loss. If, however, the packing material of the ass was turned over wrongly, or the cow was running between the vineyards, it is to be considered a loss which must be returned. If he has returned it, and it runs away again, even four or five times, he must return it, as it is written [Deut. xxii. 1]: "Thou shalt surely bring them back." If his loss of time was worth a sala, he must not say, Give me a sala, but he may take the reward as a laborer would usually take for such work. If there were three persons (who constitute a Beth Din of common men), he may make the condition before them (my loss of time in this case is worth so and so much, and I will collect from the owner); but if there were not such three persons, before whom could he make such a condition? Hence his own time has preference.

GEMARA: How is the first part of the Mishna to be understood, which states it is not to be considered a loss when it were lost to the owner? Why not? Said R. Jehudah: It means to

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say, what the rule of a lost thing is which one is obliged to trouble himself. If the articles mentioned were fed in a public thoroughfare, it is not considered such that the finder need trouble himself, unless he finds them in such condition as mentioned in the Mishna further on. But how is the second part to be understood, which states it is to be considered a loss, etc.? Does it mean for eternity? Said R. Jehudah, in the name of Rabh: "If he has seen them three days in succession at the same place." How was the case, if in night-time even one hour is sufficient, and if in the daytime even more than three days should not be considered? The Mishna treats of

a case where he had seen them in the morning or at sunset; if only three days in succession, it may be supposed that it is only mishap, and they will come out soon; but if more, it is certainly a lost thing. We have learned the same in the following Boraitha: "If one found a garment or an ox in the market, or a cow running in the vineyard, it is considered a loss; but if the articles mentioned were lying on the side of a partition, or the cow was fed between the vineyards, it is not considered a loss, unless he has seen them three days in succession. If one has seen that his neighbor's field is about to be overflowed, he may prevent it if it is within his power." Rabha said: "It is written [Deut. xxii. 3]: 'With every lost thing,' it means to add a loss of real estate." Said R. Hananiah to him: "The following Boraitha should support you: If he has seen water going to overflow, he may prevent it by making a dam." And Rabha answered: "This teaching may not support me, as it may be that it treats of a case when there were sheaves in the field (hence it is not real estate). If it is so, what does the Boraitha teach us? Is it not included in the verse cited above? It may be said that there were sheaves which were still attached to the ground, and the use of the ground was yet necessary. Lest one say because they still need the support of the earth, it should be considered as the earth itself, it comes to teach us that this is not so."

"If he returned it, and it runs away again," etc. Said one of the scholars to Rabha: "Why so? The Scripture reads *Hoshéb* (which means, 'thou shalt return'), once, and then *Thisbibém* ('thou shalt return them'), twice." And Rabha answered: The first word means even hundred times, and the second word is needed lest one say that he is only obliged to return to his house, but not to his garden or ruined building,

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hence the second word *Thisbibém*." ¹ How was the case? If the article would be saved in the garden or ruins, then it is self-evident that he must return it, and if it was not saved there, why should he return? It may be said that it is to be saved there, and it comes to teach us that the knowledge of the owner is not necessary, and this is in accordance with R. Elazar, who said, in everything between man and man, the knowledge of the owner is needed, except concerning the return of a lost thing, in which the knowledge of the owner is not needed (*i.e.*, he may put the found article on the owner's property, where it may be saved without notifying him that he has done so), and this is deduced from the superfluous word in the Scripture mentioned above. The same is the case with the word [ibid., ibid. 7] which also reads *Shalach Téishalach* (literally, "sending, thou shalt send"). "I would say *Shalach* once, *Téishalach* twice," (said the above scholar to Rabha, and he answered:) "*Shalach* means even hundred times, and *Téishalach* signifies that even if the mother was needed for a meritorious purpose (*e.g.*, to cleanse a leper [Lev. xiv. 4]), it must be, nevertheless, sent away." The same scholar said again to him: It is written [Lev. x. 17]: *Hakhéach Toucheach* (literally, 'rebuke, thou shalt rebuke'); say the first word means one, and the second two." And Rabha answered: "The first word means even hundred times, and the second means that not only the master must rebuke his pupil (when seeing him acting wrong), but even the pupil must do so to his master. The same is the case with the word [Ex. xxiii. 5] *Ozob Tahsob* (literally, 'help, thou shalt help'), which means you must give your assistance, even not in the presence of the owner; and the same means the word [Deut. xxii. 4] *Hokem Tokim* (literally, 'load, thou shalt load'). But why does the Scripture repeat the same concerning unloading [Ex. xxxiii.] and loading [Deut. xxii.]? It is needed. For if it would say the first case only, one might say that because a living thing is inflicted and damages also he must assist, but in the other case of loading, in which both things do not exist, it is not so; and if it would be mentioned in the last case loading, one might say that he must do so, because he has a right to charge for his loss of time, but in unloading, which must be done gratuitously, he is

not obliged, therefore both are written." [But according to R. Simeon, who holds that even loading

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must be done without any compensation, what can be said? He may say that the Scripture does not indicate which verse is to be explained for loading and which for unloading. But could not the trouble about a lost article be deduced from the above-cited verses? Why is it mentioned separately? It is necessary because one might say that in both cases above there is an infliction on a living being and an infliction on the owner also (therefore the Scripture prescribes support), but concerning a lost article, in which there is an infliction on the owner only and not on the lost thing, the Scripture would not prescribe support, and the former cases also cannot be deduced from the latter one, because in this case the owner is not present (and therefore support is necessary), which is not so with the former cases, hence all of them were necessary.] The same is with the repetition of [Numb. xxxv. 17] *Moth Yoomot* (literally, "dead, he shall die"), which means that if it is impossible to kill him by the prescribed death, he may be killed in any manner; the same is with [Deut. xiii. 16] *Hahkie Thakki* (literally, "smite, thou shalt smite"), which means if you cannot smite it as prescribed, you must do so in any manner; the same is with [ibid. xxiv. 13] *Hohsheb Tohshib* (literally, "return, thou shalt return"), which means that even when the pledge was taken without permission of the court, it must nevertheless be returned; so also [Ex. xxii. 23] *Choboul Tahchboul* (literally, "pledge, thou shalt pledge"), which means the same as above [if so, to what purpose is it repeated? one for a day dress and the other for a night dress]; so it is also [Deut. xv. 8] *Pathoach Tiptahch* (literally, "open, thou shalt open"), which means that not only to the poor of your city you are obligated, but also to those of other cities; and also [ibid., ibid. 10] *Nauthon Teetén* (literally, "giving, thou shalt give"), which means both great and small gifts. The same is [ibid., ibid. 14] *Hahnék Theahnek* (literally, "donate, thou shalt donate"), which means that you must do so even if thy house was not blessed through him [but according to R. Elazar b. Azaria, who holds that if it was not blessed, he is not obliged to donate, what can be said? Nothing; but the Scripture usually speaks like a human being]. So also is with [ibid., ibid. 8 [1](#)] *Ha'bêt Taabitanov* (literally, "lend, thou shalt lend"), which means that not only to him who possesses nothing and

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refuses donations, but even to him who possesses but does not want to use his property for his livelihood, you must also act the same. [But according to R. Simeon, who denies any obligation upon a person of the latter case, what does the repetition signify? Nothing; the Scripture speaks as stated above.]

"*When the loss of time was the value of a sala,*" etc. How is this to be understood? Said Abayi: "The loss of time must be appraised according to his loss in his special trade."

"*If there were three men,*" etc. Issur and R. Saphra were partners in business. Subsequently R. Saphra divided in presence of two witnesses. Finally he came before Rabba bar R. Huna, and was told to bring three men, or two of them, before whom he divided the goods, or even two witnesses that he has done so in presence of other three men, and he said to him: "From what source do you take your decision?" And he rejoined: "From our Mishna, which states, 'If there were three men,' etc." Rejoined R. Saphra: "What comparison is this? The Mishna treats of collecting money from one to give it to another, and therefore a Beth Din of three men was

necessary; but in my case I took that which belongs to me only. Why do not two witnesses suffice? And my theory may be supported from a Mishna elsewhere, which states that a widow may sell for her support the goods of her late husband, even not in the presence of a Beth Din (but before two witnesses)." Said Abayi to him: "But was it not taught in addition to your Mishna thus, R. Joseph bar Minyumi in the name of R. Na'hman said: It means, she does not need a court of special judges, but a Beth Din of three common men is nevertheless necessary."

MISHNA XII.: If he has found the animal in a stable, he is not obliged to trouble himself. In a public thoroughfare, however, he is. If it was in a cemetery (and he was a priest), he must not defile himself. If he was told by his father to defile himself, or not to return it, he must not listen to him. If he has unloaded, and reloaded, and again even four or five times, he is obliged to do so, as it is written [Ex. xxiii. 5]: "Thou shalt surely help him." 1 If, however, the owner went away and sat down, saying: "You are obliged by Scripture to assist me, do so if you want in my absence," he is not obliged to do anything, as it is written *Eemou* (literally, "with him"). If, however, he was old or sick, he is free. The commandment

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of the Scripture is for unloading, but not loading. R. Simeon, however, maintains loading also; R. Jose the Galilean said: "If the animal was overburdened more than it could carry, there is no liability, as it is written [ibid., ibid. 5], 'under his burden,' which signifies under such a burden which it can bear."

GEMARA: Rabha said: "The stable mentioned in the Mishna means that it was of such a kind where the animal was not afraid to stay, and also was not locked in, and if it wanted to leave it could do so; and this is to be inferred from the expression, 'He is not obliged.' It is only in case it is not afraid to stay there, and from the same is also to be inferred that the stable was not locked, as if it were so, would it be necessary to teach that he is not obliged; is it not certain that when he finds it on the street, he is obliged to place it in such a stable, should he then be obliged to take it out? Hence infer that such was the case."

"*In a public thoroughfare, however, he is,*" etc. Said R. Itzhak: "It means when the thoroughfare was placed two thousand ells from the town, not otherwise, and from this is to be inferred that the stable in question, even if it was placed beyond the stated limit, there is no liability."

"*In a cemetery,*" etc. The rabbis taught: Whence do we deduce that he must not listen to his father in the above-mentioned cases? It is written [Lev. xix. 19]: "Ye shall fear every man his mother and his father, and my Sabbath ye shall keep; I am the Lord," which means that ye all are obliged to preserve my commandments (says the Gemara); but were it not written here, "and my Sabbath ye shall keep," you would say that he must listen to his father? Why? In case of a lost thing there is a positive and negative commandment (*supra*, [p. 68](#), 69), and honoring his father is a positive commandment only, and there is a rule that one positive commandment does not contradict a case wherein are a positive and a negative commandment? It was necessary lest one say because the honor of parents is equal to the honor of Omnipotent, from an analogy of expression "honor" [Ex. xx. 12] and [Prov. iii. 9], "he shall listen to his father," (although it is against a commandment), which teach us that it is not so.

"*But not loading,*" etc. How is this to be understood? Shall we assume not loading at all? Is it

not written [Deut. xxii. 4]: "Thou shalt surely help him? Therefore we must explain that the Mishna means thus: The commandment is

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to unload without any compensation, but not Loading without any." R. Simeon, however, says: "The same applies to the latter, and this explanation is as the rabbis taught plainly: 'Unloading without a compensation, and loading with.' R. Simeon, however, says: 'Both are equal.' What is the reason of the rabbis? Because, if it would be according to R. Simeon, the Scripture would be loading only, and the unloading would be deduced by drawing an *a fortiori* conclusion, as above (p. 73), and R. Simeon may answer as said above."

Rabha said: "From the decision of both we learn that a living being must not be inflicted is so biblically, as even according to R. Simeon the above *a fortiori* conclusion is not to be drawn, because in the Scripture loading or unloading is not clearly mentioned, but if it were, this *a fortiori* conclusion would be drawn; hence the infliction in question is so biblically, even in accordance with R. Simeon (for if not, how could an *a fortiori* conclusion be drawn?); but perhaps the same would be drawn not from the infliction, but from the damage; thus, in case of loading, wherein there is not any damage, he is obligated so much the more in case of unloading, wherein there is damage? Does, then, the Scripture treat only of a case wherein there is no damage? How, then, is it if, *e.g.*, when the man is going to a fair and is prevented from reaching it by some occurrence, or if in the mean time all his goods are stolen (is one not obliged to help him)? And one more support, that the infliction in question is so biblically, is to be found in the latter part. R. Jose the Galilean says: "If he was overloaded," etc., from which is to be inferred that the first Tana holds even in such a case one is obliged to help, and this only because of the infliction of the animal. But perhaps they (first Tana, R. Jose) differ only in that verse from which R. Jose deduces his decision, and the rabbis do not care to deduce it (not because the infliction in question is biblically); furthermore, it may be deduced that it is not so biblically from the first part, which states that in absence of the owner one is not obliged to help; and if the infliction in question is biblically, what difference is it whether the owner is present or absent (he is biblically obliged to redeem the animal of its infliction at any rate)? Nay, the infliction is so biblically, and the decision that in the absence of the owner he is free, is not to be understood as meaning entirely free, but free to do it without compensation; but in the absence of the owner he must do for compensation. This is supported by the

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following Boraitha: "An animal belonging to a heathen, he must trouble himself with it as it were an Israelite's." This is correct. If the infliction is biblically there is no difference to whom the animal belongs; but if it is not biblically, why must he trouble himself about a heathen's animal? It may be said he must do so not to cause animosity, and so it seems from the latter part, which states: "If it was loaded with prohibited wine, he need do nothing with it." And this can apply only when the infliction is *not* biblically; for if it is, what difference is it with what material the animal was loaded? Nay, the Boraitha means to say that if there was prohibited wine to load, he should have nothing to do with it. Come and hear (another objection). If his friend was needed to unload, and his enemy was needed to load, it is a meritorious act to help the enemy for the purpose of overcoming his wicked nature. Now if the infliction is biblically, his friend should have the preference, because his animal is inflicted? Notwithstanding this, the overcoming of his wicked nature has the preference. Come and hear. The enemy in question is

meant an Israelite and not an enemy, an idolater. Now if the infliction would be biblically, what difference is it who the enemy was? (The animal is inflicted.) Do you think the enemy in question means the enemy mentioned in the Bible [Ex. xxiii. 5]? it means the enemy mentioned in the Boraitha (who needs help in loading). Come and hear. The word lying, in the just cited verse, means that the lying occurred through the burden, but not when his habit was to lie down while under burden, "lying" and not when it was standing, "under his burden" and not when it was unloaded, "his burden" such as it could stand, but not otherwise. Now if the infliction is biblically, what difference is it between lying and standing? The Boraitha is in accord with R. Jose the Galilean, who holds that the infliction is not biblically, and it seems to be so from the statement "under such a burden which it could stand," and such a theory was heard from R. Jose only.

The rabbis taught: "It is written [ibid., ibid. 5] "if thou see"; one may say that even when he was far away; therefore it is written [ibid. 3] "if thou meet"; and lest one say that only by an exact meeting (but not when he happened to be near him), therefore it is written "if thou see," to indicate that his seeing was when it was possible to meet him; and the conjecture of the sages was a seventh and half part of a mile distant, which

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was known as a *riss*. A Boraitha in addition to this states that he must accompany him the distance of a *pazsa*. Said Rabba bar bar Hama: "Provided he is paid."

MISHNA XIII.: If one lost a thing as did his father before, his own has preference. The same is the case with his master. If, however, his father and his master have lost an article at the same time, his master has preference because his father brought him only into this world, while his master, who taught him wisdom, brings him into the world to come; if, however, his father was a sage, he has the preference (*i.e.*, to trouble himself for him). If his father and his master were overburdened, he should unload his master first, and after his father. If both were in prison, his master has preference to be redeemed; if, however, his father was a sage, he has the preference.

GEMARA: Whence is this deduced? Said R. Jehudah in the name of Rabh: "It is written [Deut. xv. 4] 'No needy man among thee' 1 (above, [p. 69](#)), which means that yours has the preference always." The same said again in the name of the same authority: "Although the law is exactly so, he who always acts accordingly will finally need the support of others." (Rashi explains this that he who is always particular that he shall have the preference absolves himself of charity, of bestowing favors, and is not respected, and therefore he stands alone and will finally need support.)

"*If his father and his master were overloaded,*" etc. The rabbis taught: "The master in question is meant one who has taught him the wisdom of Gemara" (*i.e.*, the reasons of the decisions of the Mishna and that they do not contradict each other, and some sense for allowed and not allowed obligations and absolutions of the Scripture.--Rashi); "but not who taught him Scripture, exact Mishnayoth," is the dictum of R. Meir. R. Jehudah says: He who taught him the greater part of his wisdom only is considered his master. R. Jose, however, maintains: "That even if he enlightened his eyes in only one Mishna, he is to be considered his master." Said Rabha: "As, *e.g.*, R. Sh'orah, who explained to me the word Zuhma with the word Listrum." 2 Samuel tore his garment at the death of one of the

rabbis who had explained to him only one expression in the Gemara. Said Ula: "The Babylonian sages arise one before another, and tear their garments, for the death of one of their colleagues; however, concerning a lost thing of which the master has preference, they do not consider only the master of whom he had learned the greater part of his wisdom."

R. Hisda questioned R. Huna: How is it with a disciple whom his master needed? And he answered: "Hisda, Hisda, I have not any need for you; you, however, need me for forty years more." They both became angry, and did not visit each other any more. R. Hisda, however, fasted forty days for the disgrace of R. Huna, and R. Huna did the same because he suspected that R. Hisda with his question meant him. "It was taught: R. Itzhak b. Joseph in the name of R. Johanan said: The Halakha prevails in accordance with R. Jehudah. R. Aha b. R. Huna in the name of R. Shes'heth said: The Halakha prevails according to R. Jose." Could R. Johanan say so? Did he not say elsewhere that the Halakha prevails in accordance with an anonymous Mishna, and our Mishna states his master, who taught him wisdom? By the word wisdom, *i.e.*, the greater of his wisdom.

The rabbis taught: "They who occupy themselves with the study of Scripture are not to be blamed, but, on the other hand, not to be praised. With the Mishnayoth, however, they are to be praised, and will be rewarded; but with the Gemara there is not a better custom. However, look to occupy thyself with the Mishnayoth better than with the Gemara." Does not the Boraitha contradict itself? It states there is not a better custom than the Gemara, and immediately it states, Occupy thyself with the Mishna. Said R. Johanan: "In the time of Rabbi the above Mishna was taught; in consequence all the disciples left the Mishna and started the Gemara; he therefore lectured again, "Occupy thyself better with Mishnayoth," etc., and subsequently his above lecture was added to the Mishna. [1](#) What

was the basis of the above-mentioned lecture? R. Jehudah b. Ilayi lectured as follows: "It is written [Isaiah, xvi. 5]: 'Hear the word of the Lord, ye that tremble of his word. Your brethren that hated you, that cast you out for the sake of my name, said, Let the Lord be glorified, but he will appear to your joy, and they shall be made ashamed.'" "Tremble of his word" means the scholars who study Gemara; "your brethren" means those who study the Scripture; "that hated you" means the students of the Mishnayoth (the students of the Mishnayoth, says Rashi, hated the students of the Gemara, because the latter had decided that the students of the Mishnayoth, without Gemara, are the destroyers of the world, because they act according to the Mishnayoth without knowledge of their sources and bases, and very often the Halakha does not prevail according to their decisions); "that cast you out" means the common people. But lest one say their hope has ceased, therefore it is written: "He will appear to your joy"; and may one say that Israel will be ashamed, therefore it is written: "And they (the idolaters) shall be ashamed, and Israel will rejoice." [1](#)

[46:1](#) The text here is complicated, and some of the commentators try to correct it; nevertheless, Rashi's opinion and Tosphat's opinion concerning it differ; the commentators after them, such as Lurie and Meier of Lublin, and also Edlias (Marsha), discuss it also. We, however, have translated as best we could, so as to make it understood.

[48:1](#) In Tract Sanhederin the six cases will be named.

[49:1](#) In the text here similar questions are continued from the Mishna and Boraithas concerning marks and articles which are destroyed by stepping upon them, and also about places, whether it should be considered a mark for proclamation or not. Objections and answers are made to the opinions of the above sages in the same manner as above, which is already translated, and therefore we have omitted them.

[50:1](#) Rashi explains it thus: In their time the barrels were of clay, and also the cork, and they usually put glue around the cork to save the smell. In the month of Shebat or Nissan, when usually the wine merchants would sell to the store-keepers several barrels at once, they would open each of them, to taste, and to again cover it.

[51:1](#) The text reads Kufra, and Rashi explains it to mean pitch. We, however, cannot agree with such an explanation, as the place where it was found, and also that Rabh told him to give a part of it to his son, could not be with such an article. We find the same word Kufra in Baba Kama, p. 140, which is translated as we have it here.

[52:1](#) In the text the discoursing continues on what places must be considered always crowded, and what not; if the synagogues and houses of learning are among them, and what kind of people, Israelites or heathen, all of which is of no importance, and therefore we have omitted it.

[55:1](#) Such a discussion or question and answer occurs very seldom, if this be not the only one, in the whole Talmud, and it shows that the sages of the Gemara were doubtful whether the Mishna was transmitted to them correctly; in other words, they did not know exactly whether the paragraph submitted to them was a correct translation from the original. Mark this.

[55:2](#) The literal translation of the word "Magdahl" is steeple, or turret; and Itzhak of Magdahl means the Itzhak who delivered the Halakha of Magdahl. See Hacha'hutz by Schur, in the chapter where he discusses about the names of the Tana'im and Amouraim, who were named according to the Halakha they taught.

[61:1](#) In the text it is not mentioned that Rabha is the author of this phrase, but it is the continuation of R. Saphra. Rashi, however, has corrected Rabha, for a reason which is not known to us; we see, however, some more corrections of Rashi, in this so complicated a discussion; and notwithstanding this, it is very difficult to find out the real meaning of it. We have tried to make it in some way understood to the reader; still we are not sure whether it is correct, and would be very glad if some one should translate it in a better way; to omit this all, would be against our method.

[66:1](#) Luria (Rashall) in his remarks says: "I have not found in any commentary an explanation

why money belonging to orphans should be equal to found money, that the decision of R. Tarphon should apply also to it. It seems to me, therefore, that the case was where he found the money, and thereafter it was known to belong to orphans not yet of age, which should be returned to them."

[67:1](#) The text here discusses the bailee of Holy Scrolls and finally explains it as we have just translated; therefore the omission.

[68:1](#) Because it is stated here what R. [Johanán](#) said regarding worldly affairs, it mentions here the other things he said in the same matter. (Rashi.)

[69:1](#) The Scripture reads *Bekha*, which means literally *in thyself*; hence the significance of the text. Leeser, however, translates *among*, according to the sense.

[72:1](#) Leeser translates according to the sense, Thou shalt surely return; the Talmud, however, is particular as to the words which we have translated literally in our text.

[73:1](#) In all repetitions cited the Talmud takes the matter literally, though the translators, especially Leeser, whom we follow in our work, translate differently, according to the sense. Cf. Leeser's Bible.

[74:1](#) See foot-note p. 72.

[78:1](#) The Scripture reads *Bekha*, literally *in thee*, which the Talmud explains, there shall be no needy in thyself.

[78:2](#) In Section Jaharot (Keilim, XXV., 3) this word is to be found, and Rabha said: "It was known to me that it is a vessel but I did not know what kind, and he explained to me that it means a soup strainer" (Rashi).

[79:1](#) This remarkable statement is interpreted by Rashi thus: When the disciples of Shamai and Hillel increased to a great number (about three generations before Rabbi), differing and quarrelling so, that it looked as if there were two Torahs. In addition to this, persecution by the government was increased daily, and new disagreeable decisions were renewed day by day, so that they could not give the proper attention to revise the point of their differences, until the days of Rabbi. When the Almighty gave him grace in the eyes of Antoninus Cæsar of Rome, who abolished all the disagreeable decisions, and Rabbi had the opportunity to compile the Mishnayoth, which was oral until his time. He assembled all the disciples [p. 80](#) of Palestine, and each of them had to report a Halakha which he had heard from a great man, which was written down in the name of each author, and only then the sections of the Mishnayoth were classified; *i. e.*, the Halakhas which belong to damages, women, festivals, etc., were selected, separated in sections. Rabbi, however, omitted from some Mishnayoth the name of their author for the purpose of establishing the Halakha accordingly, which probably could not be done if it were taught in the name of individuals, and when this was done, the Mishna mentioned in the text was said, *i. e.*, "there is not a better custom than to study the Gemara," which means, to understand the sources and reasons of the decisions of the Mishnayoth. But when Rabbi saw that all had

occupied themselves with the study of Gemara, without repeating the Mishnayoth itself, he was afraid that the name of the sages and the obligation would be changed, so he lectured again: "Occupy thyself with Mishnayoth." See our brief general introduction, Section Festivals, Vol. I., p. xv, in which we give the history of the Mishnayoth differently, the basis of our opinion being the majority, who differ with Rashi, and say that the Mishnayoth was written down many generations before the time of Rabbi. In our periodical "Hakol," Vol. VI., No. 2, we published an article pointing out all the names of them who agree with Rashi and all those who are contrary, also the opinion of the late famous Dr. Gellenik. See also "Dour Dour Vedourshow," by I. H. Wise. All details of this matter for the English reader will be found in our forthcoming history of the Talmud.

[80:1](#) We have followed Leeser in the translation of the verse. It seems, however, that the verse was different before the Talmudist, as the end mentioned in the text is not to be found there, and also the translation, "he will appear to your joy," is not in accordance with the Talmud, which translates, "and we will see your joy," and Rashi explains that the prophet says, "I and all your brethren mentioned above will see your joy." It may be, however, that the end of the verse was added only because it is the end of this chapter, and their custom was to finish with a good word.

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