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CHAPTER IV.

LAWS RELATING TO TITLE, REAL AND PERSONAL; FRAUD, WHAT CONSTITUTES FRAUD AND THE CIRCUMSTANCES SURROUNDING FRAUDULENT TRANSACTIONS, ETC.

MISHNA *I.*: If one bought gold and silver coins together and made a drawing on the gold ones, title is also given to the silver ones, but not *vice versa*. The same is the case with copper and silver coins: the drawing on copper ones gives title to the silver, but not *vice versa*. If one has drawn coins which are out of circulation, having bought them together with good money, the sale is valid for both; if, however, he took possession of the good money, which was bought together with those out of circulation, the latter are not considered his unless he takes possession of them also. The same is the case if one buy uncoined with coined money, to acquire title to both he must take possession of the uncoined. If, however, he did so with the coined money, the uncoined is not considered bought. Movable articles give title by drawing them, also for the coins bought with them, which is not the case with drawing the coins only. All movable articles give title by drawing one of them. How so? If one made a legal drawing of the article, although he has not Paid the money as yet, he cannot rescind. If, however, he paid the money, and did not make a drawing of the article, he may rescind. But it was said that He who has punished the generation of the flood and the generation of the scattered, whose tongues were confused (Gen. xi. 7), He will punish him who does not keep his promise. R. Simeon, however, maintains that he who has the money in his hand has the preference (even in the former case).

GEMARA: Rabbi taught his son R. Simeon: "Gold coins give title to the silver." And the son rejoined: "Rabbi, in your youth you taught us that the silver ones give title to the gold ones, and now in your old age you teach that only the gold ones give title, but not the silver ones." [The Gemara questioned what was the reason then? In his youth he taught that because gold is more valued it is considered a circulating coin, and silver, which is not so valued, is considered an article of trade, and,

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therefore, if he took possession of the article, title to the gold one is acquired; and in his old age he came to the conclusion that because silver is a circulating coin used all over the world, it is considered a coin, and gold, which is not so much in circulation, is considered an article of trade: so that by drawing it the silver coins are bought.]

Said R. Ashi: "It seems to me that his opinion while in his youth is more correct, as our Mishna states that copper gives title to silver; now if you are of the opinion that silver in comparison with gold is considered an article of trade, it is correct when it states that copper gives title to the silver, as it is considered an article of trade only in comparison with gold, but in comparison with copper it is considered a circulating coin. But if you say that silver is considered a circulating coin, even in comparison with gold, is it then necessary to teach that it be considered

so in comparison with copper? Is this not self-evident? (Hence his opinion while in his youth is more correct.)" The Gemara, however, maintains that this statement cannot be considered an evidence, as the teaching that copper gives title to silver was needed in case where silver is considered a circulating coin, even in comparison with gold, because it may be said that in the places where copper coins are used they are more in circulation than silver; hence they cannot be considered articles of trade in comparison with silver; therefore he comes to teach us that although in some places it is as stated above, in the majority, however, silver is more in circulation than copper, and is considered a circulating coin everywhere. And R. Hyya is also of the opinion that silver is always considered a circulating coin, and this is to be understood from the following: "It happened that Rabh borrowed dinars from the daughter of R. Hyya; thereafter the dinars increased in value, and when Rabh came to question R. Hyya, he was told to pay with the best dinars, and this decision shows that he held that silver is the right circulating coin; for if it would be considered an article of trade in comparison with gold, it should be considered as if one had borrowed a *saah* of fruit when it was cheap, and returned the same measure when it was dearer, which is not allowed because it appears usurious." (Says the Gemara:) This also cannot be considered as a real support for the above statement, as Rabh at the time he borrowed the dinars from R. Hyya's daughter possessed his own dinars, and in such a case it is analogous to the case stated in a Boraitha: "If one says, Lend me a *saah* of grain, I shall return it to you when

my son will arrive home, as he has the key to my granary, he may return to the lender the same measure, even if it became dearer, because the lender acquired title to it at the same time that he delivered to him the required articles."

Rabha said: "The Tana of the following Mishna holds that gold is considered the right circulating coin. The coin *parutha* mentioned in the Talmud is one-eighth of an Italian *Issar*. [To what purpose is it stated? Concerning the law of marriage, that less than a parutha is not considered.] An *Issar* is one twenty-fourth of a silver dinar. [To what purpose is this? Concerning general transactions, that a silver dinar must be of this value, as it is stated further on. And a silver dinar is one-twenty-fifth of a gold one. This is taught concerning the law of redeeming the first-born son [Ex. xiii. 13].]"

Now, if the gold dinar is considered a coin which is always of the same value, it is correct to say that the Tana named this coin for the purpose of redeeming, but if it would be considered an article of trade which increased and decreased in price, would the Tana then name it for this purpose? Is it not a fact that at the time of increasing the priest would give him change of it, and at the time of decreasing the father would have to add the difference? Hence it is inferred from this that it is considered a standard coin.

It was taught: Rabh and Levi: One holds that the law of exchange applies to a coin also, and the other holds that it does not (*i.e.*, although it is said above by drawing the coin, the article is not considered sold unless by drawing the article itself, this is only when it was done in the way of buying and selling, but if it was done in the way of exchange, *e.g.*, if one says: I have an article of so and so, and would like to exchange it for this coin, as soon as he takes possession of the coin, title is acquired to the article by the other party). Said R. Papa: "The reason given by him who holds that a coin cannot be exchanged is that the face of the coin is changeable by the government, and to acquire title by Sudarium, a standard coin is needed. An objection was raised from our Mishna, gold coins give title to the silver one. Is it not to be assumed that it

means in exchange? Hence we see that the law of exchange applies to a coin also. Nay, it means in the way of buying and selling for money. If so, it should be stated that one who has drawn the gold one is liable for the silver one? Why the expression, gives title? Read, then, he is liable, etc. And it seems that so is the correct explanation from the latter part, which states that silver coins do not give title to the gold

ones; and this is correct only when it treats of selling for money, as it was said that gold is considered an article of trade, and silver a circulating coin, and the drawing of a coin does not give title to the article; but if you will say that it treats of exchange, then both articles should give title, each to the other. And also from the following Boraitha: "Silver does not give title to gold; also, if one sold twenty-five silver dinars for one gold dinar, although he made a drawing on the silver, the gold is not considered his, unless he draws the gold." And this also is correct only by selling; but if an exchange, title ought to be given. But if it treats for money, how is to be understood the first part of this Boraitha? Gold gives title to silver; also, if one has sold a golden dinar for twenty-five silver ones, the silver belongs to the seller anywhere it may be found, provided the buyer made a drawing of the gold. This would be correct if it treated of exchange, but when it speaks of an ordinary sale, it should state that the *buyer is liable* for it instead of "the silver belongs, etc." Said R. Ashi: "It treats of a sale for money, and the expression, wherever it is to be found, means the place where the coin was made; *e.g.*, if he promised to furnish new coins, he cannot finish the old ones, although they are more valuable, because the buyer may say, I need them for safe-keeping, and new ones will preserve their surface better than old ones." R. Papa said again: "Even according to him who holds that the law of exchange does not apply to a coin, means that with the coin itself exchange cannot be made, but nevertheless title can be acquired to it by drawing the exchanging article, similar to articles of fruit, in accordance with R. Na'hman's theory, which is, that although exchange cannot be done with themselves, title, nevertheless, can be acquired to it by drawing the exchanging article, and the same is the case with a coin also. This statement was objected to from a Mishna (Maassar Sheni, IV., 5), and the conclusion was that the law of exchange does not apply to a coin under any circumstance; and R. Papa himself retracted from his statement (cf. Baba Kama, p. 236). And so also said Ula, R. Assi, and Rabba b. b. Hana in the name of R. Johanan, that the law of exchange does not apply to a coin. R. Abba objected to Ula's statement from the following: "He whose drivers and employees were summoning him for their wages, and he said to a money-changer, Give me change for a dinar, and I will give you from the money I have at home a good dinar and a *tressith*; if he really possesses money at home, this maybe done, but if he has not, it is prohibited, as it appears usurious. Now, if it is borne in mind that there is an exchange with a coin,

then this act is a loan only, and should be prohibited?" Ula was silent. Said R. Abba to him: "Perhaps the money of which the Boraitha speaks was uncoined, so that they are considered articles of trade, which may be acquired by exchange." Said Ula to him: "You are right, and this is to be inferred from the expression, a *good dinar*, and not *a* dinar and a *tressith*, which means, from uncoined money I have at home I will give you the *value* of a *dinar* and a *tressith*." R. Ashi, however, said: The Boraitha treats of coined money, and, nevertheless, it does not contradict the above statement, for as soon as he has the money home, it is to be like the case where one said, Lend me until my son will come with the keys, stated above.

"*All movable articles*," etc. Said Resh Lakish: "Even a purse filled with money may be acquired with another one equal to it." And R. Ah'ha explained his statement, that he speaks of dinars in one purse which were abolished by the ruler. and in the other purse, which were by the country; and both cases are needed, for if he would speak of those which were abolished by the ruler, one might say, because they are useless anywhere, they may be exchanged; but that of the country, which can be used in another country, they are still considered coins in circulation, and the law of exchange does not apply. And if he would speak of the latter, one might say, because they are useless at any rate in this country, they are not considered any more as circulating coins; but if prohibited by the ruler, but privately still circulated, they are yet considered coins; therefore both statements.

Rabba in the name of R. Huna said: "If one were holding some coins in his hand and said: Sell me your articles for the money I have in my hand, and the other agrees, and accepts the money, without asking the amount of it, the buyer acquires title to the article; and if, however, the article was in value a sixth less than the amount, the sale is null and void, because it is fraudulent. The title is acquired to the article because the seller was not particular as to the money; it is considered as an exchange, and the law of fraud applies here, because of the expression, 'sell me,' which means it shall be the value of the amount I hold in my hand." R. Abba in the name of the same authority, however, said: "If one said, Sell to me for the money I have in my hand, no cheating can be claimed."

It is certain that when the seller is not particular as to the amount, the buyer acquires title to the article, even before he drew it, as it is considered an exchange, in which the drawing of

one article suffices for the others also. But what is the law if it is an exchange, and they are particular as to the values--is the drawing needed in both articles or does one of them suffice? Said R. Ada b. Ah'ba: Come and hear: If one was holding his cow in the market, and his neighbor questioned him, Why are you holding the cow here? He answered, I need an ass. Replied the other, I have an ass, and can furnish you with it, but would like to know the price of your cow. The price is so-and-so. And what is the price of your ass? So-and-so; and they agree. Then the owner of the ass made a legal drawing of the cow, but the ass died before the owner of the cow made the drawing; the title to the cow is not acquired by the owner of the ass; hence we see that, although in a case of exchange, as soon they are particular as to the value, title is not acquired unless the drawing of both articles occurs. Said Rabha: "Does then the law of barter apply to fools who are not particular as to the value? All exchanges are very particular, and nevertheless title is acquired by drawing of one of the exchanged articles, and the above Boraitha treats of a case where the exchange was made of an ass for a cow and a sheep, and the owner of the ass made a drawing on the cow only, but not of the sheep, which cannot be considered a legal drawing."

The Master said: "If one said: Sell me for this amount, title is acquired, and nevertheless the law of fraud applies. Shall we assume that R. Huna holds that coins maybe exchanged? Nay! R. Huna holds with R. Johanan, who says that, biblically, money gives title, but for what purpose was it so stated that drawing gives title? This was enacted for the purpose that one might say, Your property was destroyed by fire in my attic." (*I.e.*, that R. Huna holds that there can be no exchange with coins, and his above statement is made on the basis that with the money he acquired title, by using the word "sell me," and there is not any need of drawing, because the

drawing was enacted by the sages to prevent damage to buyers, who pay the money without taking possession of the article; and if a fire may happen while it is yet in the house of the seller, he will not care to save it, as it does not belong to him any more, therefore the sages enacted that the seller is responsible for the property unless the buyer has made a drawing of it.) And the enactment was made only for a usual selling and buying, but for such a sale as R. Huna stated, which is unusual, this enactment does not apply. Said Mar Huna, the son of R. Na'hman, to R. Ashi: "You taught so;

we, however, have taught plainly, and so said R. Huna, that no exchange is to be made with a coin. How should an exchange of coins be confirmed? Rabh says, with the property belonging to the buyer, [1] because it is more pleasing to the buyer that the seller shall receive a present from him [2] for the purpose that he shall decide to transfer the property to him with a good will; and Levi said, with the garment of the seller, as will be explained further on." Said R. Huna of Daskarta to Rabha: According to Levi's theory, that it must be done with the garment of the seller, for he may transfer previously to him real estate with this garment, which shows that the title to real estate can be acquired with personal property, and there is a Mishna which states the contrary: Personal property can be transferred with real estate. And he answered: If Levi would be here, he would strike your face with fiery lashes. Do you think that the garment gives title? For the pleasure he feels on being presented with the article, he concludes to transfer the goods to the other.

The former Amoraim are in accordance with the Tanaim of the following Boraitha (who differ also on this point): It is written [Ruth, iv. 7]: "Now this was formerly the custom in Israel at a redeeming and at an exchanging, to confirm anything, that a man pulled off his shoe and gave it to the other, and this was the manner of testimony in Israel." "Redeeming" means selling, and so it reads [Lev. xxvii. 20]: "It shall not be redeemed any more." "An exchanging" means taken literal, as it reads [ibid., ibid.]: "He shall not alter it nor change it." "To confirm. . . . pulled off his shoe and gave it to the other." Who has given to whom? Boaz gave to the redeemer. R. Jehudah, however, says: "On the contrary, the redeemer gave to Boaz." There is a Boraitha: "This ceremony can be done with any article, even if its value is less than a parutha." Said R. Na'hman: "It must be a utensil, but not fruit." R. Shetheth, however, maintains that this may be done with fruit also. What is the reason for R. Na'hman's statement? Because in the Scripture one reads "shoe," which is a utensil. R. Shetheth, however, bases his opinion upon "confirming anything." And

what would R. Na'hman say to this? To confirm anything, which was done by the ceremony with the shoe. But according to R. Shetheth, what does the word "shoe" signify? As the shoe is a complete article, so all other articles with which this ceremony is to be performed must be completed, to exclude fruit, which is not fit for a Sudarium.

R. Shetheth b. R. Idi said: According to whom do we write in our legal papers, 'with an utensil which is fit to confirm with'? In accordance with the opponents of R. Shetheth, who said that the ceremony may be done with fruit also, and the opponents of Samuel, who said that a vessel made of *maroka* (baked ordure) may be used for this purpose, and also to deny Levi's theory, which is "with the property of the seller"; we say to confirm "with," but not to give title with it. [1]

R. Papa, however, said: "The expression, with a vessel, means to exclude a coin, which is fit." Said R. Zbid, and according to others R. Ashi: "To exclude such vessels of which no benefit must be derived (as, *e.g.*, devoted to idolatry), there is no necessity of excluding *maroka*, which all agree it is not fit for that purpose."

"*Uncoined money*," etc. How is this to be understood? Said R. Johanan: "*I.e.*, a coin which is counterfeit." And he is in accordance with his theory elsewhere, that R. Dossa and R. Ismael said one and the same thing. R. Dossa in a Mishna (Idioth, I., 2): Second tithe must not be exchanged for a counterfeit coin. And R. Ismael of the following Boraitha: It is written [Deut. xix. 25]:,Then shalt thou turn it into money, and bind up the money in thy hand"; to include all the money which can be bound in the hand, so is the dictum of R. Ismael. R. Aqiba said that it includes all coins which have an imprint of the ruler's face on them.

"*How so, if one made a legal*," etc. Said R. Johanan: "Biblically, money paid gives title; why, then, was it said that drawing is needed? For fear that a fire may occur in the house of the seller, where the bought article is placed; and if it is still considered under his control he will trouble himself to save it, but if it would be considered under the control of the buyer he will not care to save it. Resh Lakish, however, said that the drawing is prescribed by the Scripture, viz.: It is written [Lev. xxv. 14]: "And if thou sell aught unto thy neighbor, or buy aught

of thy neighbor's *hand*," signifies a thing which goes from hand to hand. R. Johanan, however, says that "hand" excludes real estate, that the law of fraud does not apply to it. Resh Lakish, however, maintains that if it would be as R. Johanan said, the Scriptures would read in the case of selling only. Why is then the case of selling repeated? To verify my statement. An objection was raised to Resh Lakish's statement from our Mishna: "R. Simeon, however, said that he who has the money in his hand has the preference," which means that the seller may retract, but not the buyer; and this is correct only when money paid gives title biblically, therefore the preference is given to the seller that he may retract, in case the article will become dearer for his purpose he should save it from an accident, thinking it is still considered mine, as I may retract and probably the price will be increased; but not the buyer, as the title is acquired with paying the money. But if the money does not give title biblically, why should not the buyer also have the right to retract? Resh Lakish may say, I have nothing to do with R. Simeon's theory, and my explanation is in accord with the rabbis' theory. There is, however, an objection from the latter part. But it was said: He who punished, etc., which would be correct only when money gives title; but if it does not, why should he be punished? Because he retracts his words. Is that so? Have we not learned in a Boraitha: R. Simeon said, although it was said that a garment gives title to a gold dinar, and not *vice versa*, so only is the strict Halakha; but in addition to it, however, it was said that He who took revenge on the generation of the flood. . . . and the people of Sodom and Gomorrah, and on the Egyptians in the sea, He will take revenge on him who retracts his words. And he who is doing business with words only (without money), to him title is not given; however, the spirit of the sages does not please him, and Rabha adds that this is the only punishment for such people, hence we see that word retractors; do not stand under the punishments stated above? Yea! They are not under punishment when there were words only, but if there were words with money they are. Said Rabha: "The Scripture and a Boraitha support Resh Lakish. The Scripture, as it is written [Lev. v. 21]: "If he, namely, lie unto his neighbor in that which was delivered to him to keep, or in a loan, or in a thing taken away by violence, or if he had withheld the wages of his neighbor." "A loan"--said R. Hisda, *i.e.*, that the borrower has

pledged an article for

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his loan (which is then equal to a deposit). "Withheld the wages"--said R. Hisda: This is also in case the employer has separated the amount due to the employee, or the value of it, and told him, from this you will collect your wages. Now, concerning repentance the Scripture reads [ibid., ibid. 23]: "That he shall restore what he had taken violently away, or the wages which he hath withheld, or that which was delivered to him to keep." But a loan is not mentioned. Is it not because there was not a drawing on the article pledged (which was still in the hands of the borrower), and therefore he had not yet acquired title? Said R. Papa to Rabha: "Perhaps it is not repeated because wages is repeated, and this is to be deduced from it as the case is similar?" Answered Rabha: "It treats of a case when the employer already took the amount which was assigned to him and thereafter deposited it again." But is it not the same as a deposit? It tells us of two kinds of deposits. If so, should' the Scripture repeat also a loan, and should it be explained similarly that the pledge was returned and again assigned?

If it would be so, then it would, be no objection and no support; but as the Scripture did not repeat it, it may be considered a support. But is it indeed not repeated? Have we not learned in a Boraitha that R. Simeon said: "Whence do we know that the verse quoted applies to all that was mentioned in the previous verse? Therefore it is written [ibid., ibid., 24]: 'Or any one thing about which he may have sworn falsely.'" And R. Na'hman in the name of Rabba b. Abuhu, quoting Rabh, said that it intends to add that a loan shall also be returned? It may be, but nevertheless the Scripture did not repeat it plainly, and the Boraitha is as follows: If one has given a coin belonging to the sanctuary unintentionally to a bath-house keeper (for using the bath), he has committed a transgression, although he did not use it as yet. And Rabh explained the Boraitha, that the expression bath-house keeper signifies that only in a similar case, where the giver of the coin has nothing to receive in exchange; but in case he has, he committed no transgression, unless a drawing was made on the receiving article. And so also is R. Na'hman's opinion, that money gives title biblically. And Levi searched in the Boraithas which he compiled himself, and found one which stated that if one gave a coin belonging to the sanctuary to a wholesale dealer as a deposit for goods which he should take later, a transgression is committed (hence we see that money gives title without any drawing). But then the Boraitha contradicts Resh Lakish's above

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statement? He may say that this Boraitha is in accordance with R. Simeon of our Mishna.

"*But it was said that He who had punished*," etc. It was taught: According to Abayi, if he retracts, he ought to be notified that he will be punished by Heaven, and according to Rabha the Mishna means he shall be cursed. He who had punished, etc., shall punish you. Said Rabha: "I base my statement upon the following act. R. Hyya b. Joseph accepted money as a deposit for salt to be delivered afterwards. In the meantime the price of it went up, and he questioned R. Johanan what he had to do, and was told that he must deliver the salt, otherwise he must take the punishment stated in the Mishna. Now, if the Mishna means that he should be notified only, is then R. Hyya b. Joseph among those who must be notified (was he not aware of it)? But even according as you say, that he was to be cursed, is it possible that R. Hyya b. Joseph would take for himself a curse from the rabbis? The case with him was thus: He thought that he had to

deliver to him the salt according to the sum of the deposit, but not for the whole amount of the sale, and was told by R. Johanan that with the deposit they had acquired title for the whole amount bought. It was taught: A deposit, according to Rabh, gives title only for the sum it contains; and according to R. Johanan, it gives title for the whole article or articles he had bought. An objection was raised: If one has given a deposit to his neighbor, with the condition that if he should retract, the deposit shall be relinquished; and the other said to him, in case I will retract, I shall double the amount of the deposit. These conditions are to be followed, so is the decree of R. Jose. [And R. Jose is in accordance with his theory elsewhere, that the presumption is that it is a good sale.] R. Jehudah, however, maintains that it is sufficient that he should deliver to him the value of his deposit. Said R. Simeon b. Gamaliel: "This is in case he gave him the money as a deposit, but if it was given to him as a part of the payment, as, *e.g.*, if one sold a house or a field for a thousand zuz, and he paid five hundred zuz as a part of it, title to the article sold is acquired, and he must pay him the balance even after a lapse of many years." Is it not to be assumed that the same is the case with movable property, that the deposit gives title to all the movable property he has bought (so if one of them has retracted, he must accept the above curse "of him who had punished," etc.)? Nay! To movable articles title is acquired only for the sum the

deposit contains, and the difference between them and real estate is, that with the latter title is acquired by money only; the deposit gives title to the whole of it; but to movable articles, with which drawing is required, and even if he would pay for the whole, without any drawing, the possessor of the money has the right to retract (as said above), but he must take the curse in question. Hence title is acquired with the condition that the curse will be borne by him. Then this curse can apply only to the article in value as much as the deposit contains, but not for the amount it was bought (*i.e.*, that if he had delivered it to him for the amount of the deposit, the above said punishment does not apply).

R. Kahana had accepted money for flax which he was to deliver thereafter. In the meantime flax became dearer, and he questioned Rabh what to do, and was told, deliver to them for the sum you have in your hand, as the balance was bought relying on words only, for which a loss of confidence is not to be considered, as it was taught: "'Words,' Rabh said, 'if they are not kept, loss of confidence is not to be considered.' And R. Johanan says it may." An objection was raised from the following: R. Jose b. Jehudah said: Why is repeated [Lev. xxi. 36] "just hin," is this not included in the word "just ephah," ibid., ibid., to instruct you that your Yea (which is the literal translation of *hin*) shall be just, and your Nay shall be just (hence we see that words must be kept)? Said Abayi: "The cited verse signifies one shall not talk with his mouth differently from what he thinks in his heart." (An objection was raised from the Boraitha, "R. Simeon says," etc., p. 118, and the answer was that on this point Tanaim differ.)

But did R. Johanan indeed say so? Did not Rabba b. b. Hanna say in his name that if one said to his neighbor, I will make you a present, he may retract thereafter. Said R. Papa: "R. Johanan agrees that if one promises to make a present of a small amount, no retraction can take place, as the other party relies upon it. It happened that one gave money for poppy, meanwhile the poppy increased in price, and the seller retracted, and told him, I have no poppy, take your money back; and he did not. Meanwhile the money was stolen, and the case came before Rabha. He said: "Because he was told to take his money back, the seller is not responsible, not only as a bailee for hire, but he cannot even be considered a gratuitous bailee." Said the rabbis to Rabha: "Must not the retractor at least take upon

himself the above curse as his punishment?" And he said: "Yea; if he will not give the poppy, he must bear this punishment." Said R. Papi: "I was told by Rabbina that the case was not so, as he was told by one of the rabbis, who was named R. Tabuth, and according to others Samuel b. Zutra was his name, and he was such kind of a man that he would not change his word, even if all goods of the world were to be delivered to him, and he told me: The above case of poppy happened to me. On one Friday I was sitting in my house, when a man came and questioned me whether I have poppy to sell, and I said no; said the man to me, let then this money I have be deposited with you, as it is nearly twilight; and I said my house is yours, put it wherever you like; he did so, and finally the money was stolen, and when he came to complain before Rabha, he was told that by my words, "my house is yours," I did not take any responsibility even as a gratuitous bailee. And when he was asked, did not the rabbis say to Rabha that this man should take the curse of punishment, etc.? he rejoined: This never occurred.

"*R. Simeon said*," etc. We have learned in a Boraitha (in addition to our Mishna), R. Simeon said: "This is in case both the article and the money were in the hands of the seller; but when the money was in the hands of the seller and the article in possession of the buyer, he cannot retract, because he already received the value for the money." Is that not self-evident? Said Rabha: "The case was that the attic of the buyer was hired by the seller, and the article was placed there. In such a case no drawing is needed, as the enactment of drawing was for the purpose that the seller shall trouble himself in case of a fire to save it, which does not apply in this case, as the article was under the control of the buyer, and if a sudden fire would happen the buyer would do all things possible to save it." It happened that one paid for an ass, and before he got hold of it he learned that this ass would be taken away by Parsek the *rufuli*. He demanded the return of his money, claiming he had no need for the ass any more. The case came before R. Hisda, and he decided as it was enacted that the seller may retract, so long as the buyer did not make a drawing of the bought article, so it was enacted that the buyer can also retract, so long as he has made no drawing on it,

MISHNA *II*.: Cheating, which according to law makes the sale null and void, is in case where the sum of which he was cheated counts four silver dinars from the amount of twenty-four silver dinars, which makes a *salah*; *i.e.*, a sixth of the whole

amount. Until what time may the retraction take place? Up to the time that the buyer can show his article to a merchant or his relatives. R. Tarphon decided in the city of Luda that to avoid a fraudulent sale of eight silver dinars from twenty-four, *i.e.*, a third of the whole amount; and the merchants of Luda were pleased with this decision. When, however, they heard his further decision, that the retraction may take place during the whole day, they requested R. Tarphon that he should leave them with the old decision of the sages, and so they returned to the decision of the sages.

GEMARA: It was taught: Rabh said: "The Mishna means the sixth of the correct price of the article." Samuel says: "It means also a sixth of the amount" (the illustration further on). (Says the Gemara:) If one has sold an article of six dinars for five, or for seven, both agree that the price is to be considered; and in both cases there is a cheating of a sixth. If, however, he sold an

article of five dinars for six, or seven for six, according to Samuel, who said that the sum of the money must also be taken in consideration, it is considered cheating, as the price was six, and there was cheating in one dinar. According to Rabh, however, who says that the correct price of the article must be considered, if he took six for five, then the cheating was of a fifth, and the sale is void; and if seven for six, then the cheating on the part of the seller was less than a sixth, the sale is valid, and the dinar is considered relinquished. The reason of Samuel's statement is that the sale is considered void only when there is more than a sixth both in the price of the article and in the money paid; and the same is the case with relinquishing, that there is less than a sixth of both; but if there is a sixth part of one of the two, it is considered cheating, and the money which was paid in excess, or less, must be returned by the parties.

There is a Boraitha which supports Samuel, as follows: "He who was cheated has the preference. How so? If one sold an article which was worth five for six, who was cheated? The buyer; he had the preference of choosing; if he likes he may say, return to me my money, or, if he wishes, he may say, give me the dinar of which I was defrauded." And if one has sold the value of six dinars for five, who was cheated? The seller; then he has the preference; he may choose to demand the return of the article, or he shall give him one more dinar, of which he was defrauded. (Hence it is considered a cheating either in price or in the money.) The schoolmen propounded a question: "If

there was a cheating less than a sixth, which, according to the rabbis is considered a relinquishment, does it take place immediately, or does the buyer have time to show it to a merchant or his relatives; and if you would say that so it is, what then should be the difference between a sixth or less? Shall we assume that if a sixth he has the preference, if he likes to make void the sale, or to demand the money he was defrauded of; and if it was less than a sixth the sale is valid, but the sum obtained by, cheating must be returned?" Come and hear the last words stated in our Mishna: "and so they returned to the decision of the sages." (That is, that time for showing it to a merchant, etc., was always granted.)

Said Rabha: "The Halakha prevails as follows: If cheating was less than for a sixth of its value, the sale is valid; more than a sixth, the sale is void; and if, however, an exact sixth, the sale is valid, but the amount must be returned to him who was cheated, and in all such cases the time for showing to merchants, etc., is granted." There is a Boraitha supporting Rabha, viz.: "Cheating in less than a sixth, the sale is valid; more than a sixth, the sale is void; an exact sixth, the sale is valid, but the cheating must be returned." So is the decree of R. Nathan. R. Jehudah the prince, however, maintains: "The seller always has the preference; if he likes he may require the price which was agreed, or that the amount of which he was cheated should be returned; in both cases, however, time for showing it to a merchant must be granted to the buyer."

"*Until what time the retraction may take place*," etc. Said R. Na'hman: "This decision applies to the buyer only, but the seller may retract at any time." Shall we assume that the last words of our Mishna support R. Na'hman, as they are correct only when the seller has the right to retract at any rate; and, therefore, they were not benefited by R. Tarphon's decision; but if you would say that the seller has no more right than the buyer, then they could be benefited by R. Tarphon's decision, in case they have erred in the price of sale. Why, then, have they returned to the decision of the sages? (This is not to be considered a support, as it is not usual that the merchants of Luda should make an error in the sale.)

The host of Rami b. Hama sold an ass and erred in the price, and Rami found him dejected, and questioned him why, and he answered, because of the sale; and Rami told him to retract, but he rejoined that the time for showing it to a merchant, etc., had

already elapsed; then Rami advised him to go into the court of R. Na'hman, and he decided according to his theory stated above (in the beginning of the paragraph). His reason was that the buyer always carries the article with him, and so can show it to all, if there were an overcharge or not; but the seller, who is not in possession, must wait until a similar article is again in his possession to show it, and therefore he may retract. There was a man who had to sell pearls, which were worth five dinars each, and he demanded six. When, however, he was offered five and a half, he accepted it. A buyer who wanted to get the same for five dinars said to himself, if I would give him five and a half I could not sue him any more, as the half-dinar would be considered a relinquishment, as it is less than a sixth; I will, there. fore, give him all he demands, and then I will sue him for cheating me of an exact sixth; and he will be compelled to return one dinar. When the case came before Rabha, he said that the law in question applied only to him who buys from a merchant, but of a private person no cheating is considered. A similar case came before R. Hisda, and he decided the same as Rabha did; and R. Dimi, who was present, said to him: "Even so; you have decided righteously." And so did R. Elazar also say: "Even so!" But is there not a Mishna which states, as the law of fraud applies to a layman it applies also to a merchant; now, is not a layman the same as a private person? Said R. Hisda: "The Mishna speaks of a private person who sells hemp articles; but if he sells the utensils which were used by himself, if not at a good price, he would not sell them."

MISHNA *III*.. The law of fraud applies to the buyer as well as to the seller, to a private person as well as to a merchant. R. Jehudah, however, maintains that there is no cheating concerning a merchant. The cheated one has the preference; he may demand his money should be returned; or, if he likes, the amount of which he was cheated.

GEMARA. Whence is all this deduced? As the rabbis taught, it is written [Lev. xxv. 14]: "Ye shall not overreach one another"; from this we learn in case the buyer was cheated, but whence do we know that same is the case with the seller? There. fore it is written [ibid., ibid.]: "Or buy aught of thy neighbor"; and both cases were necessary, for if the Scripture would mention the seller only, one might say that, because he is aware of the value of his stock, the cheating is a crime to him, but the buyer, who is not aware of the exact price, the law of fraud does not

apply; and if the Scripture would mention the buyer only, one might say, because he received for his money a valuable article which remains with him permanently. The law of fraud applies here, but the seller, who loses his article and takes money, which is not stationary, "as people say if you sell an article it is lost to you," one might say that the above law does not apply to him, therefore both are mentioned.

"*There is no cheating concerning a merchant*," etc. Because he is a merchant, no cheating should be considered? Said R. Na'hman in the name of Rabh: "R. Jehudah speaks of a specialist who knows the value, and the reason why he sold it below the price is to be considered that he

needed money at that time to buy another bargain and, therefore, he relinquished the greater value of the article sold, and the retraction took place afterwards (therefore it must not be considered). R. Ashi, however, says: "R. Jehudah's decree may be explained thus: Concerning a merchant the prescribed kind of cheating is not to be considered, as he may retract even if it were other than the prescribed kind." There is a Boraitha supporting R. Na'hman, viz.: "R. Jehudah maintains no cheating exists in regard to a merchant, because he is experienced."

"*The cheated has the preference*." According to whom is our Mishna? Not with R. Nathan, and also not with R. Jehudah the prince, of the Boraitha cited above. For our Mishna states, "if he likes," and R. Nathan's decision is strictly; and R. Jehudah mentioned in his decision "the seller," while our Mishna mentioned "the buyer"? Said R. Elazar: "I, indeed, do not know who taught our Mishna." Rabba, however, said: "The Mishna is in accordance with R. Nathan, and the Boraitha is to be corrected with the addition, 'if he likes.'" Rabha, however, maintains that the Mishna is in accordance with R. Jehudah, and that which was omitted in the Mishna concerning the seller the Boraitha explains. Said R. Ashi: "It seems to be that this explanation is correct, as the Mishna begins, 'to the buyer as well to the seller,' and thereafter it mentions only the buyer, of which is to be seen that something is omitted, and that was the seller." Infer from this that so it is.

It was taught: "If one says, I sell this article to you with the condition you shall not claim any cheating of me, Rabh says that he nevertheless may claim cheating, if there were any, and according to Samuel he may not. Said R. Anan: "Mar Samuel has explained to me his decree as follows: If one says,

with the condition you shall not claim of me any cheating, no claim must be considered; if, however, he say, with the condition that no cheating with the article should be claimed, if there was a cheating the claim must nevertheless be considered."

Said Abayi: "Rabh's decree is in accordance with R. Meier, who holds (in Tract Kedushin) that no condition can be made concerning a law which is plainly written in the Scripture, and Samuel's decree is in accordance with R. Jehudah, who holds that this rule holds only concerning prohibited things, but not in money matters." Rabha, however, maintains that both (Rabh's and Samuel's) statements are in accordance with both mentioned Tanaim, and notwithstanding present no difficulty, as the above Amoraim speaks of a case where the seller did not mention to the buyer that he is certain that the price is higher than the real value of the article, and the Tanaim of the above cited Mishna speak of a case where such was mentioned, as so we have learned in addition to our Mishna in the following Boraitha: "This is only in case where the seller says, I do not think that you will be cheated, but even if you should, you shall not claim cheating; if, however, a condition was plainly made, as, *e.g.*, the seller says to the buyer, this article which I am about to sell you for two hundred, I am aware has a value of only one hundred, and it will be yours for my price, with the condition that you shall not claim cheating; and the same is when the buyer says to the seller, this article I am about to buy from you for one hundred, I know is worth two hundred, and with the condition that no cheating shall be claimed, I give you the money, then no claim of cheating is to be considered."

The rabbis taught: "If one is doing business with his neighbor in trust, [1] he must not furnish him with bad articles in trust and with good articles according to their value, but both should be

equal (if, for instance, there are two kinds of wine, good which can easily be sold wholesale, and bad which can be sold only in retail, the possessor must not offer the good to the agent for the full value, with the condition he shall sell for him the bad to storekeepers at any price he may obtain, and the money for both shall be returned to him after all is sold; that is, that for his trouble he should use the money obtained for the good until the

bad be sold in retail, as this would be indirect usury), and for his. trouble he should pay him the usual price. The commissioner, however, may charge him for carrying on his shoulder, for the hiring of a camel, and for storage and hotel, but not separately for himself, as he has been paid already for his trouble in full."

What does it mean that he shall pay for his trouble separately? Said R. Papa: "As, *e.g.*, the sellers of hemp articles get four per cent. 'as their commission.'"

MISHNA *IV*.: How much less of the quantity of the *Sala* should be effaced, that the law of fraud could not be claimed? According to R. Meier, four *issars*, which is one *issar* to each *dimar*; and according to R. Jehudah, four *pundiuns*, one *pundiun* to each *dinar*. According to R. Simeon, however, eight pundiuns; two pundiuns (which are four issars) to one dinar (and it means an exact sixth of its value). What time is to be given for retracting? In the large cities, time for showing it to a money-changer must be granted; and in villages, until the eve of Sabbath. If, however, there was a sale, even after an elapse of twelve months, he must accept its return without any claim, but he may be angry with him. Such a sala may be expended for second tithe without any fear, as he who does not accept circulating money is considered a bad man.

GEMARA: There is a contradiction to our Mishna from the following Boraitha, which states: How much should the *sala* be effaced that the law of fraud should apply? (the same quantity as in our Mishna is given; hence, according to the Boraitha, the law of fraud applies to such quantities, and according to our Mishna it does not?) Said R. Papa: "This presents no difficulty. The Tana of our Mishna comes from the bottom to the top (*i.e.*, an effaced sala until what quantity it may be circulated until it reaches the quantity mentioned; but if such a quantity is already reached, it is not any more considered in circulation, and the law of fraud applies); and the Tana of the Boraitha comes from top to the bottom (*i.e.*, if the effaced coin has lost the quantity in question, it is not more fit for circulation, etc., hence both statements have the same meaning)."

Why, then, do the Tanaim differ concerning a *sala* and not with another article, in which all agree that a sixth is the prescribed kind of cheating? Said Rabha: The Tana who holds a sixth is the prescribed kind is R. Simeon, who points to the same kind in a sala. Abayi, however, maintains that one usually relinquishes if he was cheated in value less than a sixth; as people say, pay

dearer for the necessity of your dressing, but for your stomach look that you are not overcharged. The text of the Mishna says: How much of the quantity, etc. A Tosephta in addition to this Mishna states that if it was effaced more than the above quantity, he may sell it

for its value. What is the prescribed quantity of a diminished coin which one is still allowed to keep? If it was a *sala*, he may keep it if it still contains the value of a shekel; and if it was a dinar, he may keep it when a quarter of the quantity was diminished. If, however, it was less than one issar it is prohibited, and he must not sell it to a merchant, and not to a powerful man, or to a robber, as they may cheat some other persons with it, and therefore it is advisable he shall bore a hole in it, and put it around the neck of his son or daughter.

The master says: "A sala of the value of a shekel, which counts a half; and from a dinar only a quarter; why the difference?" Said Abayi: "The quarter concerning an issar means a quarter of a shekel, which counts a half of a dinar." Said Rabha: "It seems to me so, because it is not stated a quarter of it, 'but a quarter,' which generally means 'of a shekel.'" But why should the prescribed quantity of a dinar be dependent upon a shekel? Herewith he teaches us, by the way, that there is a kind of dinar which came from a shekel (*i.e.*, that the quantity of the shekel was diminished to a halo, and this is a support to the statement of R. Ami, who says that a dinar which came from a shekel may be kept for circulation (as every one could recognize that it is only a half of the quantity); but a dinar which came from a sala (*i.e.*, that the sala was diminished to the value of three quarters), it may not be kept in circulation even at the value of a dinar, because it is still a large coin, and can easily be taken for a shekel. The Boraitha states, if, however, it was less than an issar, then it is Prohibited. How is this to be understood? Said Abayi: "It means to say, if the sale in question was diminished more than the value of an issar, it is prohibited to be kept." Said Rabha to him: "Why an issar? If the sala in question was diminished even only a trifle of the above quantity, it is also prohibited to be kept? Therefore," says he, "it means if a sala were diminished in quantity as an issar to a dinar, it is prohibited to be kept, and it is in accordance with R. Meier's opinion." An objection was raised: Until what quantity may it be diminished, and still allowed to be kept? If it was a sala, until the quantity of a shekel. Is it not to be assumed that it was diminished little by little, and still it was allowed to be kept until it became of the size of a shekel? Nay, it means that it was

dropped into the fire and diminished all at once. The master says: "He may bore a hole in it and put it around the neck," etc. There is a contradiction from the following: "An uncirculating coin must not be used as a weight, and also he must not use it for an ornament, and also he must not perforate it, and put it on the neck of his son or daughter; but he shall grind or melt it, or cut it in pieces, or throw it away into the Dead Sea" (so that it could not be used by swindlers, hence it states he must not perforate it, etc.). Said R. Elazar, and, according to others, R. Huna in his name: "This presents no difficulty. The statement that he may bore a hole in it means, in the middle of the coin, which spoils; it entirely; and the statement that it may not means, on the side" (as a swindler could fix it).

"*What time is to be given for retracting*," etc. Why concerning a *sala*, it makes a difference between large cities and villages, which is not the case with another article? Said Abayi: "The statement of our Mishna concerning an article means also in the large cities." Rabha, however, maintains "that every one is aware of the value of a common article, but to understand the value of a sala one must be a money-changer; therefore, in large cities, where money-changers are to be found, such time is prescribed; in the villages, however, where money-changers are not to be found, time is given until the eve of Sabbath, when usually people go to the market to buy supplies for Sabbath.

"*If, however, there was a sala*," etc. Where? If in the large cities, there is a money-changer; and if in villages, it is said, "until the eve of Sabbath"? Said R. Hisda: "It is not the strict law, but a meritorious act for pious men is taught here." If so, how is to be understood the latter part, "but he may be angry"? Who should be angry--the pious one? Let him not accept it, and not be angry, or the one who returned it should be angry, why it was accepted? It means to say thus: "That even if he who is not pious, and does not accept it, the one who possesses the coin may be angry, but cannot sue him."

"*Such a sala may be expended for second tithe*," etc. Said R. Papa: "Infer from this that he who is too particular with the examination of money is considered a bad man, provided he can circulate it easily. Our Mishna may be a support to Hiskiyah, who said that if one came to change a coin of a second tithe for small money, he may take change only for its value; but if he would exchange the second tithe for it, he may take as much of the second tithe as if it would be a good one. How is this to be

understood? He means to say that, although, when changing it for small money, he cannot take more than its value, he may nevertheless take the second tithe for the full value of such a coin.

MISHNA *V.*: The prescribed quantity for cheating is four silver dinars to each sala; for a claim of which one of the parties must take an oath, no less than the value of two silver dinars. For admitting a debt, which makes him liable for a biblical oath of denying the claim of the plaintiff, a *perutha* is sufficient. In five cases the value of a perutha is prescribed--one just mentioned; second, a case of betrothal, for which the value of a perutha suffices; third, the one who benefits himself from the goods belonging to the sanctuary, with the value of one perutha, he has committed a transgression; fourth, who finds an article worth only a *perutha*, he is obliged to proclaim; and fifth, he who has robbed his neighbor for the value of one perutha, and has sworn falsely, and after repented, he must return it to him personally, even should the robbed one be at that time in Madai.

GEMARA: Was this not stated already in Mishna II? It is repeated because of the perutha of admission; but even this is already stated in a Mishna (in Kidushin, etc.)? It is repeated here also because of the new statement about the five peruthas.

"*In five cases the value*," etc. Let it teach, also, that there is one more perutha of cheating (*i.e.*, that when he sold an article for six peruthas, and it was worth only five). Said R. Kahana: "From this is to be inferred that the law of cheating does not apply to peruthas; it means that to less than a silver coin no claim of cheating can be made." Levi, however, maintains it does apply, and so he taught in his Boraitha. There are five *peruthas*--cheating, admitting, betrothal, robbing, and the warrant of the judges. Why does not the Tana of our Mishna mention that a warrant can be issued for a perutha? Is not robbery the same case, and it is mentioned? But notwithstanding that it mentioned robbery, it does mention a loss worth a perutha (which also must be decided by the court)? This was necessary to state, owing to the peculiarity of both. The robbed article must be returned, even if the owner is in Madai, and one must proclaim a lost article even if it was worth only one perutha, and after finding it is decreased in value. Why, then, does not Levi mention a lost article in *his* Boraitha? Because he mentioned robbery. But why does he mention the warrant for a perutha-is it not the same as robbery? This was necessary to deny R. Ktina's

statement, who maintains that a warrant can be issued even for less than a perutha. Rabha objected to R. Ktina's statement from the following: "It is written [Lev. v. 16]: And that in which he hath sinned against the holy thing, he shall pay." That means to include, that even when the value was less than a perutha, it must be returned; hence it is only of the sanctuary, but not of common property; therefore if it was taught in the name of R. Ktina, it was as follows: If the court found it necessary to take up the claim of the value of a perutha, it may issue a warrant even for less than a perutha, as the court does not start a case less than a perutha; but if it *was* started, the decision may be even for less.

MISHNA *VI.*: There are five fifth parts (which must be added to the principal amount) and they are: (1) who eats heave-offering; (2) the heave-offering of tithe (*the tenth part* of which the Levites must separate from the tithe [Num. xviii. 26]); (3) the same which was separated when the grain was bought from a suspicious man; (4) the first dough [Num. xv. 20]; and (5) the first-fruits [Lev. ii. 14]. The same is also the case if one redeems his plants in the fourth year (after planting), he must add a fifth part, or he exchanges his second tithe. The same is also the case if one redeems from the sanctuary the article he has sanctified, and also who had any benefit of the things belonging to the sanctuary, the value of a *perutha*, and also if one robbed his neighbor of the value of a *perutha* and swore falsely, all of them must add a fifth part to the principal amount.

GEMARA: Said Rabha: It was a difficulty to R. Elazar, the statement of our Mishna that a fifth must be added to the heave-offering which was separated when bought from a suspicious man, thus: Is it possible that the sages have given weight to their decision equal to the Scriptures? (The law that heave-offering must be separated when bought from the man in question is only rabbinically--would it not be enough that one should pay the principal amount only, if consumed?) Said R. Na'hman in the name of Samuel: This Mishna is in accordance with R. Meir, who says elsewhere (Erubin, p. 181) that the sages usually do so.

MISHNA *VII.*: To the following things the law of cheating does not apply: Bondmen, documents, real estate and property belonging to the sanctuary; and also the law of paying the double amount and of four and five fold does not apply to them. A gratuitous bailee does not swear (if lost), and a bailee for hire

does not pay (as they would do on movable common property). R. Simeon, however, says: If one is responsible for the property belonging to the sanctuary, the law of cheating does apply, but not when he is not responsible. R. Jehudah said that there is no cheating to him who sells holy scrolls, animals, or pearls (the reason why will be explained further on in the Gemara), but he was told that there is nothing to add to the things enumerated above.

GEMARA: Whence is this deduced? From what the rabbis taught: It is written [Lev. xxv. 14]: "And if thou sell aught unto thy neighbor or buy aught of thy neighbor's hand," which means things going from hand to hand; excludes real estate, which is not movable, and also bondsmen, who are equalled to real estate; excludes also documents, because it reads, "and if thou sell

aught," which means that their body can be sold and bought; excludes documents, which are made only for the eye and of which the contents are for sale, but not their bodies [from this it was said that if one sells his documents for actual use (*i.e.*, for wrapping), the law of cheating does apply. Is this not self-evident? It was said to deny R. Kahana's theory that there is no cheating as to articles of which the value is only a *perutha*]; and things belonging to the sanctuary, because the verse reads, "From *thy brother*," to exclude the sanctuary. Rabba b. Mammal opposed: Is, then, the word *hand* everywhere mentioned in the Scripture literally? Is it not written [Num. xxi. 26]: "From his hand," which is certainly not literally, but from his control? On the other hand, can we then explain the word hand everywhere it is written not literally? Have we not learned in the following Boraitha: "It is written [Exod. xxii. 3]: 'If the thing stolen be actually found in his hand,' etc. From this we know when it was found *in his hand* only. Whence we deduce that the same is the case when it was found upon his roof, yard, or his veranda? Therefore it is written *Himatzeh Timatzeh*, (literally, 'found was found' [1]), to include the above." We see then, that if it were not for the superfluous word "Timatzeh" the word *hand* would be taken literally, provided that in such places (as cited above) where it is impossible to take it literally it is explained *control*.

R. Zera questioned: Does the law of cheating apply to a hire? Shall we assume that the Scripture reads *sale* but not *hire*, or

there is no difference? Said Abayi to him: Is it mentioned in the Scripture "a sale for ever"? Sale is mentioned anonymously, and a hire can also be called a sale for the time hired. Rabha questioned: If one bought wheat and sowed it in his field, how is the law? Is it to be compared to putting it in a vessel, and the law of fraud does apply, or, as it is in the earth, is it compared to real estate, to which the law of fraud does not apply? (Says the Gemara: Let us see how was the case? If the buyer said to the seller: "You shall sow six measures," and witnesses testify that he has sown only five, did not Rabha say elsewhere that everything with a measure, weight, or number, even in a quantity to which the law of fraud does not apply, the cheated may retract? The case was that the buyer bought a quantity of wheat needed for his field, with the condition that the seller should sow it, and thereafter it was found that he had not given the quantity needed. Hence the doubt to what case stated above it is to be compared. This question remains undecided.

Rabha in the name of R. H'assa said: R. Ami propounded the following question: The articles mentioned in the Mishna to which the law of cheating does not apply, how is the law if there was fraud to more than a sixth of the value, where in other cases the sale is abolished? Is it the same with the things of the Mishna, or not? Said R. N'ahman: Thereafter the same R. Hassa said that R. Ami resolved his question, and decided that only the law of fraud does not apply, but the law of abolishing the sale applies. R. Yonah, however, concerning things of the sanctuary, and R. Jeremiah concerning real estate, both in the name of R. Johanan, declared that the law of fraud does not apply, but the law of abolishing does. [He who applies Johanan's statement in regard to things of the sanctuary, applies it also in regard to real estate, and he who applies it in regard to real estate, to the things of the sanctuary, however, does not apply it, as Samuel said that things belonging to the sanctuary, if of the value of a *manah*, were exchanged for one *perutha*, the act is valid.]

An objection was raised from the following Mishna: "A blemished animal belonging to the

sanctuary, if it was exchanged for an animal of a commoner, the exchange is valid and the blemished animal becomes ordinary; but if its value was more than its exchange, the money must be added to the sanctuary." And R. Johanan in explaining this Mishna said: It becomes ordinary biblically; the money of its value, however, which is said to be added, is rabbinically only. Resh Lakish, however,

maintains that the money in question is also biblically. Now let us see how was the case? If the exchanging animal was less in value than the prescribed quality of cheating, how could Resh Lakish say that the money must be added biblically? Does not our Mishna state that there is no cheating in sanctuary, and if it was less in value than a sixth, how could R. Johanan say that the money added is rabbinically? He himself said that the law of abolishing applies to it? There is a case of cheating, and they differ if the explanation of the statement, "the law of cheating does not apply." Should it be explained as R. Hisda interprets it, that the Mishna, with the expression "there is no cheating," means the prescribed quality of it does not apply, even if it were less than the prescribed quality it may also be abolished.

Another objection was raised: "The laws of usury and cheating apply only to commoners, but not to the sanctuary?" Should this Boraitha have more weight than our Mishna, which was explained that it means the prescribed quality of it? Interpret, then, this Boraitha in the same manner, namely: Usury and the prescribed quality do not apply to the sanctuary. If so, how should the latter part of it be understood? This is more rigorous in the case of a commoner than in the case of the sanctuary (and as you interpret, then the reverse is the case). This statement applies to usury only. But then it should state: Regarding cheating, however, the reverse is the case? What question is it? It is correct to say that this is more rigorous in case of a commoner, etc., as this is the only case; but regarding the sanctuary, is, then, this the only case in which it is rigorous? All cases of the sanctuary are rigorous.

"*Double amount*," etc. Whence is this deduced? As the rabbis taught: It is written [Exod. xxii. 8]: "For all manner of trespass"--that is, generally; "for an ox, for an ass, for a lamb, for raiment"--that is, *partis* (a special part); "or for any manner of lost thing"--it is again general. And there is a rule that when there is in the Scripture a general, a *partis*, and again a general, it must be judged similar to the *partis*, as the *partis* mentioned is a movable thing, and its body is of value. So also all movable things the bodies of which have a value; excluded being real estate, which is not movable, and also bondmen, who are equal to real estate, and also documents, of which, although they are movable, the bodies are of no value. And concerning the sanctuary there is another verse, which reads, "his neighbor," and the sanctuary cannot be considered a neighbor.

"*And of four and five fold*," etc. Why so? Because the Merciful One says payment of four and five fold, but not the payment of three and four (*i.e.*, as the double amount is excluded, it would be for a sheep threefold and for an ox fourfold

[paragraph continues] Jehudah, however, maintains that the above-named things better answer this purpose. But in respect to what quality cheating is not to be considered? Said Ameimar: To the double amount of its value (but no more). There is also a Boraitha: R. Jehudah b. Bathyra says

that also with him who sells a horse, a sword, and a shield *in war-time*, no cheating is considered, as there is a question of life.

MISHNA *VIII.*: As cheating is prohibited in buying or selling, so it is in words. (How so?) One must not ask the price of a thing when he does not intend to buy it. To a person who has repented one must not say, Remember your former acts. To a descendant from proselytes one must not say, Remember the acts of your parents. As it is written [Exod. xxii. 20]: "And a stranger [1] thou shalt not vex, nor shalt thou oppress him."

GEMARA: The rabbis taught: It is written [Lev. xxv. 17]: "And ye shall not overreach one the other"--this means, in words. But perhaps it means in business? It is already written [ibid., ibid., 14] concerning business. Hence this verse must apply to words only. How so? To a person who has repented one must not say, Remember your former acts. To a descendant of proselytes one must not say, Remember the acts of your parents. If a proselyte comes to learn the Torah, one shall not say, The mouth that hath eaten carcasses, etc., should utter the words Torah, which was pronounced by the mouth of the Almighty. To a person who suffers from chastisements, sickness, or burying his children, one must not say, as Job's colleagues said to him [Job, iv. 6, 7]: "Is not, then, thy fear of God still thy confidence, thy hope equal to the integrity of thy ways? Remember, I pray thee, who ever perished, being innocent? or where were the righteous destroyed?" Also, one must not send people to any one, telling them that he is a grain seller, who never was so. R. Jehudah says: One must also not inquire the price of an article, having no money to pay, as all that refers to his heart, and in such a thing it is said, "Thou shalt fear thy God."

Said R. Johanan in the name of R. Simeon b. Johai: Cheating in words is more rigorous than cheating in money. As to the former, it is written, "Thou shalt fear thy God," and as to the latter it is not written so. And R. Elazar says: The former is to his body and the latter to his money. R. Samuel b. Na'hmeni

says: The latter can be returned, but the former cannot, A disciple has taught before R. Na'hman b. Itzhak: One who abuses his neighbor publicly is compared to a shedder of blood. And he answered: Your statement is correct, as we see in the man who becomes ashamed, the red color of his face disappears and he becomes white.

Said Abayi to R. Dimi: To what thing do the Western people pay more attention? And he answered. To make pale the face (*i.e.*, putting people to shame). As R. Hanina said: All descend to Gehenna, except three. All! Is it possible? Say, All who descend to Gehenna return thence, except the following three, who descend and do not return: An adulterer, one who makes pale the face of his neighbor in public, and one who applies vile names to his neighbor. But is it not the same as making pale his face? *i.e.*, even when he was already used to be named so.

Said Rabba b. b. Hana in the name of R. Johanan: It is rewarded more leniently that one commit a doubtful adultery than to make pale the face of his neighbor. Whence is it taken? From Rabha's lecture, thus: It is written [Psalms, xxxv. 15]: "But in my downfall they rejoiced, and gathered themselves together . . . they did tear me, and ceased not." Thus said David before the Holy One, blessed be He: "Lord of the Universe, it is known before thee that if they would tear

try flesh the blood would not run. Even when they are occupied in the study of *Negaim* and *Ahaloth* they said to me, David, who is an adulterer, with what kind of a death must he be punished? And I answered them, He is to be hanged: he, however, has a share in the world to come, but he who makes pale the face of his neighbor publicly has no more any share in the world to come."

Mar Zutra b. Tubia in the name of Rabh, according to others R. Hana b. Bizna in the name of R. Simeon the Pious, and still to others R. Johanan in the name of R. Simeon b. Johai, said: It is better that one throw himself in a burning furnace than to make pale the face of his neighbor publicly. And this is taken from the act of Tamar, as it is written [Gen. xxxviii. 25]: "When she was led forth, she sent to her father-in-law," etc.

Rabh said: One should be careful with his wife, not to deceive her even in words, for often her tears hasten the punishment. R. Elazar said: Since the destruction of the Temple the gates of prayer are closed. As it is written [Lamentations, iii. 8]: "Also when I cry aloud and make entreaty, he shutteth out my prayer."

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[paragraph continues] However, the gates of tears were not closed. As it is written [Psalms, xxxix. 13]: "Be not silent at my tears."

Rabh said again: He who follows the advice of his wife falls into Gehenna. As it is written [I Kings, xxi. 25]: "But indeed there was none like unto Achab . . . to which his wife incited him." Said R. Papa to Abayi: Is that so--do not people say: "If thy wife is little, bow thyself and listen to her advice?" This presents no difficulty. Rabh speaks about worldly affairs, and the people's saying is about house affairs. According to others, Rabh speaks of heavenly affairs and the others about worldly affairs. R. Hisda said: All gates are closed for prayers except for him who cries upon cheating. As it is written [Amos, vii. 7]: "Behold, the Lord was standing upon the wall of *Anach*, and in his hand was an Anach." [1] Said R. Elazar: All sinners are punished through a messenger, except the cheater, who is punished by the Lord himself, as it reads: "And the Anach is in *His* hand." R. Abuhu said: For the following three the petition of the Shekhina is not shut: Cheating, robbery, and idolatry. Cheating, as mentioned above--"Anach in His hand;" robbery, as it is written [Jer. vi, 7]: "Violence and robbery are heard in her; in my presence there are continually disease and wounds;" and idolatry, as it is written [Isaiah, lxv. 3]: "The people that provoke me to anger to my face continually."

R. Jehudah said: One should always be careful about grain in his house, as the quarrel in the house comes often about the grain. As it is written [Psalms, cxlvii.]: "He who bestoweth peace in thy borders, who satisfieth thee with the best of wheat." Said R. Papa: This is what people say, "When the barley is out of the barrel, the quarrel knocks at the door." And R. Hinna b. Papa also said: One should always be careful about grain in his house, as Israel was called poor only because of grain. As it is written [Judges, vi. 3-6]: "And it was when Israel had sown, etc. . . . And they encamped against them . . . and Israel was greatly impoverished."

R. H'albo said: One should always be careful with the honor of his wife, as the blessing in the house usually comes for the sake of the wife. As it is written [Gen. xii. 16]: "And he did well to Abram *for* her sake." And this is what Rabha used to say to the inhabitants of his town, Mahuza:

Revere your wives, for the purpose of becoming rich.

There is a Mishna (Keilim, V., 10) which treats of an oven which R. Eliezer makes clean and the sages unclean, and it is the *oven of a snake*. [1] What does this mean? Said R. Jehudah in the name of Samuel: It intimates that they encircled it with their evidences as a snake winds itself around an object. And a Boraitha states that R. Eliezer related all answers of the world and they were not accepted. Then he said: Let this carob-tree prove that the Halakha prevails as I state, and the carob was (miraculously) thrown off to a distance of one hundred ells, and according to others four hundred ells. But they said: The carob proves nothing. He again said: "Let, then, the spring of water prove that so the Halakha prevails." The water then began to run backwards. But again the sages said that this proved nothing. He again said: "Then, let the walls of the college prove that I am right." The walls were about to fall. R. Joshua, however, rebuked them, saying: "If the scholars of this college are discussing upon a Halakha, wherefore should *ye* interfere!" They did not fall, for the honor of R. Joshua, but they did not become again straight, for the honor of R. Eliezer [and they are still in the same condition]. He said again: Let it be announced by the heavens that the Halakha prevails according to my statement, and a heavenly voice was heard, saying: Why do you quarrel with R. Eliezer, who is always right in his decisions! R. Joshua then arose and proclaimed [Deut. xxx. 12]: "The Law is not in the heavens." [How is this to be understood? said R. Jeremiah: It means, the Torah was given already to us on the mountain of Sinai, and we do not care for a heavenly voice, as it reads [Exod. xxiii. 2]: "To incline after the majority." R. Nathan met Elijah (the Prophet) and questioned him: "What did the Holy One, blessed be He, at that time?" (when R. Joshua proclaimed the above answer to the heavenly voice), and he rejoined: "He laughed and said, My children have overruled me, my children have overruled me."] It was said that on the same day all the cases of purity, on which R. Eliezer decided that they were clean, were brought into the college and were destroyed by fire. And they cast a vote, and it was decided unanimously to *bless* him (to place him under the ban). The question arose, then, who should take the trouble to inform him, and R. Aqiba said: "I will do so immediately, for one who is not fit for such a message may go

and inform him suddenly, and he will destroy the world." What did R. Aqiba? He dressed himself in black and wrapped himself with the same color, and sat at a distance of four ells from R. Eliezer. And to his question: "Aqiba, what is the matter?" he answered: "Rabbi! it seems to me that your colleagues have separated themselves from you." The rabbi then tore his garments, took off his shoes, and sat on the floor, and his eyes began to flow. The world was then beaten a third in olives, a third in wheat, and a third in barley. According to others, even the dough which was already in the hands of the women became spoiled. A Boraitha states that that day was the severest of all days, as every place on which R. Eliezer had set his eyes was burned. And also Rabban Gamaliel, who had at that time been sailing, was in danger of drowning by a tempest, and he said: "It seems to me that this storm is because of R. Eliezer b. Hurkanus." He then arose and prayed: "Lord of the Universe, it is open and known before thee that not for the sake of my honor or the honor of my parents I acted so, but for thy glory, to prevent a quarrel in Israel." And the sea then became quiet.

Eima Shalum, the wife of R. Eliezer, was a sister of Rabban Gamaliel, and since that time she prevented her husband from falling upon his face. [1] It happened, however, in a day which was

the last of the month, and she erred, thinking that this day was the first of the month (in which the falling upon the face is not customary). According to others, a poor man knocked at the door and she was going to give him some bread, and when she returned she found her husband falling on his face, and she said to him: "Arise, you have already killed my brother!" In the meantime it was heralded by the house of Rabban Gamaliel that he was dead, and to the question R. Eliezer asked her: "Whence did you know this?" she answered: "I have a tradition from the house of my grandfather that all gates are closed for prayers, except for him who cries upon cheating."

The rabbis taught: "He who cheats a stranger transgresses three negative commandments, and he who oppresses him transgresses two." Let us see. Regarding cheating there are three negative commandments [Exod. xxii. 20, Lev. xix. 33 and ibid. xxv. 17], as the expression "the other" includes a stranger also. Then there are three negative commandments concerning oppression

also-namely, Exod. xxii. 20, xxiii. 9, and ibid. xxii. 24--which include also the stranger. Hence there are three negative commandments in oppression also? Read, then, in both cases: He transgresses three negative commandments.

We have learnt in a Boraitha: R. Eliezer the Great said: Why does the Scripture in thirty-six, according to others in forty-six places, warn concerning strangers? Because they are of a mischievous nature. [1] Why is there added [Exod. xxii. 20], "for strangers ye were in the land of Egypt"? There is a Boraitha: R. Nathan says: Do not rebuke your neighbor for a similar blemish to that you have on your body; and this is what people say: To him who has had a hanged one in his family, do not even mention *hang up* a fish.

MISHNA *IX*: One must not mix together fruits from two separate fields, if the seller has named the field of which the fruits were to be issued; and even when the fruits of both are new, much less old with new. In reality, it was said of wine that it is allowed to mix old with new, when the new was sold, because the old improves the new. However, one must not mix the yeast of one wine with another wine, but he may give him the yeast of the same. If the wine was mixed with water, he must not sell in his store, provided he informed the buyers; not to a merchant, however, even if he informed him, for he buys only for the purpose of cheating. In the places where it is customary to mix water with wine, he may do so. A merchant may buy grain from five barns and place it in one store-room; he may also buy wine from five presses and put it in one cask, but not with the intention of mixing it.

GEMARA: The rabbis taught: "It is not necessary to state, if the new was sold four measures for one *sala* and the old three measures only that they must not be mixed (if he sold him old ones), as this would be plain cheating; but even when the reverse is the case, he must also not do so, as usually one buys it to keep for a long time (the new becomes old and the old-spoiled)."

"*In reality, it was said*," etc. R. Elazar said: Ada was the one who said that wherever the expression "in reality" is stated, it means that so the Halakha prevails. Said R. Na'hman: The Mishna treats of a case in which it was done in the time of wine-pressing, as in that time the wine is fermenting, and therefore it is improving; but after the time is over, it spoils. But now it is customary to mix it, even not at that time. Said R. Papa: It is

because people are aware of it, and relinquish their right. R. Aha b. R. Ika said: They do in accordance with R. Aha of the following Boraitha, who permits to mix beverages which are to be tasted, as the buyer recognizes if mixed.

"*But he may give him the yeast of the same*," etc. But is it not stated in the first part that it must not be mixed at all? And lest one say that the Mishna means he shall inform him, this would not hold good, as is stated in the latter part, he shall not sell it in his store provided he informed the buyer, from which it is to be inferred that the first part treats even when not informed. Said R. Jehudah, it means to say thus: One must not mix the yeast of yesterday with the wine of to-day, and *vice versa*; he may, however, give him the yeast of the same. We have also learnt this in the following Boraitha: "R. Jehudah said: He who pours wine for his neighbor must not mix wine from yesterday with that of to-day, and *vice versa*, but he may do so with the wines of the same day."

"*If water was mixed*," etc. It happened that wine was brought to Rabha from a store; he mixed it, tasted, and it was not sweet, and he returned it to the store. Said Abayi to him: "Did not our Mishna state that he must not furnish it to a merchant, even if he was informed" (how, then, did you return the mixed wine to the merchant)? And he answered: "The wine which I mixed is easily distinguished (because I make it very weak), and lest one say that the store-keeper would add wine to it so that the water will not be recognized, then it would be prohibited to sell even plain water to a wine-merchant, lest he mix it with wine."

"*In the places where it is customary*," etc. A Boraitha in addition to our Mishna states that he may mix a half, a third, or a quarter, as is customary in that city. Said Rabh: The Mishna, however, treats of the time of wine-pressing (but not otherwise).

MISHNA *X*: R. Jehudah said: A store-keeper must not furnish little children with presents of nuts, etc., because he accustoms them to buy all their needs at his place. The sages, however, permit this. He also prohibits to lower the prices, for the above reason. The sages, however, say that people may be grateful for such an act. A store-keeper must not take off the shells of beans, in order to raise the price more than if they remained in the shells. The sages, however, permit (as the buyer usually knows the difference of the prices). They, however, agree that one must not do so with the top of the measure

only, for he deceives the eye (as the buyer may think that the contents of the whole measure is so). The embellishment of articles which are to be sold, *e.g.*, slaves, animals, or vessels, is forbidden (further on, the meaning).

GEMARA: What is the reason of the rabbis who permit to give presents to children? Because the store-keeper may say to his competitor: "I distribute nuts; you may do so with plums."

"*To lower the prices*," etc. For what reason do the rabbis permit this? Because he influences the wholesaler to lower his prices also.

"*To take off the shells*," etc. Who are the sages mentioned in the Mishna? R. Aha of the Boraitha, who permits to do so with visible things.

"*The embellishment of*," etc. The rabbis taught: "One must not brush up an animal's hair to give it a delusive appearance of fatness, or make it drink water of bran-flour, which causes its hair to be so." [1]

It is also not allowed to blow up entrails (for sale, to give them a delusive appearance), also not to soak meat in water (for the purpose of increasing the weight). Samuel has permitted to put silk fringes on a mantle (so as to make it appear more woolly). R. Jehudah did so with fine clothes, to gloss them by rubbing with a substance. Rabba permitted to press hemp garments, and Rabha to paint arrows, and R. Papa baskets (*i.e.*, to give them a better appearance). But does not our Mishna state that embellishment for slaves and animals is not allowed, This presents no difficulty: new ones are to be embellished, but old ones are not allowed, as they may get a new appearance (and the buyer will be cheated).

Concerning slaves, what embellishment can be done? As it happened, one old slave painted his hair and beard and came to Rabha that he should buy him. And Rabha answered him: "Let thy house be open for the poor" (*i.e.*, I have the service of the house done by poor men). When he came to R. Papa b. Samuel, he bought him. One day he told him to bring a drink of water, and he washed away the paint and told him: "See, I am older than your father;" and R. Papa read to himself the following verse [Proverbs, xi. 8]: "The righteous is delivered out of distress, and *another* cometh in his stead."

Footnotes

116:1 It was already explained above that in ancient times the custom of buying and selling was that either the buyer or the seller would take a garment in his hand, and the other party would grasp the size of a span of it with his hand, which is known under the expression *Sudarium*--hence the question in the text.

116:2 The ceremony signifies that the holder of the garment gives it as a present to the other.

117:1 As it is explained above, the buyer makes a present of it to the seller, etc., which cannot apply to the seller.

127:1 He gives articles to his neighbor to sell, as he trusts him on his word. Rashi Tosephath, however maintains that it means, if one is furnishing his neighbor with money to buy articles for him. In accordance with Rashi's explanation, the law of cheating could not be applied.

133:1 Leeser translates according to the sense, but the verse reads as we have translated.

136:1 The Hebrew expression for this word is "Gher," which has two meanings *proselyte* and

stranger.

139:1 The term for cheating in Hebrew is *Onaah*, hence the analogy of *Anach*.

140:1 The expression in text is the oven of *Akhnai*, which means in Chaldaic snake. Thosphat, however, maintains that the man who made the oven was named *Akhna*.

141:1 There was a custom of falling upon the face at a certain prayer daily, except on half-holidays, as Chanukah, Purim, and New-moon.

142:1 An explanation to this will be found in Tract Hrajoth.

144:1 The term in the Boraitha is *mesharbtin*, and as to the question of its meaning, Zera in the name of R. Kahana gives the former, and some other the latter.