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TRACT BABA METZIA (MIDDLE GATE).

CHAPTER V.

RULES AND REGULATIONS CONCERNING USURY IMPRISONMENT, RENTING HOUSES, INSTALMENTS, LOANS FOR HALF PROFIT, APPRAISING, ETC.

MISHNA *I.*: What is considered usury, and what is considered increase? If one lends a "sela" (four dinars) to get five, or two "saahs" wheat for three, this is prohibited, because it is biting. And what is considered increase? One buys wheat, a "kur" for a golden dinar (twenty-five silver dinars), which is the market price, and the price of wheat advances to thirty silver dinars; the buyer then requires his wheat, which he desires to sell, and buy wine for it. The seller said: "I accept the wheat for thirty dinars, and you shall have to get wine from me according to the present market price," but he has not wine ready for delivery; this is an unlawful increase.

GEMARA: In leaving out usury, which is biblical, and explaining increase, which is rabbinical only (which is the matter of an exchange), it may be deduced that, biblically, "usury" and "increase" are one and the same thing; and yet both expressions are mentioned in the same sentence [Deut. xxiii. 20]: "Usury of money, and increase of victuals?" Said Rabha: There is indeed not a case of "usury" without an "increase," and *vice versa*. The Scripture, however, mentioned purposely Neshekh (biting) and Tarbeth (increase), to teach us that there are two negative commandments for usury. The rabbis taught: It is written [Levi., xxv. 37]: "Thou shalt not give him thy money upon usury, nor lend him thy victuals for increase." There is mentioned only usury of money, and an increase of victuals; whence we know that even the negative commandment of usury is to be applied on victuals also? There it is said [Deut., xxiii. 20]: 145

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[paragraph continues] "Usury of victuals." Whence the negative commandment of increase on money? It is therefore said [*ibid.*, *ibid.*], "usury of money." This expression is superfluous, as it is said at the beginning of the same sentence: "Thou shalt not lend upon usury to thy brother," etc., which includes any kind of usury; therefore this superfluous expression is to be applied for the negative commandment of increase (tarbeth) on money. As this verse speaks of the borrower only, whence do we know that the same is the case with the lender? From the analogy of expression, "usury," which is used in both cases, we deduce that, as in the former case, there is no difference between money, victuals, usury, or increase. Whence, however, is to be deduced, that any increase is prohibited? From [*ibid.*, *ibid.*] "usury of anything that is lent upon usury."

Rabbina, however, said: The analogy of expressions would be needed if the Scripture would read: "Thou shalt not give him thy money upon usury, and thy victuals," etc.; but as it is written: "Thou shalt not give him thy money, and upon increase," etc., it is not necessary, because we read: "Thou shalt not give him thy money upon usury and increase," and we also read: "With

usury and increase thou shalt not give thy victuals." But says the Gemara: Did not the Tana of the Boraitha deduce analogy of expressions! How then can Rabbina, as an (Amoroi) oppose the statement of a Tana? There is no opposition, as he means to say, that if it would not be plainly written in the Scripture, it could be deduced from the above analogy of expression. The above analogy, however, is needed to include every kind of usury which is not mentioned in the Scripture, concerning a lender. Rabha said: Why does the Scripture mention separately a negative commandment regarding usury, robbery, and cheating? (Are they not all of one and the same character?) It is necessary, for if it were written concerning usury, only, one might say it is something peculiar, as the borrower (who needs the money) is also forbidden to give usury; hence, robbery and cheating could not be deduced (as there is a rule that nothing is to be deduced from a peculiarity). If concerning robbery only, one might say because there is an act of violence, of which cheating cannot be deduced. And if it were stated concerning cheating only, one might say that because he was not aware of the cheat, and could not relinquish even if he would like to do so, therefore the above could not be deduced. Let us see. If even one from another cannot be deduced, why, then, should not

one of them be deduced from the two others? Which of them! Suppose it should not be written concerning usury, and therefore be deduced from the others. One may say that in both the above cases it was done against his will, which is not the case with usury, as the borrower agrees. And should it be deduced concerning cheating from above two, one might say that buying and selling matters cannot be deduced from a case of violence, etc. But let the Scripture leave robbery, which could be deduced from the above, as what would be the objection? "Usury is a peculiarity!" cheating would prove; and if there would be an objection that in the case of cheating no relinquishment could be made, as it was not known, usury would prove. The same discussion will revolve indefinitely, and though the points of each are different, they are equal, however, in one point: that their acts are considered a robbery; hence, robbery could be deduced? It may be said: That so it is, and the commandment of robbery applies to him who withholds the wages of an employee. But is this not plainly written [Deut., xxiv. 14]: "Thou shalt not withhold," etc.? It is written to show that two negative commandments shall be applied to any act of unjust keeping of wages. If so, why then is theft mentioned? (Could it not be deduced from above?) It is needed, as it is stated in the following Boraitha: "Thou shalt not steal," even with the intention to vex a short time, and returning; "Thou shalt not steal," even with the intention to please your neighbor with the due double amount (instead of charity, which he would probably not accept). R. Yimar questioned R. Ashi: (After all that is said above,) is not the commandment superfluous concerning right weight? And he answered: The commandment applies to him who hides his scales in salt that they should become heavier. But is this not a direct robbery? I mean to say that the transgression comes just with the act (although he had not used it as yet).

The rabbis taught: It is written [Lev., xix. 35]: "Ye shall do no unrighteousness in judgment, in mete-yard, in weight, or in measure." Mete-yard means measuring real estate; one should not measure with the same rope for two heirs, for one in the summer season and for the other in the winter (because the rope, if dry, is shorter). "In weight" means, one should not hide the weight in salt (explained above). A small liquid measure one shall not fill up in a manner to make foam; and from this the following *a fortiori* conclusion is to be drawn: Of a small measure which contains only a thirty-sixth part of a lug, the

[paragraph continues] Thora is particular that the liquid should not be measured with foam; of a hin or a lug, or a half, third, or quarter of a lug, so much the more the measure must be full without foam.

Rabha said: Why is the redemption from Egypt mentioned in the Scripture in conjunction with usury, zizith, and weight? The Holy One, blessed be He, said: It was I who distinguished in Egypt between a first-born and another one, and it is also I who will punish one who lends money upon usury to an Israelite with the pretext that the money belongs to a heathen; and also him who hides his weights in salt, and finally him who puts thread of χαλαιγος in his garment and saying: it is purple-blue prescribed in Scripture for Tshitstits; as in these three things human beings can easily be deceived.

R. Huna happened to come to Sura of Euphrates. On that occasion Hanina of the same place questioned him: Why did the Scripture mention the redemption from Egypt in conjunction with the eating of reptiles? And he answered. "So said the Holy One, blessed be He: I who have distinguished in Egypt, etc., will punish one who mingles the inwards of unclean fishes with the inwards of clean ones and sells them to an Israelite. And he rejoined: What I do not understand is, why is here mentioned "who brought you up," which is not the case in the other place where the redemption from Egypt is mentioned?

Said Rabbina: To that was taught by the school of R. Ismael: The Holy One, blessed be He, said: If the only reason why Israel should be redeemed from Egypt would be that they should not defile themselves with the consummation of reptiles, it would be sufficient [*i.e.*, the expression, Who brought you up, is in the Hebrew *Hamnaleh*, which means also, a higher standing]. To the question, however, Is then the reward for not eating reptiles greater than that of the three things mentioned above (to which the expression, I brought you up, is not used)? he rejoined: The question here is not about reward, as the Scripture means they were brought up in such a manner that they felt disgust to defile themselves with reptiles.

What is considered increase, etc.? Is then all that mentioned before in the Mishna not increase? Said R. Abuhu: The cases of the first part are biblically prohibited, and those of the latter rabbinically only. And so also said Rabha, with the addition that to the first part the verse [Job, xxvii. 17]: "He may prepare it, but the just shall put it on," applies (*i.e.*, that the children, even being upright, are not obliged to return usury taken by their

wicked fathers). But why not so much the more in the second part, which is rabbinical? Say then: The above cited verse applies to the first part also, although the first part treats of direct usury and the second of indirect. R. Elazar said: Direct usury is to be replevied by the court, which is not the case with indirect usury. R. Johanan, however, maintains that even the former is not to be replevied. Said R. Itzhak: The reason of R. Johanan's decision is the following verse [Ezekiel, xviii. 13]: "Hath given forth upon usury, and hath taken increase, shall he then live? He shall not live; he has done all these abominations." Hence such a man is charged with a crime of capital punishment, from whom damages are not collected.

R. Adda bar Ahaba says of the following [Lev., xxv. 36]: "Take thou no usury of him or increase, but fear thy God." Hence nothing is mentioned here about the restoration (as is mentioned in the case of theft or robbery).

Rabha, however, said: It is to be deduced from the first part of the above cited verse itself [Ezekiel, xviii. 13]: "He shall surely die: his blood shall be upon him." Hence the usurers are equalled to blood-shedders; as bloodshed cannot be restored, the same is the case with usury. R. Nachman bar Itzhack said: "The reason for R. Elazar's theory stated above is because it treats in the latter part of the verse mentioned before [Lev., *ibid*., *ibid*.], that he may live with thee, which means, return him the usury taken, that he may live. R. Johanan, however, applies this verse to the case mentioned in the following Boraitha: "If two were on the road (in the desert), and one of them has a pitcher of water which is sufficient for one only until he may reach an inhabited place, but if both would use it both would die before reaching a village;" and Ben Patturo lectured that in such a case it is better that both should drink and die than one should witness the death of his comrade. (And so it was practised) until R. Aqiba came and taught: It is written: "That thy brother may live *with thee*" (but shall not die with thee, *i.e.*, the life of thyself is preferred to the life of thy brother).

R. Saffra said: Promised usury, which, according to the Persian Law, is collected from the borrower for the lender, according to our Law must be collected from the lender for the borrower; and that which, in accordance with the Persian Law, is not to be collected, is also not to be collected from the lender, according to our Law. Said Abayi to R. Joseph: Is this to be considered a standing rule? Are not then two saahs of grain promised for one

saah, that the Persian court collects from the borrower for the lender, and we do not return such to the borrower? And he answered: They do not collect it because of usury, but because they consider it as a deposit in the hand of the borrower when the grain was dear, and now, as it is cheaper, they collect the value of the deposited grain, which may amount to the extent of two saahs (according to our Law, however, it is prohibited, because it appears usurious). Said Rabbina to R. Ashi: Let us see. A pledge without account (*i.e.*, if one has borrowed money for a vineyard and the creditor used the fruit of it without deducting anything of the debt, but for usury of the money), if the borrower used the fruit for himself, the Persian court collects from the borrower for the lender; and according to our law in such a case we do not collect from the lender for the fruit he has used (as it is not considered direct usury, because it may happen that the vineyard should be sterile)? And he answered, that this also is not because of usury, but because they consider it a regular sale. (The lender paid money for the vineyard, and it is considered his until the borrower repays the amount, which is considered another sale.) Then how is R. Saffra's statement to be understood? His statement is concerning money matters only, direct usury, which is allowed by the Persians, and such a promise is collected by their court; in accordance with our Law, if the lender has already taken charge, it is to be collected from him by a court, and this is in accordance with R. Elazar's theory stated above, and also his further statement that what the Persians do not collect from the borrower speaks of usury which was not fixed with the loan, but taken previously or after it (as will be explained in the last Mishna of this chapter).

If one buys wheat, etc. And if he has no wine, is this to be considered increase? Have we not learned in the following Boraitha: "A price must not be fixed on fruit before the market prices

are announced; but when already announced, one may sell it for this price even if it is not in his possession as yet?" Said Rabba: Our Mishna treats when he came to take it for his debt, as is illustrated in the following Boraitha: "If one claims a hundred zuz, and goes to the barn of his debtor, saying: 'Give me my money, as I intend to buy wheat for it,' and he says: 'You can buy it from myself at the existing market price, and I will deliver it to you in monthly instalments during this year,' it is prohibited (although it would be allowed if he would advance him cash now), as the old debt is not considered for cash at the time

of this agreement." (Hence the statement of our Mishna that when he has no wine at the time it is considered an increase, which is prohibited.) Said Abayi to him: If so, then even when he possesses the wine it should be considered an unlawful increase (as the wheat which he claims is an old debt)? Therefore, said Abayi, the Mishna is to be explained as R. Saffra illustrated the law of usury taught in the school of R. Hyia: "There are things which in reality ought not to be considered usury, and nevertheless they are prohibited because they *appear* usurious." How so? (Illustrates R. Saffra:) If one said: "Borrow me a mana" (which is twenty-five selas), and he answered: "I have no money in cash, but I can furnish wheat for a mana," and he accepted, and thereafter the lender buys it from him for twenty-four selas, this is lawful, but nevertheless it is prohibited to be practised, as it appears usurious. And similar to this case may be the case in our Mishna illustrated; namely, if one said: "Borrow me thirty dinars," and he said: "I have no cash, but I can furnish you wheat for this amount," and he accepted, and thereafter the lender bought from him for a golden dinar (which is twenty-five silver dinars) as the market price at that time, but before delivering it to him the price increased to thirty, and when the lender came to require his wheat the borrower said: "I have no wheat, but wine for thirty dinars," then, if he possesses it he may do so, as he took from him a trade article and repays him with a trade article, but if not he will be compelled to give him the value of the wheat at the increased price (*i.e.*, thirty dinars), and this appears usurious. Said Rabha to him: If so, why does the Mishna state, Give me my wheat (the value of which when he bought it was only a golden dinar; the borrower of the wheat is considered now a seller and the buyer has not made a drawing or paid any money for it that he should acquire any title to it, hence the seller may retract and give him back twenty-five dinars; we must then say that the lender claims thirty dinars, the value of the wheat he sold him first): [1] then let the Mishna state, Give me the value of my wheat? Read, then, "The value of *my* wheat." But does not the Mishna state: "Which he desired to sell," and according to your theory it should state: "Which he sold"? Read, "Which I *sold*." But the further expressions: "I accept it for thirty," "so is the

market price," could not be explained in accordance with your theory? Therefore said Rabha: When I will die, R. Oshia will come to meet me, as I try always to explain his Boraithas in accordance with the Mishnayoth. And there is a Boraitha taught by the same, as follows: "If one claims a mana and stands at the barn of his debtor, saying, Give me money, as I desire to buy wheat for it, and he answers: I possess wheat and can furnish it to you at the market price (and the lender accepts it), then, when the time to sell the wheat arrived, and he required his wheat for sale, as he wants to buy wine to sell it in season, and he says: I possess wine, buy it from me at the market price (and he again accepted), and when he came, in season, requiring the wine for the purpose of selling it to buy oil for the season, and he says: I have also oil and you can buy it from me at the existing market price--in all these cases, if he possesses the articles, it is allowed;

if not, it is prohibited, because it appears usurious." And the expression in our Mishna: "If one buys wheat," means that he bought it for his previous loan.

Rabha said: From the above cited Boraitha three things may be inferred: (*a*) That with a loan articles may be bought at the existing price to deliver in instalments although the price may be increased, and it is considered as though he would give him cash--not in accordance with R. Hyia's statement above, that it is not so considered; (*b*) provided the article is ready by the debtor for delivery; and (*c*) R. Janai's statement [1] that there is no difference between the article and the money; as it is allowed to accept an article bought at the existing price even if afterwards the price increased, so is it also allowed to accept the difference in money.

The same said again: As the above theory is correct, there is no difference even if the article is not ready for delivery by the seller to buy of him at the existing market price, provided he takes the money now (as he can buy the article everywhere, it is considered as if it were ready for delivery).

R. Papa and R. Huna b. R. Joshua raised an objection to his statement (*supra*, p. 151): "In all cases, if he possesses; . . . if not, it is prohibited." And he answered: (What comparison is it?) There is a loan and here a sale.

Rabha and R. Joseph both said: The rabbi's decision that one may buy articles to deliver them in instalments at the existing

market price (in the larger cities, without fear that it appear usurious [1]) is because the buyer may say: I do not consider it favorable even should the price increase during the year, as for the cash I have forwarded to the seller I could buy in the cities of Hini and Shili, at a lower price than in the larger cities, all I need for this year. Said Abayi to R. Joseph: According to thy theory, it should be allowed to lend a saah of grain in the time when it is cheap, to return the same measure to him when it is dear, as the lender can say: I do not see any favor in this, as I could keep the wheat in my store until that time (and it is said above that this is not allowed, as it appears usurious). And he answered: There is a loan, but here is a sale. Said Ada b. Abba to Rabha: After all, it is still an advantage to the buyer, as he would have to pay the broker (*i.e.*, has he not the advantage of saving the broker's fee?). And he rejoined: It treats when he pays the same to the seller. R. Ashi, however, said: A man's money does the brokerage for him (*i.e.*, dealers come to the wholesaler directly).

Rabba and R. Joseph both said: One who buys grain in the time when it is ripe, but before it was harvested (when the market price is not yet fixed, and it is said above that, from him who possesses, it is allowed to buy even before the price is fixed), he must convince himself by seeing the grain at the barn of the seller. (Asks the Gemara:) To what purpose? If to acquire title, the seeing would not do (without drawing it)? And if in case of retracting by the seller he should be classified with those who have to accept the curse (mentioned in Chap. iv., Mishna I.), is the same not the case if he has not seen? Yea, it is for that purpose; but, usually, he who buys grain in the above-mentioned time buys it of two or three farmers; and then, if the farmers have seen him at their barns, they are sure that the buyer relies upon them. But otherwise the farmer may say: I thought you found better ones and you did not care any more to take mine, therefore I sold

it out. Said R. Ashi: Now, coming to the conclusion that the relying upon him is the reason of the above statement, it is sufficient even if he had told him: I rely upon you at any other place.

R. Nahaman said: The rule of usury in transactions is:

[paragraph continues] If he sells him the article cheaper because it is not yet in his hand, it is forbidden. He said again: If a wax dealer says to the buyer: "I need money and you can get now five wax cakes for a zuz instead of the fixed price, which is four," if these cakes are ready for delivery he may do so, but not otherwise. Is this not self-evident? Lest one say that the same is the case when the wax dealer has to gather his cakes placed with others' in the city, as this is similar to the case: "Lend me . . . until my son will return with the keys," mentioned above, he comes to teach us that this case, that they are not collected as yet, is not to be considered if they would be in his hand.

The same said again: If one found a surplus in the small coins he borrowed, he must return him the surplus, provided such an error is usual. If, however, it could not be supposed as an error, he may consider it a present of his friend. What error is to be considered usual? Said R. Aha b. R. Joseph: To the number of tens and fives (*e.g.*, if he had to give him two score and he found twenty-one or twenty-two, or he had to give him twenty-five and he found twenty-six or twenty-seven; but not if he found twenty-five instead of twenty). Said R. Ahab. Rabha to R. Ashi: But if the lender was a miser, so that a present from him is unimaginable, how then? And he answered: Then it can be supposed that with this he returned him the sum which he robbed him of so me time ago, as we have learned in the following Boraitha: "If one has returned robbed money with an account of other money he had to give him, he has done his duty." The former questioned again: But how is it if he never did any business with him? And he rejoined: Even then it may be supposed that another one who robbed him of the same amount told him to do so, when it will occur that he will require a loan from him.

R. Kahana said: I happened to be at the college when Rabh I had finished his lecture and I heard him saying: "Melons, melons," and did not know what he said about them. After Rabh left, the college men told me that he had said as follows: If one advanced money to a gardener for melons, to deliver to him thereafter, and his melons usually were the size of a span, the price of which was ten for a zuz, and he promised to give him the same number at the size of an ell for the advanced money, this agreement is of avail. Is this not self-evident? Lest one say that because they are growing from themselves it is allowed, he comes to teach that even then it is only when he possesses such. And according to whom is it? To the Tana of

the following Boraitha: "If one goes to milk his goats, to shear his sheep, or to take out honey and wax from his hives, and he offers to sell the products by the advance of money for a cheaper price, it is allowed. If, however, he says: 'I will sell you the above products to a certain quantity which will be produced in the future, it is prohibited.'" Hence, we see that although they grow from themselves it is, nevertheless, prohibited. Rabha, however, said the articles are not similar to the case of melons, as the same melons which are now small will become big by growing themselves, but milk, wool, or honey of the bees is not grown at all, as he takes the milk out to-day and on the morrow there is other milk instead, and the same is with the shorn wool and the

honey. Therefore, the above-mentioned case of the melons is permissible.

Abayi said: One may say to his comrade: "Take four zuz for a barrel of wine you possess, with the condition that if it should become sour you should be responsible, but if it becomes dearer or cheaper it should be charged on my account." Said R. Shrabia to him: Is this not a case in which the profit is to be very likely expected, and little loss from damage (*i.e.*, the increase in price is usual, and its becoming spoiled unusual, and there is a rule that in such cases it must not be done)? And Abayi answered: This would be correct if he would not accept in case it became cheaper, but since he accepted this also, both chances, of profit and damage, are alike.

MISHNA *II*.: A lender must not dwell in his debtor's house for nothing, or even for decreased rent, as it is usury.

GEMARA: Said R. Joseph b. Menjumi in the name of R. Nahaman: Although it was decided that one who occupies the court of his neighbor without his knowledge need not pay any rent (First Gate, p. 40; if, however, he said to him: Borrow me some money and dwell in my house, he must pay him rent. If however, while dwelling there for nothing he lent him any money, he need not pay. Why so? As the loan was not made previously for this purpose, it does not matter.

Abayi said: If a debtor who sold grain, four measures for one zuz, had to pay a zuz usury, and furnished to his creditor five measures for the same, then the court that levies the usury levies only four measures, as the fifth may be considered a present. Rabha, however, says: All the five must be levied, as all the five together came to hand by usury.

Abayi said again: If a debtor who owes four zuz usury has

furnished a garment to his creditor, when the court levies the usury it levies only four zuz, but not the garment. Rabha, how. ever, maintains that the garment is to be levied, for the reason that people may say that the garment he wears is of usury.

Rabha said: If one claimed thirteen zuz usury, and at the same time he hired a court of his debtor for the same price which is worth only ten, when the usury is levied all the thirteen zuz are to be collected. Said R. Aha of Difti to Rabbina: Why should not the creditor claim: "Because the money was of a profit I did not care to give him three zuz more than the value, but now, when they levy the money, why should I be charged more than others?" And he answered: The owner of the court may say: "There is no difference, as so was my agreement and you accepted it."

MISHNA *III*.: Hiring may be increased, but not sale. How so? The owner may say to the hirer: "You can have this court for ten selas a year, if you give me the money in advance, but if in monthly instalments you have to pay one sela a month." It is, however, not allowed for the owner of a field to say: "If you advance me a thousand zuz you can have this field, but if by instalments, you have to pay twelve hundred."

GEMARA: Why are the two cases so different? Rabba and R. Joseph both said: Hiring is usually paid afterwards, and so if he pays him monthly he pays only what was due the last day

of the month, as during the month he did not owe him anything, consequently there is no reward for waiting for the payment; and the lower price which he offered him, for paying in advance the money for all the year, must also not be considered usury, as the owner has a right to reduce the price for occupying his property. With sale, however, it is different, because the money must be paid with the act of the sale, and he acquires title immediately. Consequently, the increase of 200 for the instalments is usury. Said Rabha: The rabbis have investigated this matter to find its basis in the Scripture, and finally based it upon the verse [Lev. xxv. 53]: "Hired from year to year," which signifies that the hiring of this year is paid at the beginning of the next.

But if by installments, etc. R. Nahaman said: It is allowed to increase the price of an article when the money, is to be paid a certain time after delivering (provided he does not say: "If for cash, you will have it cheaper"). And Rami, according to others Uqba b. Hama, objected to him from the last part of our Mishna; and he answered: There he said plainly: "If you advance me

the money you will have it cheaper" (which certainly appears usurious). Said R. Papa (who was a brewer): I do so with my customers. I sell them on Tishri at the price of Nissan, thinking that to me it is undoubtedly allowed, as my beer would not get spoiled until Nissan and I am never in need of money (so that I should sell cheaper for cash), and I do only a favor to my customers by crediting them. Said R. Shesheth b. R. Aidi to him: Why should the master take the example of yourself and not of your customers? You should consider these circumstances, that if they would have money they would pay you at the price existing in Tishri? Said R. Hama: I do so in my business, and to me it is allowed beyond any question (Rashi explains that he was a wholesale dealer in many articles, and he sold them to the travellers at the market price of the large cities, with the condition that they should pay him when they returned, and he was also responsible for his goods on the way until sold; they, however, were allowed to buy articles for the money obtained and to sell them in other places), as they are pleased that I take all the responsibility of the goods until sold, and also that they are free of duty because the goods bear my name (the Persians used to free the rabbis of duties), and furthermore that my goods have the preference for sale, as it is announced in the market that no one can sell the same goods until mine are sold, because they bear my name. [1] The Halakha prevails in accordance with R. Hama, with R. Elazar (who says that usury is levied), and also with R. Yanai, who said above (p. 152) that there is no difference between the articles and the money.

MISHNA *IV*.: If one sold his field, taking a deposit and saying: "You may take possession of the field belonging to you from to-day, when you will bring the balance," such an act is not allowed. If, however, one has borrowed money on his estate with condition that if he will not repay within three years it shall belong to the lender, it belongs to the lender if not paid; and so did Baitus b. Zunin under the supervision of the sages.

GEMARA: But who uses the fruit in case he sold his field by a deposit? According to R. Huna, the seller; and according to R. Anan, the fruit must be deposited until the remainder is paid. And they do not differ. R. Huna speaks in case the seller told him he shall acquire title when he will bring the balance, and

[paragraph continues] R. Anan speaks in case he said, When the balance will be paid in time title shall be acquired by you from to-day.

R. Saffra learned in the Boraithas, treating upon usury, taught in the school of R. Hyia, concerning the statement of our Mishna: There are cases in which the use of the fruit is permitted to both, prohibited to both, permitted to the seller only.

And Rabha illustrated it thus: The first case applies when the agreement was that he shall acquire title for the amount of the deposit only; the second applies when he was told that if he will pay the balance in time, title to the property shall be given to him from to-day; the third applies, if he was told, A title will be given to you at the time when you will bring the balance; and the fourth applies if he was told, Title is given to you from now and the balance you owe me should be considered a loan.

According to whom is the statement of our Mishna that both are prohibited? Said R. Huna b. R. Joshua: At any rate, it is not in accordance with R. Jehuda, who said: If there is only one side of usury (*i.e.*, if, for instance, the buyer should not keep his promise, there would be no usury if the seller used the fruit) it does not matter. (The other parts of the above Boraitha, how. ever, are in accordance with R. Jehuda also, as there is a certain usury without any doubt).

If one has pledged his house or field, and the lender said to him: "You may sell it to me for such and such amount, but if you sell it to another, you will have to add such and such an amount to my loan," this is usury. But if he says: "Should you wish to sell for its value, I shall have the preference," it is allowed. The same is the case if one has sold a house or a field with the condition that if he should have money thereafter, the estate should be returned to him; it is considered usury (as the money is considered a loan for which the lender uses the estate until the money is returned). If, however, the *buyer* says: "I will return it to you when you will have money," such an agreement is allowed. [And the above-mentioned R. Huna said that these two Boraithas also are not in accordance with R. Jehuda, as there is only one side of usury (*i.e.*, that should the seller or bor. rower not have the money necessary, there would be no usury) which is allowed according to his theory.] But what difference is there if the seller made the condition of returning when he will have the money, or the buyer made it? Said Rabha: That is, if the buyer said, "I will do so not as a condition but by my good will."

There was a man who bought an estate without any security--*i.e.*, that the seller did not take the responsibility to return him the money should the estate be taken away from him by the seller's creditors. Seeing, however, that the man looked downhearted, the seller said to him: "Why art thou grieved? Should it be taken away from you I will collect for you the fruit and the improvement." Said Amimar: This is only a gossip. Said R. Ashi to him: Your reason is, because this condition should be made by the buyer and not by the seller; does not the above Boraitha state that if the seller said, "I will return it to you, etc.," it is allowed, because such a condition ought to be made by the seller and not by the buyer? And Rabha explained this that only when the buyer says: "It is not a condition, etc.," from which it is to be inferred that if he did not add this it would not be considered as a gossip? And Amimar rejoined: Rabha means to say thus: As this condition should have been made by the seller, and it was not, then when the buyer says, "I will do it," it is to be considered as though he would add: "from my good will."

It was taught: It happened that a sick man wrote a divorce to his wife and she heard him sigh. Then she said to him: "Why do you sigh? If you will live I am yours." Said R. Zebid: It is to be considered a gossip only. Said R. A'ha of Difti to Rabina. And should it not be considered so, what harm could there be? Does it then depend upon her to make a condition in the divorce? That depends on the husband only. (And he rejoined:) Lest one say that, hearing her statement, the husband resolved to give the divorce upon this condition, he comes to teach us that it is not so.

If one has borrowed money on his estate, etc. Said R. Huna: The case is if the condition was made at the time the money was paid. If, however, it was made thereafter, title is acquired according to the amount paid only. R. Nahaman, however, maintains that even then title is acquired on the whole estate; and R. Nahaman acted accordingly in a case of the Exilarch. R. Jehuda, however, tore the document, and the Exilarch told this to R. Nahaman, and he said: (It does not matter;) a boy tore it as, concerning jurisprudence, all are considered boys in comparison with me. Afterwards, R. Nahaman retracted from this statement, and said that even when the condition was made at the time the money was given, it is of no avail. And Rabha objected to him from our Mishna: "If he will not repay within three years . . . it is his." And R. Nahaman answered: I say that an

[paragraph continues] *asmakhta* [1] gives title. Minjumi, however, maintained that it does not. But then our Mishna contradicts Minjumi? He interprets our Mishna as treating of when the seller said: Title should be acquired by you from now. Said Mar the Senior and the junior, sons of R. Hisda, to R. Ashi: So said the sages of Nahardai in the name of R. Nahaman: An *asmakhta* gives title only in time but not thereafter. And R. Ashi rejoined: This would not be correct, as there is a rule that a thing which gives title in time gives also thereafter. Perhaps you mean to say thus: If the borrower sought him within the time of the loan and told him: Acquire title on it, as I will not redeem it any more, then title is acquired; but if he said the same to him after the time has elapsed, it counts nothing, as it is to be considered that he said so only because he was ashamed for the delay of the payment. (Says the Gemara:) In reality, title is not acquired even within the time, as the saying of the borrower is to be considered as a postponement of time only, as he would not like to be troubled when the time of payment arrived.

R. Papa said: The *asmakhta* sometimes gives title and sometimes does not. If, *e.g.*, he finds his debtor on the day of payment drinking beer, and not caring about the payment of his debt, it is to be considered that the debtor does not intend any more to redeem his pledge, and then title is acquired by the lender; but if he found him on that day searching for money, title is not acquired. Said R. A'ha of Difti to Rabina: Even in the first case title should not be acquired, as it may be the debtor drinks only to drown his grief, or he relies upon some one who assured him that he would furnish him money. Therefore said Rabina: If we see that the debtor does not care to lower the price of his goods for the purpose of collecting the money due, it must be considered that he does not care any more for the pledged estate, and title is acquired. And the above R. A'ha rejoined: Even this proves nothing, as it may be he does not want people to know his circumstances, which would cause a reduction in value of his estate. Therefore it may be assumed that R. Papa's statement was thus: "If the debtor was particular on that day with his estate not to have it sold, even for its value, it is certain that he does not care

for the estate pledged, and title is acquired. R. Papa said again: Although it is decided by the rabbis that an *asmakhta* gives no title, it is nevertheless considered a hypotheca of which he should collect his money. Said R. Huna b. R. Nathan to him: Has then the debtor at the time pledged said: "Acquire title on the estate to the amount of my debt"? Said Mar Zutro bar R. Mari to Rabina: And even if he said so, would the title be acquired? The stipulation of the pledge was that if he does not repay him within three years then he may collect from this estate, and this is again only an *asmakhta*, which gives no title. Therefore the hypotheca mentioned by R. Papa is to be explained, that the stipulation was thus: "From this estate you shall collect your money within three years (*i.e.*, I shall sell out from it for your money). However, should the money not be collected within that time, all the estate shall belong to you after the elapse of above-stated time."

There was a man who sold an estate with security, and the buyer questioned: "Should this estate be taken away by your creditors, will you then repay me from the very best of your estates?" And he answered: "From the very best of my estate I will not, as I need it for myself; your money, however, will be collected of other best estates I possess." Finally it was taken away, and the very best estate of the seller was overflooded. R. Papa (before whom this case was brought) thought to collect the buyer's money from the best estate still left in his possession. (The seller, however, claimed that the agreement was, he should repay him from the best but not from the very best; and as now the very best is overflooded, this next best is now the very best, which he needs for himself, so he has a right to repay him from the estate lower in value.) Said R. Papa to him: "This estate which was secured is still in your possession, and you have to repay from it."

Said R. A'ha of Difti to Rabina: "The claim of the seller (just explained) is a just one, as this estate which is not overflooded is now his very best, which according to the agreement was not security." Rabi b. Shiba was a creditor of R. Kahana, who said to him: "Should I not pay you at a certain time, you may collect your money from this wine." Finally the wine became dearer, and R. Papa was about to say, that the law of *asmakhta*, which gives no title, applies only to real estate which was not for sale. This wine, however, which was for sale, is considered money. Said R. Huna b. R. Jehoshua to him: "So

was said in the name of Rabba: 'Everything made with a stipulation, gives no title.'" R. Nahaman said: "As the rule that an *asmakhta* gives no title is accepted by the rabbis in case of a loan with pledged estate for three years, if the lender took possession of it and used the products he must return both."

(Said the Gemara:) "Shall we assume that R. Nahaman holds that a relinquishment by an error is not to be considered? Was it not taught concerning one who sold out the products of his tree, that, according to R. Huna, he may retract from the sale before the fruits were produced, but not afterward; and according to R. Nahaman he may, even in the latter case?" He, however, said: I admit that if the buyer used already the products in question, it is not to be collected from him (hence we see that a relinquishment by an error is considered?). (The answer was:) There was a sale, but our case is a loan, and the lender used the products for the interest of his loan, which is considered direct usury, which is to be collected by the court. [1] Rabha said: I was sitting before R. Nahaman at the time he said, "I admit, however," etc. (just quoted), and was about to object

to his statement from the law of cheating mentioned above, that the amount cheated must be returned, although it was done willingly. (*Supra*, p. 126.) He, however, looked at me and understood my intention, and he therefore brought as a support to his statement the following Mishna (Kethuboth ii., Mishna 6): "She who refuses to cohabit with her husband, etc., is not entitled to her marriage contract." (The compensation for usufruct, etc.), from which it is to be inferred that although her husband has not any right to use the fruit belonging to her, it is not to be collected from him if he has done so. (Says the Gemara:) In reality, however, both the objection and the support do not hold; there is no objection from cheating of which the cheated one was not aware that there is such, that he should relinquish it; and there is no support from the woman in the Mishna cited, that each of the women mentioned in the cited Mishna would be pleased to be counted among the married ones.

There was a woman who said to a certain man: "Go and buy for me an estate from my relatives." He did so. The seller, however, said to him: "I sell it to you with the stipulation that

when I shall have money, I shall repay you and take back my estate." And the messenger answered him: "You and Navla [1] are brother and sister and you can settle this matter between you." Said Rabba b. R. Huna: "Such an answer may be considered satisfactory, that the seller should rely upon it, and therefore he doesn't give title." (Questioned the Gemara:) "According to this decision, the estate certainly must be returned; but how is the law with the products if she used them? Is it considered direct usury, which is levied by the court, or indirect, which is not?" Said Rabba to R. Huna: "It seems that it is considered indirect," and so also said Rabha. Said Abayi to Rabba: "How is the law with an estate pledged without any stipulation, when the lender has used the fruit? Shall we assume that the reason, in the above case, which was considered indirect, is because it was not determined at the sale she should use the fruit, and the same is the case here? or it is not to be compared, because there was a sale, and here it is a loan?" And he answered: "This reason holds good, in this case also." Said R. Papi: Rabina acted in his court not in accordance with Rabba b. R. Huna's statement, but has reckoned the value of the fruit used and collected. Mar b. R. Joseph, in the name of Rabha, said: "In places where it is the usage for the lender to use the fruit from a pledged estate without any deduction of the debt, and the borrower has a right to return the money at any time, then is the law as follows: If the lender has used the products to the extent of the amount of his loan, he may be ejected from the estate; if, however, he has used more than the amount of the loan, the court may not collect from him, neither may it be deducted from another debt which the debtor owes him. If, however, the estate belongs to orphans, then if he has used more than the amount due, it is to be collected, or deducted from another debt they owe him." Said R. Ashi: "As you came to the conclusion that in case he has used more than the amount due we do not collect from him, we do not eject him even if he has collected the amount of the money loaned, unless he is paid the money issued; because the ejecting is the same as if it would be *collected* for the product consumed by means of sale, and not by means of deducting from his loan, and this is not to be done with indirect usury." And R. Ashi

acted accordingly in a case of orphans irrespectively of age. Rabha R. Joseph, in the name of Rabha, said: In the places where it is the usage to pledge estates without stipulations, it is advisable that one shall not use the fruit unless by way of deducting something of the debt, as

then it is considered as if he would sell him the products for the amount deducted, and it appears not usurious. A scholar, however, must not do even this, but he must determine at the time of the loan how much he may use. But this would be correct only to him who holds that a determined quantity is allowed; but to him who holds that even this is not allowed, what can be said? [And it is known that R. Aha and Rabina are the two who differ on that point.] Let us then see. What kind of a determination is meant? If, *e.g.*, the lender stipulated, "I will use the fruit during five years without any deduction; at the elapse of that time, however, I will credit you with all products." Such a determination, however, is opposed by some sages, who maintain that as soon he uses the products without any deduction it is direct usury; we must therefore say that the determination mentioned by Rabha means, if he said: "During the first five years I will deduct from the amount due so-and-so; at the elapse of this time, however, I will credit you with all products." R. Papa and R. Huna b. Yehosha both said: "The pledged estates in question, a creditor of the lender has no right to collect from in case he dies" (because the deceased has nothing in the body of the estates, and the using of their products is considered movable property, which is not secured to a creditor after the death of the debtor, although it may be collected from him as long as he is alive; and the reason is that as long as he is alive, although movable properties are not secured to the creditor, the court has a right to levy on them for a debt for which the debtor has promised to repay, even from the garment of his body; but after his demise his orphans are not obliged to repay their father's personal debt if it were not secured by real estate). And also a first-born of the lender can not claim the double amount prescribed to him biblically, for the above reason, and the Sabbatical year makes the debtor free, as it is not considered a pledge, since the borrower has a right to eject the lender from the estate after the product was used to the extent of the amount due. In places, however, where it is not customary to eject the lender from the estate in question, a creditor and a first-born may claim their right on it, and the Sabbatical year does not make it free. And Mar Sutra, in the name of R. Papa, said that, as to the estate in question,

where it is the usage to eject the lender, he may be ejected even from using dates that were blown down by wind on the rush mats. If, however, the lender has already picked them up from the rush mats, and put them in his vessels, title is acquired. And according to him who says that when the vessels of a buyer are placed in the care of the seller for the purpose of putting in them the things bought it gives title to the buyer even in his absence, if the dates in question were put in the vessels of the lender by some one they give title to him even if he himself has not picked them up. It is certain that in countries where ejection is the usage, and the lender stipulates that he shall not be ejected, it is of avail; but how is it when the lender made the stipulation that he may be ejected, in places where ejection is not the usage--is it then necessary to enforce this by the ceremony of a *sudarium* or not? According to R. Papa it is not necessary, and according to R. Shesheth b. R. Aidi it is, and the Halakha so prevails.

If the borrower says to the lender: "Stop using the fruit, as I am about to furnish the money due," he must do so immediately (in places where ejection is usage). If, however, he says: "Stop using the fruit, as I am making efforts to get the money"--according to Rabina, the lender may not listen to him, and according to Mar Sutra, the son of R. Mari, he has to, and so the Halakha prevails.

R. Kahana, R. Papa, and R. Ashi did not use the fruit even by deduction; Rabina, however, used to do so. Said Mar Zutra: "The reason of him who does so is, because he compares this to the

biblical case [Lev. xxvii. 16], that although the fruits of the field mentioned there are of great value, he may redeem it for the sum of four zuz a year, [1] and the same is the case here (he may do so because he is not certain that there will be any products of the estate, consequently, he may buy it for a small price). However, he who does not allow this to be done holds that this case is not similar to the biblical case mentioned above--there is a sanctification for which the Merciful One allows it to be redeemed for such a trifle, but here it is a loan, and it appears usurious. R. Ashi said: "I was told by the elders of M'tha Mechasia (Suria) that an anonymous pledge holds good one year only; *i.e.*, that the borrower can eject the lender only after the elapse of a year, but not earlier." He said again: I was told by the same

authorities that a pledge is called *mashkhantha*, as the lender is considered from that time a neighbor (shakhan) to the borrower; so that if the borrower has to sell his estate, and the lender is willing to give the same price as offered by others, he has the same privilege as the preëmptor of an estate attached to that seller, to whom the laws give privileges to obtain it for himself in case he offers the same price as others.

Rabha said: The Halakha does not prevail, as the inhabitants of Papuna, who sell their goods on instalments for the same reason as R. Papa mentioned above (p. 156), and not as the inhabitants of Mahuza, who used to write in their notes the profit which they supposed the borrower would derive from the money taken on half profit, as who can assure that such a profit would be derived? Said Mar b. Amaimar to R. Ashi: "My father used to do so, and nevertheless when they claim that such a profit was not derived, he trusted them;" and he answered: This holds good only when they came to *him* with that claim; but how would it be in case he should die and the note falls into the hands of his heirs? [R. Ashi's talk was like an error which proceedeth from the ruler (Eccles. x. 5), and Amaimar died.] And also not as the farmers of the city of Narshah, who used to lend money to poor farmers on their land, and thereafter rented it to them for so-and-so many kurs yearly, and so they wrote in their contracts; "So-and-so has pledged his field to so-and-so, and afterwards he rented it for so-and-so many kurs." Had, then, the lenders acquired title on the field to be justified to rent it out? It is then direct usury. However, now that they write in their agreements: "I have bought from so-and-so such a field for so-and-so, and it was under my control such length of time, in which I have used the fruit and have deducted from the money paid, and thereafter I rented it to the former possessor for so-and-so many kurs yearly"--this is allowed, for the purpose not to shut the door for borrowers. (Said the Gemara:) After all, it is direct usury, as it can happen that the field should not yield so much product as agreed, and the lender takes the kurs of grain as interest for his money.

MISHNA *V.*: One who possesses articles for sale must not give them to a retail dealer to sell, with the stipulation to receive half profit from the sale, charging him the articles at wholesale market price. One must also not furnish some one with money in order to buy and sell articles for it, for half profit, provided he pays him separately as a laborer for his trouble. It is also not,

allowed to hatch hens for half profit, and also not to appraise calves and foals, according the value after two years, and making a half of it a compensation for the raising of them. Should it happen, however, that they die (the raiser must suffer half of their loss), provided the raiser is paid separately for his trouble and food. One, however, may accept the above animals without

any stipulation for half profit. And then they shall be kept calves until they become threefold and an ass until it is fit for carrying burdens.

GEMARA: A Boraitha in addition to this Mishna states "as a laborer," and Abyi explains "as a laborer of this profession."

The rabbis taught: "How much should he be paid separately? According to R. Meier: More or less, but it must be stipulated between them; according to R. Jehuda, it is sufficient even if he gives him a meal or some fruit. R. Simeon b. Johai, however, maintains that he should receive the amount a laborer is entitled to."

The rabbis taught: "Goats, sheep, and all other animals which are fed but do not labor, must not be appraised for the half. R. Jose b. R. Jehuda, however, says: Goats and sheep may, as the raiser has the milk and the wool for use, and they yield wool by being shorn, by passing through water, and by being plucked (in passing bushes, etc.); and also a hen, because she is laboring for her food (as she lays eggs)." (Says the Gemara:) And according to the first Tana (of the Boraitha), their milk and wool are not sufficient for his trouble and food? If agreement was that the raiser shall use milk and wool for himself, all agree that it is sufficient; the point of their differing is if it was agreed that the raiser should use only the whey of the milk, and whey and refuse of wool; the first Tana holds in accordance with R. Simeon b. Johai, who demands the full payment of a laborer, and R. Jose holds in accordance with his father, R. Jehuda, who says above, that one meal suffices.

The rabbis taught: "A woman may say to her neighbor who has eggs, 'You may give me four eggs and I'll let my hen sit on them for two little chickens she will hatch.' If, however, she says, 'I have the hen and you the eggs, let us divide the little chickens,' it is not allowed according to R. Simeon. R. Jehuda, however, allows this."

The rabbis taught: "In the places where it is the usage to pay the raiser for carrying the calves on his shoulder, it may be appraised, and it is not necessary to act differently to the custom of the country." R. Simeon b. Gamaliel said. "A calf and a

foal may be appraised with their mother and without any separate payment, even in those places where they pay separately for carrying calves (as the mothers are with them, there is no trouble in carrying them, and they are also fed by their mothers)." Said R. Nahaman. "The Halakha prevails in accordance with R. Jehuda, with R. Jose his son, and with R. Simeon b. Gamaliel." The sons of R. Ilish were summoned for a note which was issued by their father for half profit and half loss. Said Rabha: "R. Ilish was a great man, and he would not have issued a prohibited document; the note, therefore, may be explained that if his partner desired to obtain the half profits, then he had to suffer two-thirds of the loss, and if R. Ilish would have to suffer the half of the loss, then his partner would take two-thirds of the profit for his trouble." Said R. Kahana: "I told this to R. Zebid of Nehardae, and he rejoined: (It is not necessary to give the above explanation) about the note of R. Ilish, as it may be R. Ilish had some benefit from his partner, and it is in accordance with R. Nahaman, who said that the Halakha prevails with R. Jehuda; and I answered him: It was not taught by R. Nahaman, 'the Halakha prevails,' but the system of the above-mentioned sages is one and the same, and it seems to be so from his expression, 'R.

Jehuda, R. Jose his son, etc.' Should he desire to state that the Halakha prevails according to them, he would teach the Halakha prevails in accordance with R. Jehuda, who is more lenient than all others."

Rabh said: 'If one gives a calf for raising, with the stipulation that the profit and loss shall be equally divided, and besides a third increase of the present value should belong to the raiser, it is allowed." Samuel, however, maintains: "How would be the case if there should be no increase? Should then the man labor for nothing? Therefore he must fix a dinar for his labor." But Rabh himself is also of this opinion, as he said that the head of the calf belongs to the raiser. Is it not to assume that the head is an additional compensation to the third increase, said above? Is it not for the purpose that, should there be no third increase as agreed, he takes for his labor the head; hence here is the fixed dinar which Samuel desires? Rabh's decision that a third increase suffices without any other compensation means when the raiser has his own cattle to raise, as people say: "It is the same trouble to feed one as many."

R. Elazar of Hagruniah bought a cow which he gave to his gardener for raising, and gave him besides the half interest also

the head for his trouble. Said his wife to him: "If he would be an equal partner to you by giving the half money of the half cost he would give you the •••• [1] in your share." Afterwards they bought one in partnership and divided the •••• and R. Elazar said: "Let us divide also the head." Said his gardener: "When you issued the whole amount for the animal, I took the whole head to myself, and now when I have the half money in it, I shall take a half only?" R. Elazar answered: "When the money was my own, if I would not add a little to your share it would appear usurious; but now we are equal partners, and if you claim you had more trouble than I, the food for it was used from my garden, and while you were engaged therein, there was not much trouble feeding it."

The rabbis taught: Until what time must the raiser trouble himself with the appraised animal given to him for raising? Symmachos said: "With mules eighteen months, with asses twenty-four months, and if one desires to divide within that time, his partner may prevent him, for the years are not equal; as in the second year the trouble of feeding is more than in the first." There is another Boraitha: "Until what time must one trouble himself with the offspring of the appraised animal? With little animals, as goats and sheep, thirty days, and big animals, fifty days." R. Jose, however, said: "With little animals, three months, as their teeth are small, and he has to see what food is fit for them, and from that time further on the raiser takes a half of his value and a half of the increase belonging to his partner (as he takes the same of the mother)."

R. Menasya b. Gadah took his half and half of the increase of his partner; when he came before Abayi, he said to him: Who was the appraiser? [Perhaps the appraisement was not correct, and, secondly, this city is counted among those where it is customary to raise the offspring until grown tip, and there is a Mishna that where the custom is to do so no change is to be made.]

There were two Samaritans who had done business with each other. Afterwards one of them divided the money without knowledge of his partner, and the case was brought before R, Papa, and he decided that his act was correct, as R. Nahaman

said that cash money may be considered as divided. The next year they bought wine in partnership, and one of them divided without knowledge of his partner, and the case came again before R. Papa, who asked Who has appraised for you? Said the plaintiff to R. Papa: It seems to me that the master is partial" (as last year he decided in his favor, and also in this case). Said R. Papa: "Why then? Last year you did not complain that your partner took the better coins and left you the worse ones, and as there was cash, which need not any appraisement, he had the right to divide without your knowledge; but in this case, everybody knows that there is a difference between one kind of wine and another. How could you do it without knowledge of your partner and without any appraisement by a specialist?" It is mentioned above, R. Nahaman said money is considered as if it would be divided; however, this is only if the coins were equal, as, *e.g.*, all of them were circulating ones, or if old coins, which have more weight but are not in frequent circulation; but if they were of both kind, it must not be done without knowledge of the partner.

R. Hama used to rent zuzes daily for the smallest coin for each zuz, and he lost his money. [He thought that because he had not given it as a loan, but as a lease, it is allowed to do so as with another erub; in reality, however, it cannot be compared, as the same erub is to be returned, and if it was spoiled it is recognized; but here the same zuz is not returned, as he took it for business and returned him another one, and therefore it is considered a usurious loan.]

Rabha said: One may say to his neighbor: "I will lend you four zuz to keep for a longer time with the stipulation that you shall lend to so-and-so a zuz;" as the law has prohibited only usury that came direct from the borrower to the lender. The same said again: One may pay money to any one for giving a good reference to the money broker in order to borrow money from him. As Abba Mar, the son of R. Papa, used to take wax vessels from the wax dealers for reference to his father, that he should lend them money; and when the rabbis told R. Papa that his son took usurious money, he answered thus: Such a usury he may take; the law has forbidden only usury which comes from the borrower to the lender. Here, however, he is paid for his reference, and this is allowed.

MISHNA *VI.*: A cow, an ass, and all animals which are laboring for their food may be appraised, that the increase shall

be divided equally. In the places where it is customary to divide the offspring while they are yet small, it should be so done; and where it is customary to raise the offspring until they arc grown up, it should be so done. R. Simeon b. Gamaliel said: "That a calf and a foal may be appraised with their mothers." One may say to a farmer: If you would lend me some money which would enable me to manure your field, I shall give you twelve kur of grain for it, instead of the ten you demand; and the farmer may accept it without fear of usury (as the kurs added are considered for the use of a manured field).

GEMARA: The rabbis taught: This which is said above is allowed only with a field, but not with a store, and not with a boat; *i.e.*, the hirer must not increase the price for rent, in case the owner lends him money to buy stock for sale, or to buy a cargo for his boat. Said R. Nahaman, in the name of Rabba b. Abuhu: It may happen that the same should be allowed to be done also

with a store if he lends money to paint and decorate it, in order to draw customers; and also with a ship, in order to improve it with masts of which the hirer has the benefit in that it will sail faster; and if he borrows money for this purpose, he may increase the rent of the above-mentioned, and it is not considered usury, as the owner may raise his rent for a decorated store and an improved boat.

Rabh said: "One may rent a boat with the condition that, should it break, the hirer is made responsible." Said R. Kahana and R. Asi to him: "If he takes rent, he, the owner, must be responsible for damage, and when the hirer is responsible for it, then he must not pay rent." Rabh was silent. Said R. Shesheth: Why was Rabh silent? Was he not aware of the following Boraitha, although it was said that an iron sheep must not be accepted from an Israelite, *i.e.*, one must not both be responsible for the article hired, in case it becomes injured while laboring, and at the same time pay rent for it; but he may do so with a non-Israelite. It was said, however: One may say: I take your cow for the price of thirty dinars in case it will die; but all the time it will be alive in my hands I will pay you monthly a salah for her labor. This is allowed, because the appraisement of the cow was in case she is dead, but not when alive. Said R. Papa: The Halakha prevails that a ship may be hired for rent and at the same time the hirer should be responsible, and the custom of the sailors was that they pay rent when they take possession of the boat, and pay the value of the damage in case such occurs. Is

this then depending upon custom (as he must pay for the whole boat in case it breaks, then it is a sale, and the rent paid should be considered usury for awaiting of payment)? Because it was said in the above Boraitha that it may be done with a cow, as the appraisement was after death, the same is the case here. And as this law was accepted, it became customary.

R. Annan, in the name of Samuel, said: Money belonging to orphans may be lent for usury. Said R. Nahaman to him: Be cause they are orphans should we permit prohibited things for them? Orphans who are consuming that not belonging to them may go to their bequeather; but as you said the Halakha in the name of Samuel tells me the fact, you have seen that Samuel did so (as it cannot be that Samuel would declare that such an unlawful Halakha should be practised). And he answered: There was a copper kettle belonging to the orphans of Mar Uqba, which was under the control of Mar Samuel, who used to weigh it at the time of giving it to the hirer, and did the same at its return; and in case of the weight diminishing, got paid for it besides the payment for using it. Hence if it would not be allowed to lend the money of orphans for usury, how could he demand both to be paid for the diminished weight and at the same time to take rent for using it? Said R. Nahaman: "Such a thing maybe done even with bearded orphans, as the copper of the kettle decreased in value by using it, for which the orphans get no separate payment, as they take the value for the diminished copper only." Rabba b. Chila, in the name of R. Hirda, according to others, R. Joseph b. Hama, in the name of R. Shesheth, said: "Money belonging to orphans may be used for a business that is very likely to bring profit, and with small chance of loss."

The rabbis taught: "One who lends money for a business which is very likely to bring profit with little chance of loss, is wicked; for one which is likely to bring loss and far from profit, is pious. Equal to both, this is the custom of every just business man. Said Rabba to R. Joseph: How, then, should be done with money belonging to orphans? And he answered: "It shall be deposited in court, and the court shall furnish them with means for livelihood from time to time, according to their need." But if so, then the whole amount will be consumed? Said R. Ashi: "We look for a

man who is rich, trusted, listens to the Law, and never accepts a rebuke from the rabbis, and we give the money to him by the court for use in a business which is likely to bring profit with small chance of loss."

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MISHNA *VII.*: An iron sheep must not be accepted from an Israelite (*i.e.*, to lend money with the understanding that the debtor shall always be responsible for it, and at the same time he shall pay the half profit it brings), as it is direct usury. This, however, may be done with non-Israelites, as it is allowed to lend them, and borrow from them, for usury. This is also allowed to be done with a proselyte who obligated himself not to worship idols, but did not obligate himself to observe the Hebrew laws. An Israelite may lend to his race money belonging to non-Israelites for usury, provided the latter are aware of it, but not otherwise.

GEMARA: Is it to be assumed that the iron sheep in question is considered under the control of the acceptor? Then it would be a contradiction to the following Boraitha: "If one accepted 'iron sheep' from a heathen, the offspring are free from the law of first-born; *i.e.*, that if for the money in question was bought cattle, which brought young ones, the first-born must not be given to the priest, although it was in the hand of an Israelite (hence we see that it is considered under the control of the lender and not of the acceptor, for if it were under the control of the latter, why should the first-born of the half belonging to the Israelite be free from the above-mentioned law?). Said Rabha: The reason is, because, should he not repay the money, the heathen would take possession of the cattle, and if even this would not be sufficient he would also take the young ones; and so it is considered that the hand of a heathen rests in this case, and under such circumstances the law of the first-born does not exist.

It is written [Prov. xxviii. 8]: "He that increaseth his wealth by interest and usury, will gather it for him, that will be kind to the poor." What is meant by the expression, "that he will be kind to the poor"? Said Rabh: For example, as the King Sabura, who collects money from the Israelites for the purpose of distributing it among the poor of the Persians. Said R. Nahaman: Huna told me that not only usury-taking from an Israelite is meant, but also from a heathen; and Rabha objected this statement from [Deut. xxiii. 21]: "From an alien thou mayest take interest", and he answered: The expression in Hebrew is *tashikh*, which means you may give him interest if you need money and you cannot get it without; but to your brother (an Israelite) you must not do so under any circumstances. But is it not written plainly further on: "But from thy brother thou shalt not take interest?" It is written to show that he who does so transgresses both a positive and a negative commandment.

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[paragraph continues] He objected again from our Mishna, which states that with a non-Israelite it is allowed. Said R. Hyya b. R. Huna: The Mishna allows to do so only for the need of his livelihood, but not more than he needs, as the rabbis had prohibited the taking of usury from all mankind.

There are some who applied the above statement of R. Huna to the following: R. Joseph taught: It is written [Ex. xxii. 24]: "If thou lend money to my people to the poor by thee," which signifies, if there is one of thy people, and an alien, the former is to be preferred. If there were a poor and a rich man, the poor is to be preferred; poor of thy city and poor of another one, the

former has the preference. And to the question, Is it not self-evident that an Israelite is to be preferred? said R. Nahaman: Huna told me that it means that an Israelite should be preferred even if he can take usury from a heathen, and to the Israelite he must give it for nothing.

There is a Boraitha: R. Jose said: Come and see how the usurers are blind. If one calls his neighbor "wicked," his neighbor tries to take revenge on him as soon as he is able to do so, and the usurers bring witnesses, a scribe, a pen and ink, and write and sign that so-and-so reasons away the God of Israel (who has prohibited the taking of usury).

There is another Boraitha: R. Simeon b. Elazar said: One who has money and lends it without usury, to him applies the verse [Psalm xv. 5]: "That putteth not out his money for interest and taketh no bribe against the innocent. He that doeth these things shall not be moved to eternity." Which signifies that he who takes usury will lose all his possessions. But is it not a fact that they who do not take usury are also stricken with poverty? Said R. Elazar: The latter are to be raised again, but those who take money, if they fall will never rise again.

The rabbis taught: It is written: "Thou shalt not take of him usury or increase" [Lev. xxv. 36], but thou mayest be a surety for him. A surety for whom? For the lender [1] who is an Israelite? Is there not the following Mishna: The following transgress a negative commandment: the lender, the borrower, the surety, and the witnesses?--*i.e.*, to an alien. But is it not a fact that the aliens summon the surety first? Hence it should be considered that the surety takes usury from him. Said R.

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[paragraph continues] Shesheth: It speaks of when the alien has promised that in case of a suit he shall obey the decision of the Jewish court. But if so, then usury should not be taken from him at all. Said R. Shesheth: He promised only to obey the decision of the Jewish court in case of a suit, but not to observe the law of usury.

An Israelite may lend money belonging, etc. The rabbis taught: One may lend money belonging to an alien with his knowledge, but not otherwise. How so? If an Israelite borrowed money from an alien for usury, and when he was about to return it another Israelite said to him: Give the money to me and I will pay you the usury you have to pay to the lender;--this is prohibited. If, however, he takes him to the lender, he may do so; and the same is the case if an alien has borrowed from an Israelite for usury, and when he is about to return it to him, another Israelite meets him, and asks to have the money lent to him for the same interest he has to give to the Israelite, it is allowed; if, however, the alien takes him to the lender, it is prohibited. The prohibition of the last part is correct; but why is it allowed in case the Israelite takes the money belonging to the Israelite and pays usury? Is it not a fact that in the case of an alien no messenger is to be considered? Hence, even with the knowledge of the heathen, it should be considered that one Israelite takes direct usury from another Israelite? Said R. Papa: It means, he takes him to the alien that he may hand him the money personally. Is this not self-evident? Lest one may say that as the alien does it through the Israelite it is not allowed, he teaches us that it does not matter.

The rabbis taught: An Israelite who borrowed money from an alien for usury, and afterwards added the usury money to the principal amount, and then took a note from him for the whole

sum and then the lender became a proselyte: he may collect the whole amount. If, however, the note was taken after he became a proselyte, he collects the principal amount, but not the usury. The same is the case with an alien who borrowed money from an Israelite, and became a proselyte; if the note for the principal amount including the usury was given by him while he was yet an alien, the whole amount is to be collected; but if after he became a proselyte, the principal amount only is to be collected. R. Jose, however, maintains that even then the whole amount may be collected; and Rabha, in the name of R. Hisda, quoting R. Huna, said: So the Halakha prevails; and he himself declared that the reason of R. Jose's statement is that people

shall not say that he became a proselyte on account of this money only.

The rabbis taught: "For a note in which usury is mentioned the lender must not be allowed to collect even the principal amount, which he must forfeit as a fine. So is the decree of R. Meier. The sages, however, maintain that the principal amount *is* to be collected." What is the point of their differing? R. Meier holds that the permissible amount may be imposed as a fine for that of the prohibited one, and the rabbis hold that it may not.

There was a man who had pledged his vineyard to a lender, who kept it for three years, and afterwards said to the owner: If you sell it to me, good; but if not, I will hide the document of the pledge, and claim that the vineyard was *bought* by me (and as it is in my possession already three years, I will be trusted according to the law of (*Hasaka*) occupancy. The owner then assigned his vineyard in presence of witnesses to his minor son, and afterwards gave a bill of sale to the lender. This sale is certainly not valid; but the money which the lender has given for the bill of sale, is it to be considered as a loan with a note which is to be collected from an encumbered estate, or is it considered a loan without a note which is not to be collected from such estate? Said Abayi: Is this not the case of which R. Assi said above that when one admits his signature to the note, it is not necessary to have it approved by the court, and it is to be collected also from an encumbered estate? Said Rabha to him: What comparison is it? In the case of R. Assi, where the borrower admits that he owes the money with a note, another note can be written even if the original is lost; in this case, however, the bill of sale was written unwillingly, and another one cannot be written. Mrimar repeated Rabha's statement in the presence of Rabina, who cited to him then the statement of R. Johanan on the explanation of the Mishna, "that notes which were written with a previous date are of no avail"; and to the question, Why should it not be collected from the later date? R. Johanan answered: It is to be feared that he will collect from an encumbered estate at the previous date. Let him then say that the bill of sale is invalid because, if lost, it cannot be rewritten from the date of the first writing. And he answered: What comparison is it to our case? There it cannot be rewritten from the original date, but it can be rewritten with a later date; here, however, it cannot be rewritten at all for the reason said above.

MISHNA *VIII.*: One must not buy articles to deliver during the year, for a certain price before the market price is fixed. He may, however, do so afterwards--even when the seller does not possess as yet the articles bought--for the price he pleases, as, if he does not possess them, he can buy them from another. If the seller was first in the harvest, the buyer may stipulate the price with him for the sheaves, crop of grapes, vat of olives, clay balls of a potter, and lime

when it was already in the kiln, and also for manure of the whole year. R. Jose, however, maintains that he must not do so with manure unless he has it ready for delivery; the sages allow it. For all mentioned above he may make the stipulation that if the price will decrease he shall deliver them for the lower price. R. Jehuda says that to this effect no stipulation is necessary, as the buyer may claim in such a case the existing price or the return of his money.

GEMARA: R. Assi said in the name of R. Johanan: The price for the whole year must not be stipulated for at the existing price of the large cities, as these prices are changeable.

The rabbis taught: "One must not buy articles to deliver during the year before the market price is fixed. If, however, the new articles were four for a salah and the old ones three, the price must not be fixed until it will be a standing price for both of them. If mixed grain from different fields sold four measures for a salah, and from a single one three, the price must not be fixed until the market price will be fixed for both." Said R. Nahaman: A price may be fixed for the mixed one, as the existing market price for such grain. Said Rabha to him: Why should this differ from grain from a private field? You may say that, if the seller does not possess the mixed grain, he can borrow from another seller of mixed grain; is it not the same with private men? And he answered: A private man would consider that it is humiliating for him to borrow from a dealer of mixed grain, or, if you wish, I may say that one who gives money to a private man intends to get from him the best in the market.

R. Shesheth, in the name of R. Huna, said: "One must not lend money with the understanding that if it is not returned at a certain time the borrower shall furnish him articles at the existing price (*i.e.*, although this is allowed to be done in the manner of buying and selling, with a loan it is not allowed, as it appears usurious). Said R. Joseph b. Hama, according to others, R. Jose b. Abba, to him: Did, indeed, R. Huna say so? Was he not questioned whether it was allowed to be done as the students

of the college did, who borrowed money in Tishri and repaid with fruit in Tebeth at the price of Tishri? And he answered: There is wheat ready for sale in the cities of Hini and Chili which is always at a low price, and they can buy and repay their debt with that. We see then that he has allowed such a loan? He was previously of the opinion that it must not be so done; after. wards, however, when he heard that R. Samuel b. Hyya said in the name of R. Elazar that this may be done, he retracted from his previous opinion and decided that it may be done.

The rabbis taught: If one travelled with stock from one place to another, and while on the road his neighbor asked him to sell it to him at the price of the place he intends to go to (I will sell it here and will use the money until a certain time)--if the seller takes the responsibility of the stock while on the road it is allowed, but otherwise it is not (because it is considered a loan, and the increase in price appears usurious). If one was about to deliver his fruit to a certain city in which the price of it was higher, and some one told him that he has the same fruit in the above-mentioned city and he will deliver it to him there in exchange for the fruit in his possession here, then, if he really possesses the same in the above-mentioned city at the time he takes the exchange, it is allowed (because the fruit of that city is considered from now under the control of him who gives the exchange for it here). But if the one who offers the exchange has it not ready for delivery as yet, it is not allowed. For the grain dealers, however, it is allowed to borrow money with the understanding to repay it with grain for a lower price than the existing

one in that city, without fear that this appears usurious. Why so? R. Papa says: Because with his money he opens the door for them to buy grain at the lowest price at every place it is to be found; so he enables them to repay him with the grain at a lower price, even immediately after the loan, and therefore it is not to be considered usury for the prolongation of time for repayment. R. A'ha b. Iqa, however, says: It is favorable to them for the wholesale grain dealers to know that they sold their grain at a low price, so that the dealers will make the price of their grain still lower, so as not to lose their custom. What is the difference between these two reasons?' If the grain seller was a new one who was unknown as yet to the country grain sellers, then, according to R. A'ha b. Iqa's theory, it is not allowed for him to do so. In Sura four measures of grain could be bought for one zuz; in Kahfri there were sold six for one zuz; and Rabh had given money to the grain dealers in Sura

to buy grain for him in Kahfri at the rate of five measures for a zuz, taking the responsibility of the grain while on the road. But if he was responsible for them while on the road, why didn't he take six, as was the existing price in Kahfri? With such a prominent man as Rabh it is different (he allowed them one measure for their trouble). R. Assi questioned R. Johanan: May this be done with other articles besides grain? And he answered: Rabbi was about to do so with frippery, and R. Ismael b. R. Jose restrained him from this. With regard to a vineyard (*i.e.*, to buy the products of it, when they are not as yet ripe, at a low price, by advancing money for the same), Rabh did not allow this, because the price of the ripe fruit will be higher, and it appears as if he were taking usury for his money. Samuel, however, permitted this, as the buyer takes the risk of his money in case the vineyard may not yield the products, or in case they may become spoiled. Said R. Shima b. Hyya: Rabh, however, admits that this may be done with calves [1] (*i.e.*, to buy the offspring of the cattle for next year), and there is a great risk of miscarriage and other accidents. Samuel said to the grain dealers who used to give money to the farmers for the products of the next year: "I order you to help the farmer in his labor on the field, in order that you may acquire title to the body of the field, as, if you will not do so, your money will be considered as a loan, which is not allowed." And Rabha also said to the watchmen of the crops (who used to receive their payment from the grain when ready for delivery): "I order you to help the farmer in his labor all the time he is laboring, until harvest, as if you were hired for this purpose; for according to the law you would have to be paid only after all the labor is done, and then, when you receive a larger quantity of the grain than your trouble was worth, it would be considered that the farmer lowered the price for you, which is allowed. (If, however, you will not follow my order, the larger quantity would be considered as arising from waiting for the money which ought to be paid to you every day for watching, and appears usurious)." The rabbis said to Rabha: "You, master, consume usury, as usually the farmers hire their fields for the quantity of four kurs for each field, with the understanding they shall harvest it in Nissan, and you wait until Eyor and take six kurs." And he answered: "Your acts are unlawful, as the field is hired to the gardener, and if you compel

him to harvest in Nissan you are injuring him in many kurs, as the grain is not ripe as yet; but I am awaiting until Eyor and benefit him, and the two kurs more I take is for hiring the field and not for awaiting the payment of the money." There was a certain alien who pledged his house to R. Mari b. Rachel, [1] and afterwards he sold the same to Rabha. At the elapse of one year after the pledging took place R. Mari submitted the rent for the next year to Rabha, saying: The

reason why I did not submit the rent to you for the first year is because a pledge without a fixed time is a year, and if the alien would like to repay me within the year, he could not do so without my consent; but now, when the time is over, I have to submit to you the rent for your house. And Rabha rejoined: "I did not know that the house was pledged to you, and if I were aware of it, I would not buy it; but now we have to act according to the Persian law, which dictates that the buyer has not to collect the rent until he pays the whole amount, and I will also act so. I will not take the rent from the house until the debt on the house will be paid to you by the seller.

Said Rabha of Barnish to R. Ashi: "I call the attention of you, master, that the rabbis are consuming usury, as they pay for wine in Tishri and choose it in Teveth when it is already in good condition, and this appears usurious, as, if they would take it in Tishri, they would suffer the damage if spoiled; but by advancing the money, the responsibility rests on the seller." And he answered: They advance the money for wine and not for vinegar, and the wine which becomes sour during that time was so already in the beginning of the season, but it could not be so recognized it is, therefore, lawful for them to take the wine for which they have advanced their money. Rabina used to give money to the inhabitants by the shore of Shanwatha before the time of wine-pressing, that they should deliver him the wine thereafter, and they delivered him a barrel or two more than he bought. He came to question R. Ashi whether he could accept it or not, as it appeared usurious. And he answered: You may; as it is only a gift. Said Rabina: But I am afraid this should be considered robbery, as the estates they possess were occupied by

them after the owners of them escaped for not paying taxes, and the possessors paid the taxes to the Government (and as it is a law that estates cannot be considered robbed, they still belong to the previous owners; consequently the products are robbery). And R. Ashi rejoined: The estate is pledged for the taxes, and the Government says that the estate on which taxes were not paid is to be pledged to him who pays; consequently their occupation is lawful.

R. Papa said to Rabha: I call the attention of you, master, to the rabbis, who pay head-tax charge for those who cannot pay them, and they are laboring with them more than ought to be. And he rejoined: If I were to die a day previous you would not be aware of what R. Theshsth said, namely: The surety for these people lies in the archives of the king, and the king has ordained that he who pays no *charge* shall be made the servant of him who pays (for him).

R. Seuram, the brother of Rabha, used to compel doubtful characters to carry the palangin of Rabha, and Rabha approved his act from the following Boraitha: "Whence do we deduce that one, whose habit is not in accordance with the law, may be made to labor?" From the verse [Lev. xxv. 46]: "You may hold them to service forever, and [1] over your brethren, the children of Israel." Lest one say, however, that the same may be done with one who is acting rightly, therefore it is written: "But over your brethren . . . ye shall not rule with rigor."

R. Hama said: If one gave money to his comrade to buy wine for him, and he neglected to do it, the latter must deliver to him wine at the price current at the dock of Zulschafat (a place where the wholesale wine dealers brought their stock for sale). Said Amimar: I repeated this Halakha to R. Zbid of Nahardea, and he said: R. Hama's decision holds good only when he ordered him to buy any wine for him; but when the order was to buy a certain kind of wine, the messenger has no responsibility, as who can be sure that the wine ordered could be gotten easily? R. Ashi, however, maintains that even if the order was for any wine, he is not to be made responsible, as

it is only an *asmachta* . . . which gives no title. But why should this case be different from the Mishna in Chapter IX of this tract, that if one hired a field for sowing purposes, and did nothing, he must pay according to

the appraisement of the products it would yield when cultivated? Then it was in his power to cultivate the field, and therefore he is responsible; but here it may be that he could not find the wine required.

Rabha said: If one of a company of three partners has given money to a messenger to buy something, it is to be considered for the company, and not for himself. However, this is only in case their money is kept in one sum; but if the money of each partner is tied and sealed separately, the things bought are only for him who gave the money.

R. Papi, in the name of Rabha, said: "The mark which is usually placed on each barrel of wine when sold gives title to the buyer" (even without any drawing). To what purpose was this decision made? According to R. Habiba, to give title so that the seller should have no right to retract; and according to the rabbis, if the seller has retracted, the sale is invalid, but he has to accept the curse of "who has punished the generation of the flood," etc., mentioned in the above Mishna. And so the Halakha prevails in places where it is customary to make such a mark a final act of the sale.

If the seller was first in the harvest, etc. Said Rabh: If the grain was to be finished with two kinds of labor only, he may fix the price; but if he requires three kinds, he must not. Samuel, however, maintains that if the finishing depends upon the efforts of a human being, even if there were a hundred kinds of labor for finishing, he may; but if he depends upon Heaven (as, *e.g.*, rain or sunshine), even if there is only one kind of finishing, he may not. But did not the Mishna state that one may fix the price on sheaves, although he must dry, thresh, and winnow them (hence there are three kinds of labor before it is finished)? It may treat of when the sheaves were already spread in the sun for drying. But according to Samuel, that the price must not be fixed even if one depends upon Heaven, and there is the winnowing which cannot be done without an extraordinary wind. This:, also can be done with sieves.

Clay balls of a potter, etc. The rabbis taught: "The price must not be fixed on the clay balls of a potter unless they are made." So is the decree of R. Meier. Said R. Jose This is in the case of white earth, which is not so frequently in the market; but of i black earth, as from the village of Hanania or Shihin and neighborhood, he may do so even before they are made, as, if he does not possess the material, he may find it in the market. Amimar

used to give the money when the earth was brought to the pottery. According to whom did he act? If according to R. Meier, it must not be done until ready; if according to R. Jose, it may be done even before the earth was brought? His act was in accordance with R. Jose's decision. But in the place of Amimar the earth was dear, and not so frequently found; when the earth was brought he relied upon the sellers and gave the money; otherwise, he did not.

And also manure of the whole year, etc. Is not the statement of the sages the same as that of the first Tana? Said Rabha: They may differ concerning the rain-season, in which is allowed to be done, in accordance with the decision of the first Tana; and according to the sages, it may be done only in the sun-season, but not in the rain-season.

For all mentioned above, etc. There was a man who paid a stipulated amount for an outfit to be delivered at the house of his daughter's father-in-law; in the meantime the value of the equipment was reduced (and the father-in-law refused to receive it for the value stipulated), and when the case came before R. Papa he decided that if the price was stipulated at the rate existing when the goods were to be delivered, then he must give for it the existing price, and if this stipulation was not made, he has to accept it at the previous price. Said the rabbis to R. Papa: And even then why should he pay him the higher price? The money paid does not give title? And he answered: My decision also was only concerning the curse mentioned in the Mishna. If it was stipulated, and the seller retracted, *he* has to accept the above curse; and if it was not stipulated, and the buyer retracts, then the above curse applies to the latter.

MISHNA *IX*: One may lend his gardeners wheat to return him in the harvest-time the same measure, for the purpose of sowing, but not for consuming. (This was stated because) Raban Gamaliel used to do so with his gardeners, but if afterwards the price changed to a higher or a lower one, he always took the lower price to benefit the gardener, not because so was the Halakha, but because he wanted to act rigorously for himself.

GEMARA: The rabbis taught: "One may borrow his gardener's wheat, etc., for sowing, if he has not started work, but not if he has." Why did not the Tana of our Mishna make a difference, when the Tana of the Boraitha did? Said Rabha: R. Aidi explained to me thus: The Tana of the Mishna speaks of a place where the gardener usually sows the field with his own wheat, and there is no

difference whether he started to work or not. As long as he did not furnish the seed the owner may eject him; consequently, if he lends him his wheat, it is not considered a loan, but as a stipulation that he shall work for the owner of the field, and the owner shall receive from the share of the gardener that measure of grain which was advanced to him (and therefore, no matter if afterwards the price was raised, it is not usury). And the Tana of the Boraitha speaks of a place where usually the owner of the estate furnished the seed, and he (the owner) has changed the custom of his place; because his field was in good condition he made the gardener furnish the seed. Then, if the gardener has not started his work as yet, so that the owner may eject him, the above stipulation may be made, as it is considered a business matter, not a loan; but if his work is already begun, for which reason he cannot be ejected by the owner, and then the gardener is compelled to borrow the seed from the owner, it is considered a loan; and if the grain becomes higher, if he returns him the same measure it appears usurious.

The rabbis taught: "One may be asked by his neighbor for a loan of grain, to return the same at a certain time if the price will not be lower; but if it will, then he shall be paid in money at the price now existing. If, however, such stipulation was not made, if it became lower, he may return him with grain; if higher, he has to pay him in money at the price existing at the time borrowed, according to the explanation of R. Shesheth.

MISHNA *X*.: One must not lend a kur of wheat that it shall be returned to him from the barn (for fear it may become dearer). He may, however, lend him until his son came with the key. Hillel, however, forbids even this, as he used to say: A woman must not lend a loaf of bread to her neighbor, unless a price is stipulated for it, for fear wheat may become dearer, and then the return of the loaf will appear usurious.

GEMARA: Said R. Huna: "The statement of the Mishna that one may borrow wheat until he found the key: it is allowed only to borrow as much as he possesses; if he possesses a saah, he may borrow one; if two, two." R. Itzhak, however, said that even if he possesses only one saah, he may borrow many kurs (as the title of this saah is not secured to the lender and he may use it for himself; consequently the borrowed grain is to be returned from that of the market, and this saah he possesses remains free; on which he may borrow many saahs). Taught R. Hyya to support R. Itzhak: ("One must not borrow wine or oil if he does not possess)

a drop of wine, a drop of oil." From which it is to be inferred that if he possesses one drop he may borrow upon it many drops.

Hillel forbids, etc. Said R. Nahaman in the name of Samuel: The Halakha prevails in accordance with Hillel. (The Gemara, however, says:) The Halakha does not prevail in accordance with R. Nahaman's statement.

As he used to say, etc. Said R. Jehuda in the name of Samuel: Hillel stands alone with his statement, as the majority of the sages hold that it may be borrowed and repaid anonymously (without any stipulation). The same said again in the name of the said authority: Society men transgress who are not very particular with each other regarding the size, weight, and number of things borrowed and returned (if they borrow from one another, and do not care to make return in kind and in the same manner, they transgress the commandment, "Thou shalt not cheat thy brother in measure, etc.," as they accept more or less than was borrowed). And also as regards violence, Sabbaths, and festivals, if they lend to each other on these days, according to Hillel, they are also accused of usury. The same said again in the name of the said authority: Scholars who know the law of usury may lend each other for interest (as they know the law, they give the interest by means of a present). Samuel said to Abuhu b. Ihi: Lend me a hundred peppus; I will return you a hundred and twenty, and it will be right (not as usury, but as a present). R. Jehuda, in the name of Rabh, said: One may lend to his sons or family for usury, to give them an idea how hard it is to pay usury and to understand the great punishment of it. (Said the Gemara:) This, however, must not be practised, as they may get accustomed to it, and afterwards lend money for usury.

MISHNA *XI*.: One may say to his neighbor: Help me in weeding or in digging around my vineyard to-day, and in return I will help you on some other day, but he must not say: "Help me in weeding and I will help you in digging, or *vice versa*. All the days of the rainy season are considered alike, and the same is the case with the days of the sunny season; but one must not say: "Help me in the sunny season and I will help you in the rainy season," or *vice versa*.

Raban Gamaliel says: There is a kind of usury which may be named preceding usury, and also another kind which may be named succeeding usury. How so? If one is to borrow money from

another, and he sends him a present previously for this

purpose, it is a preceding usury; if one has kept the money of his neighbor for a certain time, and on repaying he sends a present, saying: "This is for the favor you did in leaving the money in my hand for such a time"--this is succeeding usury. R. Simeon says: There is also usury of talk. One must not say: I inform you that such and such a man, whom you are anxious to see, has arrived (and for this information you shall favor me with a loan). The following transgress the negative commandment of usury: The lender, the borrower, the surety, and the witnesses. The sages add also the scribe. They transgress the following commandment [Lev. xxv. 37; also *ibid*. 36, and Ex. xxii. 24, and in the verse: "Ye shall not lay upon him usury;" and finally, Lev. xix. 114]: "Ye shall not put a stumbling block before the blind, but thou shalt be afraid of thy God. I am the Lord."

GEMARA: There is a Boraitha: R. Simeon b. Joa'ling said: Whence do we deduce that, if one owes his neighbor a hundred zuz, and it was not customary for him before the loan to greet him first, he must not do so after the loan took place? From [Deut. xxiii. 20]: "Interest of anything, etc.," *i.e.*, that even a word must not be given as interest.

And the following transgress, etc. Said Abayi: "The lender transgresses all the commandments mentioned; the borrower transgresses the commandments of Deuteronomy mentioned above and of Leviticus, xix. 14. The witnesses, however, transgress the commandment of Exodus, xxii. 24."

We have learned in another Boraitha: "The usurers lose more than they profit (as said above, finally they lose all they possess); furthermore, they make Moses our master a fool, and his law untrue, saying: If he knew that usury brought great profit, he would not have written that it is prohibited."

When R. Dimi came from Palestine, he said: Whence do we deduce that if one is aware that if one is aware that his debtor has nothing with which to pay, he must not pass him by? From the verse [Ex. xxii. 24] cited above. R. Ami and R. Assi both said: One who does so is as if he caused his debtor to suffer from fire and water; as it is written [Psalm lxvi. 12]: "Thou hast caused men to ride on our head; we entered into fire and into water." R. Jehuda said, in the name of Rabh: Who lends money to any one without witnesses transgresses the commandment: "Ye shall not put a stumbling block before the blind." Reish Lakish adds that he who does so draws a curse upon himself, as it is written

[paragraph continues] [*Ibid*. xxxi. 19]: "Let the lying lips be made dumb which speak hard things against the righteous." (Rashi explains this as meaning that in case the debtor denies the entire claim of his creditor, people usually believe the debtor and curse the creditor.)

The rabbis said to R. Ashi: Rabina adheres strictly to all that the rabbis ordained. (And to try whether it is so,) R. Ashi sent to him on one eve of Sabbath: Let the master send me ten zuz, as I have a chance to get a bargain. And he answered: Let the master appoint witnesses or write a note. And R. Ashi sent to him: Do you demand this also from *me*? And he answered: In much

the more from you, master, who are always engaged in your study. It can easily escape your mind, and I would draw a curse on myself.

The rabbis taught: "The following three cry for help without being heard: Who lends money without witnesses, who buys a lord to himself, and he over whom his wife rules." What is meant by "who buys a lord to himself"? Who assigns his possessions to his children while he is still alive. Other number among the cries for help which are not heard, that of him who suffers in one city and does not try to find his livelihood in another.

Footnotes

151:1 The text here is both very short and complicated. The commentators are silent. We therefore were compelled to give our own explanation.

152:1 See also First Gate, p. 232, before Mishna V., Rabbi's statement.

153:1 This also is our own explanation, as without this there is no meaning. Meyer of Lublin tries to give some explanation to this paragraph, but he makes it still more complicated.

157:1 This was usually done by the Jewish courts when a scholar came to their city with his trade, and with references from other courts.

160:1 The term *asmakhta* is very difficult to translate into English with a term of the same meaning. The literal translation of *asmakhta* is "relying upon," which is to be understood: "He acquires title because he relies upon it"; and therefore we use the term *asmakhta* in the text without explanation. Jastrow tries to explain this term at length in his dictionary. See there, Part I.

162:1 This is the explanation of Rashi. Tosephath, however, objects, saying "that using fruit is not considered direct usury, but indirect, which is not to be collected," and therefore they give another explanation to this paragraph. See there.

163:1 Rashi says that he has seen in the answers of the Gaonim that Navla is an Aramaic expression, which was used in brotherhood; he, however, maintained that so was the name of the woman who sends the messenger to buy the estate.

165:1 It is according to the estimation prescribed in the Scripture in this paragraph the Talmud counts it according to the money used at that time.

169:1 The term in text is *alitha*. Rashi explains *aliah*, which means the fat of the tail. However, it seems to us this is correct only of a sheep, but not of a cow; it may be, however, that they bought a sheep in partnership.

174:1 *I.e.*, the lender shall not collect more than is due to him in case the debt is paid his time.

179:1 This is in accordance with the explanation of Hananal in Tospheth. Rashi, however, explains otherwise, which is not understood easily.

180:1 Rachel was the daughter of Mar Samuel, who was captured by heathens, married a heathen who afterwards became a proselyte, and his name was Issur the Proselyte. Her pregnancy began while be was yet a heathen, and therefore R. Mari was named after his mother, *Rashi*. (There was another Mari b. Rachel mentioned in Sabbath. p. 111, and his father Rabba. See there).

181:1 The Scripture reads *ubachiecham*; literally, "and with your brothers." Leeser translates according to the sense, "but." The Talmud takes it literally, and makes this word correspond both to the former and the latter sense, as explained in the text.

Next: Chapter VI.