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CHAPTER II.

RULES AND REGULATIONS CONCERNING SPACE TO BE LEFT BETWEEN ONE'S PROPERTY AND ANOTHER'S, BE IT OF ONE OR TWO KINDS. UNDER WHAT CONDITIONS A TENANT MAY PLACE AN OVEN IN HIS DWELLING. UNDER WHAT CIRCUMSTANCES A SHOP IN A YARD MAY BE PREVENTED. CONCERNING THE SPACE TO BE LEFT BETWEEN A CITY AND PIGEON-COOPS, TREES, BARNs, CEMETERIES, AND TANNERIES.

MISHNA I.: One must not dig a well near that of his neighbor, nor a channel, cave, aqueduct, or basin, for washing, unless it be removed to a distance of at least three spans from that of his neighbor, and plastered with lime. Olive or poppy waste, dung, salt, lime, and flint-stones must also be removed to a distance of three spans, and must be covered with lime. To the same distance, seeds, ploughing, and urine must be removed from the wall; a handmill to a distance of three spans from the lower millstone, which is four from the upper millstone; and an oven three spans from the foundation, which is four spans from the upper rim.

GEMARA: The Mishna begins with a well and ends with a wall? Said Abayi, according to others, R. Jehudah: By the term "wall" is meant the wall of the well. But then it could teach: "Unless he removes it from the well," and it would be self-evident that the meaning is "from the wall of the well"? The Mishna comes to teach us by the way that a wall of a well must measure no less than three spans, in cases of selling and buying, as we have learned in the following Boraitha: "If one says, 'I am selling you the well with its walls,' the walls must measure three spans."

It was taught: If one comes to dig a well at the boundary of his neighbor's vacant plot, has he to remove it to the distance mentioned in the Mishna, or not? According to Abayi he has not, and according to Rabha he has. They differ with regard to a plot prepared for works only; but if it is not prepared for this, they both agree that he may dig at the boundary. And

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even if it was according to Abayi, he is not obliged to remove the well to any distance. Even in accordance with the theory of the rabbis, who state farther on that if one comes to plant a tree near the well of his neighbor, he must do so at a distance of twenty-five ells, it is because the well was already in existence there at the time he comes to plant; but here the well does not as yet exist. And according to Rabha he must maintain the distance. Even in accordance with the theory of R. Jose, who says, farther on, that each of the neighbors has a right to do what he pleases on his own property, etc., it is because, when he begins to plant, roots which can injure the well do not as yet exist. But here the owner of the plot which is prepared for wells may claim: "Each time you use the spade at my boundary, you weaken my estate."

An objection was raised from our Mishna: One must not dig a well near that of his neighbor,

from which it is to be inferred--near the already existing well; but if not, he may. And this contradicts Rabha's theory? He may answer: Was it not taught, in addition to this, that it means from the wall of the well?

Another objection from the latter part of our Mishna was raised, which enumerates all the things that are to be removed from the wall, from which it is to be understood that it speaks of an existing wall, but not if it is not yet in existence. And the answer was: This can also be explained that the Mishna comes to teach us that all the things which it enumerates are injurious to the wall.

Come and hear the following: A tree must be removed from a well to a distance of twenty-five ells. Does it not mean from an existing well? Here also it may be explained to mean that at a distance of less than twenty-five ells the roots are injurious to the well. But the same is the case if the well did not as yet exist. If so, then how should the latter part, which states that if the tree is already in existence one has not to cut it down, be understood? For if one must not plant a tree near a plot, even when it is only prepared for walls, how can such a case be found? As R. Papa explained elsewhere, it speaks of a case where one buys such. So it can also be explained here to mean: In case one bought such a tree, he has not to remove it.

Come and hear the following: One must remove a pond for steeping flax from herbs, garlic from onions, and mustard from

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bees. Is it also not to be understood to mean already existing herbs? Here also it can be explained, even when it is only prepared for them, and it comes to teach that the things mentioned harm one another. But if so, how should the latter part: "R. Jose allows mustard. . . . Because the bees consume the blossoms of my mustard," be understood? As if one must remove the bees even from a place which is only prepared for mustard, how can such a case be found? Said R. Papa: "It means, when one buys such." But if so, then what is the reason of the rabbis' decision; and also according to R. Jose, why only with mustard? Should it not also be the same in the above case of herbs and flax? Said Rabhina: The rabbis hold that the injurer has to remove himself from the things which can be injured by him; *e.g.*, if the roots of a tree are injurious to a well, the tree must be removed, and not the well, (Says the Gemara:) From Rabhina's statement it is to be inferred that R. Jose holds that the injured one has to remove himself--then why only in the case of mustard? The same ought to be the case with the herbs. If there is a pond for steeping flax, the herbs should be removed, and not the pond? Therefore we must say that R. Jose is also of the opinion that the injurer must remove himself, and the reason of the herbs in question is because the pond does harm to the herbs, and not the herbs to the pond; but bees and mustard injure each other. And thus said R. Jose to the rabbis: The case of the herbs and pond is correct, because the pond injures the herbs, and not *vice versa*. But why should the same be in the case of bees and mustard, which injure each other? The rabbis, however, are of the opinion that bees do not harm mustard; for if they try to consume the mustard within the sown seeds, they cannot grasp them, by reason of their extremely small size. And if they do harm the leaves, it would not matter, for others will grow. But how can it be said that R. Jose holds that the injurer must remove himself--does not the following Mishna state: R. Jose said: Although the well was in existence before the tree was planted, the latter has not to be cut down, etc.? Therefore we must say that R. Jose holds that the injured one has to remove himself. And he said to the rabbi thus: My theory is, that the injured one must remove; but even in accordance

with your theory, that the injurer must remove, your decision is correct in the case of the herbs in question, as the pond harms the herbs, etc. But why should it be the same in the case of mustard and

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bees, which do harm each other? To which the rabbis answered as stated above. The mustard, however, harms the bees on account of its pungency.

"*Nor a basin for washing,*" etc. Said R. Na'hman in the name of Rabba b. Abuhu: The case is when it is a basin for soaking clothes (they used to soak clothes for several days in canine dung); but if it is a basin for washing, it is to be removed four ells (because of splashing while washing). And so also we have learned in the following Boraitha: "A basin for washing--four ells." But in our Mishna it is stated "three spans." Hence it must be explained that the Boraitha treats of a basin for washing, and is in accordance with R. Na'hman.

R. Hyya b. R. Ivyva taught in our Mishna plainly: Provided there is a space of three spans from the edge of the soaking pond to the wall.

"*And plastered with lime.*" The schoolmen propounded a question: Does the Mishna state, "and plastered with lime" (which means that this must also be done), or, perhaps, "or plastered with lime" (which means that one of the two requirements suffices)? It certainly teaches "*and plastered with lime*"; for if it read *or*, then all, parts of the Mishna would be taught together, as there is no difference between them. But perhaps it teaches separately, because the injurious effect is not the same in both cases: in the one case it is wetting from the well, while in the other it is the heat from the olive waste? Come and hear the following Tosephtha: R. Jehudah said: "If a flint-stone is placed by a human being between the properties of two persons, each of them may dig a well on his property at a distance of three spans from the flint-stone, provided the walls of the well he plastered with lime." We see, then, that only when that from which the earth becomes weak is placed there by a human being the lime is needed; but if it is there naturally, no lime is needed? Nay; the same is the case even when it is there naturally; and the expression "placed" is necessary. lest one say that in such a case the prescribed amount of space is not sufficient. Therefore he comes to teach us that it does not matter.

"*Olive or poppy waste,*" etc. There is a Mishna [Sabbath, p. 86]: "It must not be deposited . . . and also not in lime or in sand," etc. Why, then, here is sand not mentioned and a flint-stone is, while there the reverse is taught? Said R. Joseph: Because it is not customary to deposit victuals in flint stones.

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[paragraph continues] Said Abayi to him: "Is it, then, customary to so deposit in wool-flocks, and, nevertheless, it is mentioned there? Therefore," said Abayi, "the Mishnayoth rely upon each other." (*I.e.*, our Mishna relies upon the cited one in the case of sand, while the latter Mishna relies upon ours in the case of flint-stones, as the same is the case with both.) Said Rabha to him: "If such were the case, then the other things would not be repeated in both Mishnas; but some of them would be mentioned in one Mishna, and others in the other, Therefore," said Rabha, "the reason why a flint-stone is not mentioned in the cited Mishna is because a pot with victuals

cannot be deposited there, as the flint-stone would break it. And the reason why sand is not mentioned here is because the nature of sand is such that it is warmed up by a hot thing, but it is cooled by a cold thing," (Hence, here, it must not be removed.) But did not R. Oshia teach us in his Boraitha that sand must also be removed? R. Oshia numbers it among the things which are injured by wetting. Let, then, the Tana of our Mishna, also add this to the category of things that injure by wetting? Wetting is already dealt with in the case of the channel mentioned therein. But does not the Mishna state, "a basin for washing," which is also in the same category, although a channel has already been mentioned? Both must be mentioned, because one could not be inferred from the other, for the following reasons: If a channel only were mentioned, one might say because it is stationary--but for a basin for washing, which is not stationary, the space in question is not needed. On the other hand, if it mentioned only a basin for washing, one might say: "Because of the wetting by stagnant water which has been used for washing is injurious, but a channel does not matter." Therefore both had to be mentioned.

"*Seeds, ploughing,*" etc. Why is it necessary for both to be mentioned? If seeds must be removed, is it not self-evident that ploughing for the purpose of sowing is also meant? It means even when the seeds were sown in an unploughed field where they are not so deep. And would not ploughing be understood from seeds; as what is a field ploughed for, if not for sowing? It means even when it was ploughed for the improvement of trees. But why all this? It has already mentioned the things that injure by wetting; and as a field that has been ploughed or in which seeds have been sown needs wetting, it is self-evident that it must be removed? The Tana speaks

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of Palestine, concerning which it is written [Deut. xi. 11]: ". . . from the rain of heaven doth it drink water." Shall we then assume that the Tana holds that the rootlets proceeding from the planted seeds extend laterally so that unless the distance be at least three spans the wall maybe injured? Have we not learned [Kilaim, VII. 1] that when one plants vines, he cannot sow seeds over them, unless there be a layer of earth at least three spans in depth over the vines; and a Boraitha in addition to this taught that he might sow on the sides of the plot where the vines are planted (even if not three spans deep; hence we see that the rootlets proceed from seeds downwards, and not laterally, for in the latter case it would be forbidden to sow the seeds even on the sides)? Said R. Haga in the name of R. Jose: The seeds are mentioned, not because the rootlets proceed laterally, but because they render the ground wherein they are sown friable, thus weakening the support to the wall of the well if placed too near it.

"*And urine.*" Said Rabba b. b. Hana: One is allowed to void his urine near the wall of his neighbor; as it is written [I Kings, xxi. 21]: "*Mashtin C'kir.*" But does not our Mishna state that urine must be removed to a distance of three spans? The Mishna means urine which has been collected in a urinal. Come and hear another objection from the following Tosephtha: "One must not void his urine against the wall of his neighbor, unless it be at a distance of three spans." This is said concerning a brick wall, but in the case of one made of stones, a distance of one span is sufficient to prevent harm by softening the ground under the wall. And if the wall is built upon a rock, then it does not matter at all. Hence it contradicts Rabba b. b. Hana? This objection remains. But does he not cite a verse? The verse means even such a creature as habitually voids its urine upon a wall--namely, a dog.

"*A handmill,*" etc. Why so? Because it makes the ground vibrate. But have we not learned in a Boraitha that a horse-mill must be removed to a distance of three spans from the circumference,

which is four spans from the funnel; and such a mill does not make the ground vibrate? Therefore it must be said that the reason of our Mishna is not the vibration of the ground, but the noise produced by the mill.

"*And also an oven,*" etc. Said Abayi: From this it is to be inferred that the foundation should be wider than the upper rim by one span. And this regulation relates to buying and selling;

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for if its foundation did not contain a span more, the buyer may recede.

MISHNA II.: One must not place an oven in a lower story of a house, unless there be an empty space of four ells above it. If the oven is placed in an upper chamber, there must be at least three spans of stone-flooring under it; under a cooking stove only one span of stone-flooring is required. Yet when damage is caused, it must be repaired. R. Simeon, however, says: All these measurements are ordained so that, when they are complied with and damage is caused, one is not held responsible for it.

One must not establish a bakery or a dyer's shop under another's granary; and also not a stable. In reality, it was said that a bakery may be established under a wine store; but, at all events, not a stable.

GEMARA: But have we not learned in a Boraitha that an oven requires four spans, and a stove three? Said Abayi: That Boraitha speaks of bakers, ovens and stoves, and the oven mentioned in our Mishna is that of a private man, and similar to a baker's stove.

"*One must not establish a bakery,*" etc. A Boraitha states that if the stable has been established before the granary over it, it may remain.

"*In reality, it was said,*" etc. There is a Boraitha: It was allowed under a wine store, because it improves the wine; but not a stable, because it imparts a bad odor to the wine. Said

R. Joseph: Our wine is harmed even by the smoke of a candle. Said R. Shesheth: A haystack is likened unto a stable (because when the hay is damp it becomes warm and emits an odor which harms the wine).

MISHNA III.: Partners in a yard can prevent one from establishing a store there, claiming that they cannot sleep on account of the noise produced by the people's coming and going. He, however, who makes utensils, which he sells in the market, cannot be prevented by the partners, with the claim that the noise of the hammer disturbs their sleep. The same is the case if one of them has a handmill, or if he is a teacher of children, as the claim that they cannot sleep on account of the noise is not to be considered.

GEMARA: Why, in the first part, is the claim of the noise from the people's coming and going considered, while in the latter part the noise of strange children is not considered? Said

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[paragraph continues] Abayi: The latter part speaks of an instructor of children residing in an adjoining yard. Said Rabha to him: "If it were so, then the Mishna would state that in an adjoining yard it is permitted. Therefore," said he, "the latter part of the Mishna speaks of a school for children's education, and was stated after the enactment of Joshua b. Gamla. So R. Jehudah said in the name of Rabh: May the memory of Joshua b. Gamla be blessed, for, were it not for him, Israel would have forgotten the Torah, as in former times the child who had a father was instructed by him; but the one that had not, did not learn at all. The reason is that they used to explain the verse [Deut. xi. 19]: "And ye shall teach them to your children," etc., literally--ye personally. It was therefore enacted that a school for the education of children in Jerusalem should be established, on the basis of the following verse [Is. ii. 3]: ". . . for out of Zion shall go forth the law, and the word of the Lord out of Jerusalem." And still the child who had a father was brought to Jerusalem and instructed; but the one who had not, remained ignorant. It was therefore enacted that such school should be established in the capitals of each province; but the children were brought when they were about sixteen or seventeen years of age, and when the lads were rebuked by their masters, they turned their faces and ran away. Then came Joshua b. Gamla, who enacted that schools should be established in all provinces and small towns, and that the children be sent to school at the age of six or seven years (and after this enactment it was also enacted that the claim of the noise of school-children should not be considered).

Rabh said to the schoolmaster R. Samuel b. Shilath: If the child is under six years of age, do not accept him; but above that age, accept him and feed him (with knowledge) as you feed an ox. The same said again to him: When you must beat a child, do so with a shoe-strap only; if this produces the desired effect, then well and good; if not, leave him in the company of his comrades, whose steady progress he will see, and this will improve him. An objection was raised from the following: If one of the tenants of a yard wishes to establish an office for circumcision, a barber shop, a tannery, or a school for children, the other tenants may prevent him? It speaks of children of idolaters. But there is another Boraitha which states that if there are only two tenants, and one of them wishes to make one of the above-named establishments, the other one

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may prevent him? This Boraitha also speaks of children of idolaters. Conic and hear another Boraitha: He who has a house in a yard belonging to partners, must not rent this house for one of the above-named establishments; nor to a Jewish or a Gentile schoolmaster. This Boraitha speaks of the head schoolmaster of the entire city (who has all the subordinate schoolmasters under his control, and instructs them how to teach, which produces a great deal of noise).

Rabha said: Since the enactment of Joshua b. Gamla we do not transfer a child from the school of one city to that of another; but from one congregation to another we do. However, if there is a river between them, we do not, unless there is a bridge over it; but if there is only a dock, we do not. He said again: The number of children in a school must not exceed twenty-five, if there is one teacher; if the number is between twenty-five and forty, an assistant must be provided for him by the city; and if there are fifty, two teachers must be appointed. He said again: If there is one teacher who can perform his duties well enough, but there is another one who is still better, the former must not be discharged, lest his successor become too certain of retaining the position and will not attend to his work properly. R. Dimi of Nahardea, however, said: On the contrary, he will be even more diligent, as the jealousy of scholars increases wisdom. Rabha

said again: If there are two teachers, one of whom is a good expounder, but is not particular about the exact pronunciation of the words in the Scriptures, while the other is particular in the latter respect but is not so good an expounder, the former should be appointed, as the errors will be corrected by themselves. R. Dimi of Nahardea, however, said: On the contrary, an error impressed upon the mind of a child remains there forever (therefore the latter should be given the preference), as it is written [I Kings, xi. 16]. "For six months did Joab remain there with Israel, until he had cut off every male in Edom." When he came before David, and was asked why he had done so, he said . Because it is thus written [Deut. xxv. 19]: thou shalt blot out each *zochor* (male) of Amalek." Said David to him: But we read *zoicher* (remembrance, meaning both--males and females)! And Joab answered: "My master instructed me to pronounce *zochor*." ¹ He then went to his master, and questioned him

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how to pronounce this word, and he answered *zochor*. So he took out his sword, and wanted to kill him. And to the question of the master, "Why?" he answered: Because it is written [Jer. xlviii. 10]: "Cursed be he that doeth the work of the Lord negligently." And his master rejoined: "Let, then, this man (myself) remain in this course," and he answered him, quoting the end of the verse: "And cursed be he that withholdeth his sword from blood." Some say that he slew him, and others say that he did not. Rabha said again: An instructor of children, a planter, a butcher, a barber, and a scribe of the city are to be considered as if they were already warned (*i. e.*, if they neglect their duties they may be discharged without previous notice); as the general rule regarding this is: All irreparable damage done by a specialist, who is appointed as such, is to be considered as if he were previously warned. (An instructor of children who has spoiled a child cannot repair this harm; and the same is the case with a planter who has spoiled the trees; a butcher who, through his neglect, has made the meat illegal for use; a barber who has killed a man by performing venesection; and a scribe who has written the Holy Scrolls fallaciously.)

R. Huna said: If one of the inhabitants of an alley establishes a handmill there, and another one comes to do the same, the law gives the former the right to prevent the latter; for he may claim: "You are cutting off my livelihood." He is supported by the following: Fishermen must remove their nets from a fish which has already been marked by one of them while it was trying to escape from him to a distance that a fish is usually able to traverse. And to the question, How far is it? Rabba b. R. Huna said: "The distance of a *parsa*"? Nay, with fish the case is different, as they place spies (to look out for bait, and the former fisherman is certain that the fish will go to his bait and then he will surely catch it; but here his comrade may say to him: "I am not injuring your livelihood, as your customers will go to you and mine to me").

Said Rabhina to Rabha: Shall we assume that R. Huna is in accordance with R. Jehudah, who said (Middle Gate, p. 143) that a storekeeper must not furnish little children with presents of nuts, etc., for the purpose that they may call again--and the sages allowed this? Nay, it may be said that R. Huna's theory is in accordance with that of the rabbis also, as there they allow this for the reason that the storekeeper may say, "I bestow

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nuts, you may give plums"; but here the claim, "You are cutting off my livelihood," is a right one, even in accordance with the rabbis.

An objection was raised. One may establish a store or a bath-house near or opposite to that of his neighbor, and the latter cannot prevent him from doing so, for he may say: "You can do business in your establishment, and I will do business in mine." (Hence this contradicts R. Huna's theory?) On this point Tanaim of the following Boraitha differ: "The inhabitants of an alley may combine to prevent one from another alley from opening a tailor shop, tannery, children's school, or any other specialist's establishment; but they cannot do so against an inhabitant of their own alley. R. Simeon b. Gamaliel, however, maintains that the majority can prevent an inhabitant even of their own alley."

R. Huna b. R. Joshua said: "It is certain to me that the inhabitants of one city have a right to prevent one of another city from competing with them, provided he does not pay the duties of the city. It is also certain to me that an inhabitant of an alley cannot prevent another inhabitant of the same alley; but I doubt whether an inhabitant of one alley can prevent one of another alley." And this question remains undecided.

Said R. Joseph: R. Huna, who prohibits competition in any specialty, admits that concerning instructors of children no competition is to be considered; as the master said that the jealousy of scholars increases wisdom. Said R. Na'hman b. Itz'hak: R. Huna also admits that no competition is to be considered in the case of peddlers in large cities, as the master said that Ezra has enacted for Israel that peddlers shall travel in the large cities, for the purpose that the daughters of Israel might easily procure their ornaments. This is only concerning travelling dealers; but the establishment of a stationary place may be prevented. And if the peddler is a young scholar for whom it is a humiliation to travel, he may be permitted to establish a stationary place; as Rabha permitted R. Yashia and R. Obadiah to establish a place of business against the then existing law of that city, saying that because they were scholars they would be hindered in their study by travelling.

There were three basket dealers who brought baskets to Babylon, and the inhabitants of the city prevented them. So they came before Rabhina, who said: They come from the country, and may sell their goods to countrymen who come

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here on the market day; but only on that day, and in the market only, but may not traffic with their goods in private houses of the city.

There were wool dealers who brought wool to the city of Pumnahara, and the inhabitants there prevented them. They came before R. Kahana, who said to them: "They have a right to do so." They, however, claimed that they had to collect their debts, which must take time, and they had nothing to live on if they should be prevented from selling their goods; and he allowed them to sell as much as they needed for a livelihood only, while they were there, but not more.

R. Dimi of Nahardea brought dry figs in a boat. Said the Exilarch to Rabha: Go and see whether he is a scholar; then you may hold the market for him. And Rabha sent R. Ada b. Abba to examine him. He questioned him about something of the Law, which he could not answer. So R. Dimi said to him: Is the master Rabha? He tapped him good-naturedly on the sandal, and answered: "From myself to Rabha there is a great difference; but, nevertheless, I am your master, while Rabha is the master of your master." In consequence of this, the market was not

held for him; and R. Dimi lost on his dry figs, and came to complain before R. Joseph, saying: See, master, what was done to me! And he answered: The One who neglected not to take revenge for the shame of the king of Edom, shall not neglect to revenge your shame. (The shame of Edom, as it is written [Amos, ii. 1]: ". . . because he burned the bones of the king of Edom into lime.") Consequently R. Ada's soul has gone to its rest. Then R. Joseph said: *I have punished him, for I have cursed him.* R. Dimi said: *I have [punished](#) him, for he had caused my loss on the dry figs.* Abayi said: *I have punished him, for he used to say to the rabbis: While ye are licking bones in the college of Abayi, would it not be better for you to eat fat meat in the college of Rabha?* And Rabha said: *I have punished him, for, when he used to go for meat, he used to say to the butcher: You must give me meat before you give it to the servant of Rabha, as I am better than he.* R. Na'hman b. Itz'hak said: *I have punished him.* For R. Na'hman b. Itz'hak was the head of the preachers in the days before festivals; and every day, before preaching, he reviewed his sermon together with R. Ada b. Abba. On that day, however, on which R. Ada b. Abba died, R. Papa and R. Huna b. R. Joshua detained him, so that he should explain to them what Rabha

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lectured on the last Sabbath concerning cattle tithe, and he repeated for them all that Rabha said. Meanwhile the time for R. Na'hman's preaching arrived, and R. Ada did not call him. Said the rabbis to R. Na'hman: Why does the master sit? It is already dawning, and you have to go to preach. And he answered: I am sitting and waiting for the coffin of R. Ada. And, indeed, R. Ada's death was soon announced. It seems, therefore, that R. Na'hman had punished him.

MISHNA IV.: If one's wall is attached to that of his neighbor, he must not build a wall parallel to it unless he leaves an interval of four ells. One must also not build a wall opposite the windows of his neighbor, wherever they are to be found, unless it be at a distance of four ells.

GEMARA: But the Mishna declares that his wall was already attached to that of his neighbor. Who gave him the right to do so? Said R. Jehudah: It means that if one wished to do so he must not, unless he left the above-mentioned space. Rabha opposed: "But the Mishna states that it was already attached?" Therefore he said that the Mishna meant to say thus: If there was already a wall at a distance of four ells from that of his neighbor, and it fell, he must not build another one unless at the same distance, as the treading upon the earth between the two walls is useful for the strength of their foundations. ¹ Rabh, said: "The Mishna treats only about a wall of a garden (because, as inside there is no treading upon the earth near the wall, it needs the treading outside); but concerning a wall of a yard, it does not matter. R. Oshia, however, maintains that the same is the case with a wall of a yard also. Said R. Jose b. Hanina: And they do not differ; as the former speaks of an old town (where the ground is already trodden), while the latter speaks of a new town.

Our Mishna states that, for windows, wherever they may be placed, a space of four ells is needed; to which a Boraitha adds: "If a window is placed at the top, the wall in question must reach such a height that when the owner stands upon it and stoops, he should be unable to see anything by looking in at the window. And if a window is placed at the bottom--to such a height that he could not see when standing upon it. And if the window be opposite the wall, he must leave such a space as would not darken the window." We see, then, that the reason of the

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regulation concerning a parallel wall is the darkening, but not the treading mentioned above? The Boraitha speaks of a side-wall. How much space, however, must one leave, in order that the window will not be darkened? Said R. Jyobha, the father-in-law of Ashian b. Nadbach, in the name of Rabh: As much as the width of the window. But from such a height one can still look in at the window? Said R. Zebid: He speaks of a wall with a gable-top. But does not the Mishna state four ells? This presents no difficulty. The Boraitha speaks of one side-wall to which the space of the width of a window suffices; and our Mishna speaks of two side-walls; then four ells are needed, so that the window be not darkened. Come and hear: One must leave a space of four ells near the drains of his neighbor's roof, so that the latter may be able to place a ladder there. (It speaks, in case the owner of the house, is allowed to direct his drains to the neighbor's yard; and, while he allows him this, he must also allow him a space for a ladder.) We see again that the purpose of leaving the space is for placing a ladder, and not for treading upon the earth? It speaks of a slanting roof overhanging the neighbor's yard, with the drains placed at the edge, which does not prevent the treading in the yard under it; and, therefore, there could be no reason but the latter.

MISHNA V.: One must remove the ladder in his yard from his neighbor's pigeon-coop to the distance of four ells, that a weasel should be unable to jump from it to the latter; and also his wall from his neighbor's roof-drains to a distance of four ells, to enable his neighbor to place a ladder there.

GEMARA: Shall we assume that our Mishna is not in accordance with R. Jose, who says farther on that everybody may do on his property what he pleases? This Mishna can also be in accordance with him, as R. Ashi said: When I was at the house of R. Kahana, he said that R. Jose admitted that one is responsible for any damage done to his neighbor by his arrows (*e.g.*, if he places a ladder so, that it would be easy for a weasel to jump from it to the pigeon-coop). But, after all, this is not direct damage, but *germon*? (See First Gate, p. 125.) Said R. Tubi b. Mathna: We infer, then, from this, that to cause damage by *germon* is forbidden (*i.e.*, indirect damage).

R. Joseph had in his yard small date-trees, under which barbers used to perform venesection; and ravens, while coming to consume the blood, caused harm to the dates; and R. Joseph commanded: "Remove the *cur-cur* from my property!" (*i.e.*,

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that the barbers should not be allowed any more to do their work there, and then the ravens would not come for the blood). And to Abayi's question: Are not the barbers a *germon*? he answered with the declaration of R. Tubi b. Mathna just quoted. But had not the barbers already made there a *hazakah*? To this R. Na'hman in the name of Rabba b. Abuhu said: There is no *hazakah* concerning damages. But was it not taught that, regarding this, R. Mari said: "As, for instance, smoke, which injures the eyes," and R. Zebid said: "As, for instance a toilet, which is disgusting to the sight"? Said R. Joseph: To me, who am tender-hearted, the blood is as disgusting as the things just mentioned.

MISHNA VI.: A pigeon-coop must not be placed within fifty ells of the town: nor has one a right to make a pigeon-coop on his own property, unless his property extends to fifty ells on each side. R. Jehudah said: "He must have four kursalim on each side--the space which a dove can

cover at one flight without resting." If, however, one has bought one, he is in his right even when there is only a quarter of a kur of space.

GEMARA: Are fifty ells sufficient for this? Have we not learned in a Boraitha that a net for doves must not be spread unless the locality be thirty *riss* distant (four miles) from an inhabited place? Said Abayi: "As far as flying goes, it is to a great distance; but with fifty ells it usually gets enough of food" (after which it flies thirty *riss*; hence beyond the fifty ells it does no harm to the gardens or vineyards). But does not a Boraitha state that in an inhabited place even within a hundred miles one must not spread a net? Said R. Joseph: This speaks of the case when there are vineyards, so that they fly from one vineyard to another, and so they can fly through a much greater distance. And Rabha said that it speaks of a case where there are many pigeon-coops. If it is so, why does the Boraitha state that one hundred miles from a city one must not do so, because he can catch doves from another pigeon-coop, even not in the city? It may be said that the pigeon-coops in question were his own, or they were ownerless.

"*He is in his right*," etc. Said R. Papa, and according to others R. Zebid: From this it is to be inferred that the court has to open the mouth of a buyer or of an heir to claim *hazakah*. (*I.e.*, if the plaintiff claims that the estate is his and brings evidence that such estate is his or his parents', and the defendant says, "I inherited it from my parents," or "I bought it from so

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and so, who has [occupied](#) it for so many years," and brings witnesses to his statement, but the witnesses cannot testify that he who occupied it before bought it or inherited it from some one, then the court must consider the defendant's claim; and by the expression "open the mouth," it is meant that the court may say to the defendant: Look for evidence that the one from whom you bought it or inherited it had it in his occupancy for so many years.) What news do they come to teach us? Does not a Boraitha state farther on that if the defendant claims inheritance it is not necessary for him to say when the bequeather bought it? It was necessary for them to teach that the same is the case when the defendant claims "I bought it." But this is also stated farther on [Chapter III., Mishna 10]? Their statement was nevertheless necessary, for the following reason: From the case in the quoted Mishna one might say that, because it speaks of a yard which was near the public thoroughfare, the claim is to be considered a right one; for if it were not as he says, the public would prevent him; or, at his request, the public have relinquished their right to that yard. But here, in a private case, it is different; and if this case only were stated, one might say that it is to be taken into consideration, as a private party usually settles the difference, or else he relinquishes his right; but there, in the case of the public, with whom can he settle, or who can relinquish? Therefore both cases were necessary to be stated.

Again--"he is in his right" (*hazakah*). But did not R. Na'hman in the name of Rabba b. Abuhu say that there is no *hazakah* in regard to damages? Said R. Mari in the name of Rabh: This is said only concerning smoke, as mentioned above.

MISHNA VII: A little dove that is found within fifty ells of a pigeon-coop belongs to the owner of the latter; if outside of fifty ells, it belongs to the finder. If it is found between two pigeon-coops, it belongs to the nearer one; but if in the exact middle, it is to be divided.

GEMARA: Said R. Hanina: In a case which we should judge by a majority, it would be so; and

if, according to proximity, it would be different, the decision by a majority must be taken into consideration; and although both majority and proximity are biblical, nevertheless majority has the preference.

R. Zera objected: It is written [Deut. xxi. 3]: "The city which is the nearest," etc. Does it not mean even if there are other cities which are more populous than the nearest one?

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[paragraph continues] Nay; it means if they are not. But even then, why should not the majority of the world be considered? It means, if the city in question is situated among the mountains, where it is not usual for robbers to come from a distant place. But does not our Mishna state that a dove within fifty ells of the pigeon-coop belongs to it, even when there are others outside of the fifty ells which have more doves than the nearest one? Nay; it means when there are not. If it is so, how is the latter part, which states, "if outside of fifty ells, it belongs to the finder," to be understood? If there are no other pigeon-coops, it can only be from that one? It speaks of a pigeon which can hop only; and R. Uqba B. Hama said that a pigeon which hops cannot do so more than fifty ells. R. Jeremiah then questioned in the college: How is the law if one foot was within the fifty ells and the other without? And for this question he was driven out of the college.

Come and hear another objection from our Mishna, which states that if it is found between two pigeon-coops, it belongs to the nearer one. Does it not mean even when the farther one has more doves? Nay; it means when both have an equal number. But why, then, should the majority of the world not be considered? It speaks of a case when vineyards occupy the whole distance between the two pigeon-coops, and the pigeon is found on a walk within the vineyard; and then it cannot be supposed that it came from anywhere else, as it is known that a hopping dove does not go out of sight of her pigeon-coop. Hence she must be from one of these two in question; as, if she were from another one, she could not see it on account of the trees and partitions.

It was taught: A barrel of wine floating on a river, if found opposite a city of which the majority of the inhabitants are Jews, it may be used; if opposite a city of a majority of Gentiles, it must not be used. So said Rabh. Samuel, however, maintains that even when the majority are Jews it is also prohibited, lest perhaps it came from Dagra (a country near the river Euphrates, where there were no Jews). Shall we assume that their point of difference is the above statement of R. Hanina--that one is in accordance with him and the other is not? Nay; both agree with R. Hanina, and the point of their differing is thus: One maintains that if this were from Dagra, it would have sunk while floating in the bays formed by the projecting rocks along the coast from Tyre to Accho, and in the shallow waters

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caused by melting snow; and the other maintains that because the stream in the river is strong, it could reach here.

A pitcher of wine was found in a vineyard of *arla* (the third year after planting); and Rabhina allowed to use it. Shall we assume that he did so because he holds with R. Hanina's theory? Nay; his reason was because if it were stolen from this vineyard they would not have hidden it in the same. This is only concerning wine (because the thief would not leave the wine lest the presser

of the grapes should find it); as for grapes, however, they would not fear to leave them where they were stolen and take them away afterwards. There were some leather bags of wine which were found among the vines of a vineyard belonging to a Jew; and Rabha permitted their use. Shall we assume that he did so because he does not hold with R. Hanina's theory (as the majority of men are Gentiles, and not Jews)? Nay; his reason is that all the pressers and those that pour the wine into barrels are Jews. This law, however, applies only to large leather bags, but not to small ones, for fear that they were dropped by travellers, the majority of whom are Gentiles; and even if there were large ones with them, the law nevertheless applies, for fear that they were dropped by a traveller upon an ass, who had hung them on both sides of the ass. [1](#)

MISHNA VIII.: In planting a tree, a space of twenty-five ells must be left outside of the town; for a carob or a sycamore, fifty ells are needed. Aba Shaul said: "For a wild tree, fifty ells." If the city was built first, the tree might be cut down without paying for it; but if the tree was planted first, it is to be cut down and paid for; if doubtful as to which was there first, it is to be cut down without paying for it.

GEMARA: What is the reason of all this? Said Ulla: "Because of the beauty of the city." But why not because it is not allowed to make a field of the open space around the town, and *vice versa*? It means to say that even according to R. Elazar, who hold., that this is allowed, here it is not to be tolerated, because it spoils the beauty of the city. And also according to the rabbis, who allow to plant trees in an open space belonging to the city, but not seeds; here, concerning a single tree they would not allow it, as it spoils the beauty of the city. And whence do you know that the rabbis make a difference between

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seeds and trees in this respect? From a Boraitha [Erubhin, p. 57]: "If a wood-shed of more than two saahs . . . was used to sow grain . . . things must not be moved therein . . . If, however, trees were planted in the greater part of it, things may be carried therein." The Mishna states that if the tree was planted first, it must be cut down and paid for; but why should the owner of the tree not claim that it should be paid for, and then, cut down? Said R. Kahana: Because a pot belonging to partners is neither warm nor cold (it means that one relies upon the other to warm it or to cool it, and it remains as it was); and here also, if he should wait until he got the money, each of the inhabitants would refer him for payment to the next one, and so the trees would remain indefinitely; therefore it is to be cut down, and the money should be collected through the court.

"*If there is a doubt*," etc. Why is this case different from that of a tree and a well, concerning which, if there is a doubt as to which was there first, the tree must not be cut down? Because there, if it is certain that the tree was there first, it must not be cut down, the same being the case when there is a doubt; while in our case, even when it is certain that the tree was planted first, it must be cut down, the same being the case when there is a doubt. And concerning the payment for it the city may say: Bring evidence that your tree was planted first, and then you will get the money.

MISHNA IX.: A barn must not be placed within fifty ells of the town; the same is the case if one wishes to make a barn on his own property—he may do so, provided he has fifty ells of space on each side of it. One must also remove a barn from the plants and from the newly ploughed field of his neighbor (which must wait a year before sowing), to a distance sufficiently great to

prevent any harm to the plants or the field.

GEMARA: Why, in the first part, is a space of fifty ells required, and in the second part a space only large enough to prevent harm. Said Abayi: The latter part of the Mishna speaks of a temporary barn, and not of a permanent one. What is called a temporary barn? Said R. Jose b. Hanina: If one does not winnow with the shovel. R. Ashi, however, maintains that there are no two parts in the Mishna at all, only the latter part is an explanation of the first, thus: Why must a permanent barn be removed from the city fifty ells? For the purpose that it shall not do any harm to the city. An objection was raised from the following: "A permanent barn must be removed fifty

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ells from the town, and the same distance must be allowed to one's cucumbers, plants, and a ploughed field, to prevent damage." Now this is correct only according to R. Ashi's explanation; but it contradicts Abayi. The difficulty remains.

However, it is correct only concerning cucumbers, etc., as the dust of the barn settles upon their hearts and spoils them; but what harm can this do to a ploughed field? Said R. Aba b. Zabda, according to others b. Zutra: Because the dust of the barn increases the amount of manure in the field (and spoils the seeds).

MISHNA X: Carcasses, cemeteries, and tanneries must be removed to a distance of fifty ells. A tannery must not be established except on the east side of the city; R. Aqiba, however, maintains that it may be established on every side except the west, and a space of fifty ells is to be left. One must also remove his pond for steeping flax from a neighbor's herbs; garlic from onions; and mustard from bees. But R. Jose allows mustard.

GEMARA: The schoolmen propounded a question: What does R. Aqiba mean? On each side he may establish without the space of fifty ells, excepting the west side, where the fifty ells are necessary; or does he mean that on each side he may establish, provided he leaves the space of fifty ells, except the west side, where he must not do so at all? Come and hear the following Boraitha: "R. Aqiba said: On each side one may establish a tannery, if he leaves a space of fifty ells, excepting the west side, where he must not do so at all because of its frequency." Said Rabha to R. Na'hman: "What does the expression frequency mean--does it mean frequent winds? Did not R. Hanan b. Aba say in the name of Rabh, that four winds are blowing every day and the *north* wind blows with them? Therefore the expression frequency means that the Shekhinah rests there frequently." As R. Joshua b. Levi said: "We must be grateful to our forefathers for having informed us of the place where we are to pray; as it is written [Neh. ix. 6]: And the host of the heavens bow down before thee." R. Aha b. Jacob opposed: "Perhaps it means, on the contrary, that they are praying at the east side, and then they step backwards, as a slave does usually before his master; and when they come to the west side, they bow." Hence the Shekhinah is in the east side. The objection remains.

R. Jose, however, holds that the Shekhinah occupies every

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place, as he said: It is written [ibid., ibid.]: "Thou indeed art the Eternal One alone: it is thou that hast made the heavens," etc. Thy messengers are not as the messengers of human beings, who usually return from the place to which they were sent, to that whence they were sent, announcing that they have fulfilled their duty. Thy messengers, however, are doing the same in the very place to which they were sent; as it is written [Job, xxxviii. 35]: "Canst thou send out lightnings, that they may go, and say unto thee, 'Here are we'?" It does not read that they *come* and say "Here are we," but that they *go* and say it in the place to which they were sent: hence the Shekhinah occupies every place. And R. Ishmael also holds the same, inferring it from [Zech. ii. 7]: "And, behold, the angel that spoke with me went out, and another angel came out to meet him." It does not read *after* him (*achrov*), but *against* him (*likrono*): from which it is to be inferred that the Shekhinah is everywhere. And R. Shesheth also holds so, as he (who was blind) said to his servant: Raise and turn me for praying to any side of the world excepting the east; not because the Shekhinah is not resting there, but because the *minim* have decided that one must pray only towards the east side. R. Abuhu, however, maintains that the Shekhinah is resting in the west, as he said: Why is the west side called *Oriah*? Because it is filled with the air of God. [1](#)

R. Jehudah said: It is written [Deut. xxxii. 2]: "My doctrine shall drop as the rain"; which means the west wind, which comes from the neck of the world; [2](#) "my speech shall distil as the dew," which means the north wind, which makes gold cheap (because it brings hunger, and that renders gold cheap), as it is written [Is. xlvi. 6]; [3](#) "as heavy rains upon the grass," means an east wind that makes storms in the world; [4](#) "and as showers upon herbs," Means a south wind, which brings beneficent rain and causes growth of grasses.

There is a Boraitha: R. Elazar said: The world is like a balcony without the fourth wall; and when the sun arrives in the

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evening at the northwest corner, it is diverted by this wind and ascends above the sky. And R. Joshua said: The world is like a tent which is fenced on all sides, and when the sun arrives in the evening at the northwest corner, it turns around and returns beyond the sky; as it is written [Eccl. i. 6]: "Going toward the south, and turning round toward the north, the wind moveth round about continually; and around its circles doth the wind return again." "Going toward the south"--during the day; "and turning round toward the north"--during the night; "moveth round about"--means facing east and west, so that sometimes, when the days are long, it goes through them, and when the days are short, it goes around them. R. Elazar used to say [Job, xxxvii. 9]: "Out of his chamber cometh the whirlwind," which means the south wind; "and out of the north, the cold," which means the north wind. "From the breathing of God ice is given"--means the west wind; "and the broad waters become solid"--means the east wind.--But did not the master say that the south wind brings beneficent rain' etc.? This presents no difficulty: If the rain comes slowly, it makes the grass grow; but if it comes down in torrents, it does harm.

R. Hisda said: It is written [ibid., ibid. 22]: "The golden light that cometh out of the north"--it means the north wind, which makes gold cheap, as it is written in Isaiah, verse cited above.

Raphram b. Papa in the name of R. Hisda said: "Since the Temple was destroyed, the south wind has never brought rain, as it is written [Is. ix. 9]: 'And he snatcheth on the right hand, [1](#) and is yet hungry; and he eateth on the left hand, and is not yet satisfied; they shall eat every man the flesh

of his own arm.' It is written also [Ps. lxxxix. 13]: 'The north and the south--these hast thou created,' etc." The same said again in the name of the same authority; "Since the Temple was destroyed, the rains do not come from the good treasure; as it is written [Deut. xxviii. 12]: The Lord will open unto thee his good treasure, the heaven, to give the rain of thy land,' etc. From which it is to be seen that when Israel did the will of the Omnipotent, and Israel was in his own land, the rain came from the good treasure; and now that Israel is no more in his own land, the rain does not come from the good treasure."

R. Itz'hak said: He who desires to increase his wisdom shall

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recite his prayers towards the south; and he who desires to become rich shall do so towards the north; and as a mark in aid to remembering this direction, may be taken the fact that in the tabernacle the golden table was placed on the north, and the candelabrum, which gives light (wisdom)--on the south. And R. Joshua b. Levi said: One shall always recite his prayers towards the south, as when his wisdom shall increase, he shall also become richer; as it is written [Prov. iii. 16]: "Length of days is in her right hand: in her left are riches and honor." But did not R. Joshua b. Levi say that the Shekhinah is in the west? He does not mean that he should stand in the south exactly, but that he should stand in the west (southwest corner) and incline himself towards the south.

Said R. Hanina to R. Ashi: Ye who are located on the north side of Palestine must recite your prayers towards the south (so that you shall face Jerusalem). And whence do we know that Babylon was situated north of Palestine? From [Jer. i. 14]: "Out of the north shall the evil break forth," etc.

"*A pond for steeping flax,*" etc. There is a Boraitha: "R. Jose allows mustard; as the owner of it may claim: 'Instead of telling me that I should remove my mustard from your bees, it is for you to remove your bees from my mustard, for they come and consume its blossoms.'"

MISHNA XI.: From a well a distance of twenty-five ells must be left when planting a tree; and fifty ells when planting sycamores or carobs. It makes no difference whether it be above or alongside. If the well has been there first, the tree must be cut down and paid for; but if the tree has been there first, it may remain. The same is the case when there is a doubt. R. Jose, however, maintains that even when the well was there before the tree there is no necessity for cutting down the latter, as one digs on his property while another plants on his own.

GEMARA: There is a Boraitha: "It makes no difference whether the well be below the tree or *vice versa*"? This would be correct when the tree is above the well, as its roots injure it; but if the well be above the tree, what harm can be done? Said R. Haga in the name of R. Jose: Because the roots render the earth friable, and thus harm the bottom of the well.

"*R. Jose, however, maintains,*" etc. Said R. Jehudah in the name of Samuel: The Halakha prevails in accordance with R. Jose. And R. Ashi said: When I was with R. Kahana, we came to the conclusion that R. Jose admits that when one's arrows do

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damage, etc. (see above, [p. 68](#)). Papi di Unaha, who was poor and afterwards became rich, built a palace. In the neighbor. hood were established poppy presses; and when they were in operation the palace used to shake. He came to complain before R. Ashi, who told him what R. Kahana said to him. But how much should the palace shake to make the presses [responsible](#)? When a pitcher is on the roof of the palace and its cover shakes.

The disciples of Bar Marian b. Rabbin used to card flax, and the dust of it harmed the men that passed by; and they came to complain before Rabhina, who said to them: That which was said, that R. Jose admits that one should be made responsible for the damage caused by his arrows, was said only when they come from him directly; here, however, as the dust does not come directly, but is blown by the wind, there is no responsibility. Mar b.. R. Ashi opposed: Why should it be different in the case of winnowing, when the wind assists one, concerning which it is said, in the First Gate, that he is responsible? When this was said before Miramar he decided that Mar was right in his supposition, and Marian's disciples were responsible. But to Rabhina: Why should this case be different from that of a spark that proceeds from under the hammer and does damage, in which case he is responsible? "There one is pleased that the sparks should escape outside and not inside--where they may cause harm; but in our case they are not pleased at all that the dust should escape where men pass."

MISHNA *XII*.: One must not plant a tree near to his neighbor's field, unless it be at a distance of four ells; and it makes no difference whether it be vines or other trees. If, however, there is a fence between the two estates, each of them may plant on his side of the fence. If the roots spread to the estate of one's neighbor, the latter may replace them three spans deeper, so that they shall not hinder in ploughing. If he has to dig a pit or a cave, he may cut off the roots which prevent him from doing so, and the fuel is his.

GEMARA: There is a Boraitha: "The four ells in question are for the purpose that the owner of the vineyard should be able to work it up." Said Samuel: "This is said only concerning Palestine, where they have long ploughs; but in Babylon, where the ploughs are short, two ells suffice." And the same is stated in the following Boraitha: "One must not plant a tree near his neighbor's field, unless he leaves a space of two ells."

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[\[paragraph continues\]](#) And as this contradicts our Mishna, which states four ells, it must be explained that the Boraitha speaks of Babylon, and is in accordance with Samuel's theory. Infer from this that so it is.

Rabha b. R. Hanon had trees at the boundary of R. Joseph's vineyard; and birds which used to rest on the trees descended into the vineyard and did harm. And R. Joseph told him to cut down his trees. And to his claim that the trees were placed at the prescribed distance, R. Joseph said: "This is prescribed only for trees, but for vines more space is required." But does not our Mishna state that there is no difference between vines and trees? R. Joseph rejoined that it means a tree from a tree, and vines from vines; but from a tree to vines more space is required. Said Rabha: "I shall not cut it down; as Rabh said that a tree which bears fruit to the measure of a kab is forbidden to be cut down; and also R. Hanina said: 'Shakkhath, my son, would not have died if he had not cut down a fig-tree before the time; but you, masters, may cut it down if you like.'"

R. Papa had trees at the boundary of R. Huna b. R. Joshua's estate. At one time he found him digging and cutting off its roots; and to the question why he did so, R. Huna answered: In accordance with our Mishna, which states that one may replace the roots to the depth of three spans, in order not to prevent ploughing. Said R. Papa to him: But the master digs deeper. And he answered: I am digging an excavation, and our Mishna allows to do this. Said R. Papa: I tried to repeat for him many supports to the statement that he was not doing right, but he did not listen to me; until I reminded him about the decision of R. Jehudah, that a path that is used by the majority was forbidden to be spoiled. After R. Papa went out, R. Joshua said to himself: Why did I not oppose also this claim of his, with that this was said only within sixteen ells from a tree; but in my case it was outside sixteen ells, and the cutting off of the root could do no harm to the tree.

"*And the fuel is his,*" etc. Jacob of Daiba questioned R. Hisda: Who is meant by 'his'? And he answered: This we have learned in the following: "From roots of a tree belonging to a private man, which spread into the estate of the sanctuary, must not be derived any benefit; but if one has so derived, he is not liable for a sin-offering. This can be correct only when it is said that the roots go with the tree; therefore one is not liable for a sin-offering. But if it should be said that they go with the estate wherein they spread, why should one not be liable? But if

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the theory that the roots go with the tree remains, how is the latter part of the Mishna to be understood: If the tree is from the sanctuary, and its roots spread into a private estate, the same is the case? Now, if the roots go with the tree, why is one not liable when he derives benefit from it? This objection cannot hold good, as it speaks of a root that grew after the tree had already been sanctified; and there is a Tana who holds that upon the growth which takes place after sanctification no transgression is considered. Rabhina, however, says that there is no contradiction in that Boraitha, as the first part speaks of the roots which were within sixteen ells of the tree, and the latter part of those which were outside of the sixteen ells. Hence the Mishna, which states "his," means the owner of the tree.

Ulla said: A tree which is within sixteen ells of the boundary of another's estate is considered robbery, as it derives its nourishment from another's estate, and its fruit must not be used for the firstfruit offering. Whence did Ulla deduce this? Shall we assume from the Mishna [Sh'byith, I. 7]: "Ten plants which are scattered within a field which a saah of grain can be sown in, the entire piece of land may be ploughed for the sake of the trees until the new Sabbath year comes (as the trees derive nourishment from the entire field in which they are scattered, which is not allowed in a field for sowing seeds)." How many ells are there altogether in a piece of land which is fifty ells square (this is the extent of ground in which a saah of grain can be sown), if divided into strips of one ell? Two thousand five hundred. Then each tree needs for its nourishment two hundred and fifty; and this would not correspond with Ulla's theory, as he requires sixteen ells on each side, which means thirty-two ells square. And if it should be divided into strips of one ell, it would be 1,024 ells. And shall we say from the Mishna (ibid., ibid. 5): A field with three large trees (which are scattered in the above space), belonging to three different persons, according to the Sabbatic law it counts as a tree field, so that it may also be ploughed until the new Sabbatic year? Then, of the two thousand five hundred ells each tree derives its nourishment from $833 \frac{1}{3}$ ells; but even then the quantity prescribed by Ulla differs by still more. Ulla was not particular. But non-particularity may be applied when the matter is taken rigorously; but when taken leniently (as, e.g., in Ulla's case, in which the tree becomes

free from the firstfruit offering), it must not be applied. Ulla meant to say, not sixteen ells square, but sixteen ells in a circle, and as

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a square measures more than a circle by one-fourth, it makes only 768 ells for nourishment; and, according to the cited Mishna, each tree would need $16 \frac{2}{3}$ ells for nourishment, hence he was not particular in the two-thirds, and this makes it more rigorous--to which non-particularity applies. [1](#)

But why only sixteen ells--does not our Mishna state that a space of twenty-five ells must be left from the tree to the well? Said, Abayi: "The roots spread much farther, but to a distance of sixteen ells they nourish and render the earth poor; while beyond that distance they do not." When Rabbin came from Palestine, he said in the name of R. Johanan that from a tree near the boundary, as well as from a tree whose branches are inclined towards another estate, the firstfruit offering might be brought; and there might be read in this connection the passages from the Scriptures referring hereto, as with this stipulation did Joshua bequeath the land to Israel.

MISHNA XIII.: If the branches of a tree are inclined towards another field, the owner of the field may cut them off to a sufficient extent, so as not to hinder a team of oxen from passing with the plough. In the case of a carob or a sycamore, however, it must be measured with a plummet (cutting off all the branches as far as they hang over the border line); and if the field is of dry land, the branches from any tree, which overhang it, may be cut off. Aba Shaul said that the same is the case with every wild tree.

GEMARA: The schoolmen propounded a question: Does Aba Shaul mean to oppose with his decision the first part of the Mishna, saying that even if it be not dry land the branches of a wild tree must be cut off; or the second part, which states that the branches from any tree must be cut off--he opposes, saying only of a wild tree, but not of a fruit-tree? Come and hear the following Boraitha: "Aba Shaul said: Every tree of which the branches overhang a dry field must be measured with a plummet, because the shade harms a dry field." Hence his opposition was to the first part. Said R. Ashi: "Even if the Boraitha did not state it so plainly, this could be understood from R. Shaul's expression in our Mishna, as it states every wild tree; and if he opposed only the second part, he would have specified a wild tree. Hence his opposition is to the first part."

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MISHNA XIV.: The branches of a tree which overhang public ground may be cut off, so that a camel with its rider may pass freely. R. Jehudah says: A camel loaded with flax or with bundles of branches. R. Simeon says: Every tree of that kind must be measured with a plummet, because of the law of defilement.

GEMARA: Who is the Tana who holds that concerning damages we have to consider only the present time, and not the future? (As the Mishna states, it must be cut off only for a camel; and does not consider that the branches grow up again.) Said Resh Lakish: Tana'im differ in this case; and our Mishna is in accordance with R. Eliezer, who allows in a Mishna farther on to dig caves and excavations under a public ground, of a size sufficient for a wagon loaded with stones to pass. R. Johanan, however, maintains that our Mishna may be also in accordance with the

rabbis of that Mishna who prohibit this, as there it is to be feared that it may fall suddenly; but here, each branch that grows up can be cut off.

"*R. Simeon says,*" etc. A Boraitha adds to this "for the purpose that it may not form a tent of defilement." Is this not to be understood from the Mishna itself? (As what other law of defilement can it mean?) If from it one may say that it meant, for fear a raven should bring something unclean and deposit it on the tree; and then it would be sufficient to cut off some branches, so that the branches should not hold anything, it comes to teach us that it means it shall not form a tent, and then it must be measured with a plummet.

Footnotes

[63:1](#) The Scriptures were then written without vowels, these being added at a later time.

[67:1](#) This explanation of Rabha does not very well justify his own opposition, and it is, indeed, objected to by Tothpath, without any answer following it.

[72:1](#) The term in the text is *abruri*, and Schönhack maintains that it originates from the Greek •βαρης, which means *without weight*, the first Hebrew *r* being interpolated.

[75:1](#) Rashi says he has heard that in the Persian language *Oriah* means west; he himself, however, maintains that, on the contrary, *Oriah* (orient) means east. And it is so called because the Shekhinah rests on the west side, facing east. Hence the east side is His air; *avir*, which contains the first four letters of *Oriah*, in Hebrew means *air*.

[75:2](#) The word in Hebrew is *yaarof*; and *ohraf* means *neck*.

[75:3](#) The term in Hebrew is *zol* in both passages--literally, *cheap*. The translation certainly differs in both, according to the sense.

[75:4](#) The term is *sair*, which means also *storm*.

[76:1](#) The expression for *right hand* is *yomin*, and in the Psalms the expression for *south* is also *yomin*; hence the analogy.

[81:1](#) There are many commentaries on this calculation, which would be too complicated for translation, and we leave it to the mathematicians. To omit this, however, would be against our method.