assume [that it can be placed even] above ten handbreadths, why did R. Judah say that in the case of a Chanukah candle there would be exemption? Why should the plaintiff not plead against him: 'You should have placed it above the reach of the camel and its rider?' Does this therefore not prove that it is ordained to place it within the [first] ten handbreadths? — It can, however, be argued that this is not so. For it could still be said that it might be placed even above the height of ten handbreadths, and as for your argument 'You ought to have placed it above the reach of the camel and its rider', [it might be answered that] since he was occupied with the performance of a religious act, the Rabbis could not [rightly] make it so troublesome to him.[5] R. Kahana said that R. Nathan b. Minyomi expounded in the name of R. Tanhum:[6] 'If the Chanukah candle is placed above [the height of] twenty cubits it is disqualified [for the purpose of the religious performance],[7] like a sukkah[8] and an alley-entry.[9]

C H A P T E R V I I

MISHNAH. THERE IS MORE FREQUENTLY OCCASION FOR THE MEASURE OF DOUBLE PAYMENT[10] [TO BE APPLIED] THAN THE MEASURE OF FOUR-FOLD OR FIVE-FOLD PAYMENTS,[11] SINCE THE MEASURE OF DOUBLE PAYMENT APPLIES BOTH TO A THING POSSESSING THE BREATH OF LIFE AND A THING WHICH DOES NOT POSSESS THE BREATH OF LIFE, WHEREAS THE MEASURE OF FOUR-FOLD AND FIVE-FOLD PAYMENTS[11] HAS NO APPLICATION EXCEPT FOR AN OX AND A SHEEP [RESPECTIVELY] ALONE, AS IT SAYS 'IF A MAN STEAL AN OX OR A SHEEP AND KILL IT OR SELL IT, HE SHALL PAY FIVE OXEN FOR AN OX AND FOUR SHEEP FOR A SHEEP.'[12] ONE WHO STEALS [ARTICLES ALREADY STOLEN] IN THE HANDS OF A THIEF NEED NOT MAKE DOUBLE PAYMENT,[13] AS ALSO HE WHO SLAUGHTERS OR SELLS [THE ANIMAL] WHILE IN THE POSSESSION OF [ANOTHER] THIEF HAS NOT TO MAKE FOURFOLD OR FIVE-FOLD PAYMENT.

GEMARA. That the measure of double payment applies both in the case of a thief and in the case of [an unpaid bailee falsely] alleging a theft,[14] whereas the measure of four-fold or five-fold payments has no application except in the case of a thief alone — [this, be it noted], is not taught here. This [omission] supports the view of R. Hiyya b. Abba, for R. Hiyya b. Abba stated that R. Johanan said: He who falsely alleges a theft [to account for the absence] of a deposit [entrusted to him], may have to make double payment;[14] so also if he slaughtered or sold it he may have to make four-fold or five-fold payment.[15] Some read as follows: Shall we say that this [omission] supports the view of R. Hiyya b. Abba who said in the name of R. Johanan: He who falsely alleges a theft [to account for the absence] of a deposit [entrusted to him] may have to make double payment; so also if he slaughtered or sold it, he may have to make four-fold or five-fold payment'? — But does your text say, 'There is no difference between [this[16] and that[17] except . . .]'? What it says is, THERE IS MORE FREQUENT OCCASION. — While some points were stated in the text others were omitted.[18]

AS THE MEASURE OF DOUBLE PAYMENT APPLIES BOTH TO A THING POSSESSING THE BREATH OF LIFE AND TO A THING WHICH DOES NOT POSSESS THE BREATH OF LIFE etc. Whence is this derived? As our Rabbis taught: For every matter of trespass[19] is a generalisation; whether it be for ox, for ass, for sheep, for raiment, is a specification; or for any manner of lost thing generalises again. We have thus here a generalisation preceding a specification which is in its turn followed by another generalisation,[20] and in such cases we include only that which is similar to the specification. Just as the specification here mentions an object which is movable and which has an intrinsic value, there should therefore be included any object which is movable and which has an intrinsic value. Real estate is thus excluded,[21] not being movable; slaves are similarly excluded as they are on the same footing [in the eye of the law] with real estate;[22] bills are similarly excluded, as though they are movable, they have no intrinsic value; sacred property is

also excluded as the text speaks of 'his neighbour'. But since the specification mentions a living thing whose carcass would cause defilement whether by touching or by carrying,[23] [why not say] there should be included any living thing whose carcass similarly causes defilement whether by touching or by carrying[24] so that birds would not be included?[25] — How can you seriously say this? Is not raiment[26] mentioned here? It may, however, be said that it is only regarding objects possessing life that we have argued.[27] Why then not say in the case of objects possessing life that it is only a thing whose carcass causes defilement by touching and carrying that is included, whereas a thing whose carcass does not cause defilement by touching and carrying should not be included,

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(1) V. supra 22a.

(2) As he is to blame for placing his candle outside his shop.

(3) Feast of Dedication.

(4) As he was entitled to place the Chanukah candle outside.

(5) As to make him place his Chanukah candle on a higher level.

(6) V. Shab. 21a.

(7) As when placed at such a high level it will not be noticed by passersby and publicity will not be given to the miracle.

(8) V. Glos. Cf. Suk. I, 1.

(9) V. 'Er, I, 1. An alley where a post or a stake would be required to be placed at the entrance for the purpose of enabling the inmates of that area to carry their domestic objects on the Sabbath day.

(10) For theft, in accordance with Ex. XXII, 3.

(11) For the slaughtering (or selling) of a sheep or ox respectively; cf. ibid. XXI, 37.

(12) Ibid.

(13) Since the article had in any case already passed out of the possession of the true owner.

(14) In accordance with Ex. XXII, 8.

(15) Infra p. 369.

(16) The measure of double payment.

(17) The measure of four-fold or five-fold payment.

(18) The omission of a particular point should therefore not be taken as a proof.

(19) Ex. XXII, 8.

(20) V. supra 54a.

(21) From the law of double payment.

(22) For which cf. Lev. XXV, 46.

(23) Lev. XI 39-40.

(24) Ibid. 26-28.

(25) As these do not cause defilement either by touching or by carrying.

(26) Which is not a living object at all.

(27) That they should be such that their carcasses would cause defilement whether by touching or by carrying.

Talmud - Mas. Baba Kama 63a

as each item in a generalisation and specification[1] is expounded by itself,[2] so that birds would not be included? — If so, the Divine Law should have inserted only one item in the specification.[3] But which item should the Divine Law have inserted? For were the Divine Law to have inserted only 'ox' I might have suggested that an animal which was eligible to be sacrificed upon the altar[4] should be included, but one which was not eligible to be sacrificed upon the altar[5] should not be included. If on the other hand the Divine Law had inserted only 'ass'[6] I might have thought that an animal which is subject to the sanctity of first birth[7] should be included but that one which is not subject to the sanctity of first birth[8] should not be included. [Why then still not exclude birds whose carcasses would, unlike those of the ox and the ass, defile neither by touching nor by carrying?] — It may still be said that if so, the Divine Law would have inserted 'ox' and 'ass'. Why then was 'sheep' inserted, unless to indicate the inclusion of birds [which would otherwise have been excluded]? But still why not say that you can [only] include birds which are [ritually] clean[9] for food, as these in some way

resemble sheep in that they defile the garments worn by him who swallows them[10] [after they have become nebelah],[11] whereas birds [ritually] unclean for food[12] which carry no defilement and do not cause the defilement of garments worn by him who swallows them[13] should not be included? — [The term] 'all' is an amplification.[14] [Does this mean to say that] whenever the Divine Law uses [the word] 'all' it is an amplification? What about tithes, where 'all' occurs and we nevertheless expounded it as a case of generalisation and specification? For it was taught: And thou shalt bestow that money for all that thy soul lusteth after[15] is a generalisation; for oxen, or for sheep, or for wine, or for strong drink is a specification; or for all that thy soul desireth is again a generalisation. Now, where a generalisation precedes a specification which is in its turn followed by another generalisation, you include only that which is similar to the specification. As then the specification [here] mentions produce obtained from produce[16] which springs from the soil[17] there may also be included all kinds of produce obtained from produce[18] which springs from the soil.[19] [Does this not prove that the expression 'all' was taken as a generalisation, and not as an amplification?][20] — It may, however, be said that [the expression] 'for all'[15] is only a generalisation, whereas 'all' would be an amplification.[21] Or if you wish I may say that [the term] 'all' is also a generalisation, but in this case 'all' is an amplification. For at the very outset we find here a generalisation preceding a specification followed in its turn by another generalisation, as it is written: If a man deliver unto his neighbour,[22] which is a generalisation, money or stuff which is a specification, to keep which generalises again. Should you assume that this verse for any matter of trespass etc. was similarly inserted in order to give us a generalisation preceding a specification followed in its turn by another generalisation, why did the Divine Law not insert these items of the specification [of the latter verse] along with the items of the former generalisation, specification and generalisation?[23] Why was the verse for any matter of trespass inserted at all, unless to prove that [this 'all'] was meant as an amplification?[24] But now that you have decided that the term 'all' is an amplification,[25] why do I need all these terms of the specification?[26] — One to exclude real estate, a second to exclude slaves and the third to exclude bills; 'raiment' to exclude articles which have no specification;[27] 'or for any manner of lost thing' was meant as a basis for the view of R. Hiyya b. Abbah, as R. Hiyya b. Abba reported[28] that R. Johanan said:

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(1) [MS.M. omits 'in a . . . . specification'.]

(2) V. infra 64b.

(3) Regarding objects possessing life.

(4) As was the case with ox.

(5) Such as an ass, horse, camel and the like.

(6) Which would include also animals not eligible to be sacrificed upon the altar.

(7) As is the case with ass; cf. Ex. XIII, 13.

(8) Such as horses and camels and the like.

(9) Deut. XIV, 11.

(10) Cf. Hul. 100b.

(11) I.e., a living creature which lost its life not through the prescribed method of ritual slaughter; cf. Glos.

(12) Enumerated in Lev. XI, 13-20 and Deut. XIV, 12-19.

(13) Cf. Hul. loc. cit.

(14) I.e., the term 'all' does more than generalise, for it includes everything, v. supra p. 317. n. 7.

(15) Deut. XIV, 26.

(16) Such as wine from grapes.

(17) Which characterises also cattle.

(18) Excluding water, salt and mushrooms.

(19) Thus excluding fishes. V. supra p. 317.

(20) Which would have included all kinds of food and drink.

(21) V. p. 318, n. 2.

(22) Ex. XXII, 6.

(23) In Ex. XXII, 6.

(24) [That is, with reference to the double payment, whereas the generalisation in the preceding verse refers to the oath (v. Shebu. 43a)].
(25) V. p. 366, n. 3.
(26) Ox, ass, sheep or raiment.
(27) According to Rashi it means that which has no distinguishing mark, but according to Tosaf, that which is not defined by measure, weight or number; see also Shebu. 42b and B.M. 47a.
(28) Supra 57a.

Talmud - Mas. Baba Kama 63b

He who falsely alleges the theft [to account for the non-production] of a find,[1] may have to make double payment,[2] as it says, 'for any manner of lost thing whereof one saith . . .'[3]

We have learnt elsewhere:[4] [If a man says to another] 'Where is my deposit?', and the bailee says 'It was lost', whereupon [the depositor says], 'I call upon you to swear' and the bailee says, 'So be it',[5] if witnesses testify against him that he himself had consumed it, he has to pay [only] the principal,[6] but if he admits [this] of himself, he has to pay the principal together with a fifth and a trespass offering.[7] [If the depositor says] 'Where is my deposit?', and the bailee answers 'It was stolen!', [whereupon the depositor says] 'I call on you to swear', and the bailee says, 'So be it',[5] if witnesses testify against him that he himself had stolen it, he has to make double payment,[8] but if he admits [this] on his own accord, he has to pay the principal together with a fifth and a trespass offering.[7] It is thus stated here that it is only where the bailee falsely alleges theft that he has to make double payment, whereas if he falsely alleges loss, he has not to make double payment. Again, even where he falsely alleges theft it is only where [he confirms the allegation] by an oath that he has to make double payment, whereas where no oath [follows] he has not to make double payment. What is the Scriptural authority for all this? — As the Rabbis taught: If the thief be found;[9] this verse deals with a bailee[10] who falsely alleges theft.[11] Or perhaps not so, but with the thief himself?[12] — As, however, it is further stated, If the thief be not found,[13] we must conclude that the [whole] verse[14] deals with a bailee falsely advancing a plea of theft.[15]

Another [Baraitha] teaches: If the thief be found: this verse deals with the thief himself.[16] You say that it deals with the thief himself. Why, however, not say that it is not so, but that it deals with a bailee falsely alleging theft? — When it further states, If the thief be not found this gives us the case of a bailee falsely alleging theft, How then can I explain [the verse] If the thief be found unless on the supposition that this deals with the thief himself![16] We see at any rate that all agree that [the verse] If the thief be not found deals with a bailee falsely alleging theft. But how is this implied [in the wording of the text]? — Raba said: [We understand the verse to say that] if it will not be found as he[17] stated[18] but that he himself had stolen it, he has to pay double. But whence can we conclude that this is so only in the case of an oath [having been falsely taken by the bailee]? — As it was taught: The master of the house shall come near unto the judges[13] to take an oath. You say to take an oath. Why not say, however, that this is not so, but to stand his trial?[19] — The words 'put his hand unto his neighbour's goods' occur in a subsequent section[20] and the words 'put his hand unto his neighbour's goods' occur in this section[13] which precedes the other one; just as there[20] it is associated with an oath,[21] so here also it should be associated with an oath. Now on the supposition[22] that one verse deals[23] with a thief and the other[24] with [a bailee falsely] alleging theft we quite understand why there are two verses; but on the supposition[25] that both of them deal with a bailee falsely alleging theft, why do I want two verses?[26] — It may be replied that one is to exclude the case of a false allegation of loss [from entailing double payment]. Now on the supposition[22] that one verse deals with a thief and the other with [a bailee falsely] alleging theft, in which case there will be no superfluous verse [in the text] whence can we derive the exclusion of a false allegation of loss [from entailing double payment]? — From [the definite article; as instead of] 'thief' [it is written] 'the thief'.[27] On the supposition[25] that both of the verses deal with [a bailee falsely] alleging theft, in

which case Scripture excludes a bailee falsely alleging loss, how could [the fact that instead of] 'thief' [it is written] 'the thief' be expounded? — He might say to you that it furnishes a basis for the view of R. Hiyya b. Abba reported in the name of R. Johanan, as R. Hiyya b. Abba stated[28] that R. Johanan said that he who falsely alleges theft in the case of a deposit would have to make double payment, and so also if he slaughtered or sold it he would have to make fourfold or five-fold payment. But on the supposition[22] that one verse deals with a thief and the other with [a bailee falsely] alleging theft, and that [the fact that instead of] 'thief', 'the thief' [is written] has been used to exclude a false allegation of loss [from entailing double payment], whence could be derived the view of R. Hiyya b. Abba?[28] — He might say to you: A thief and a bailee falsely alleging theft are made analogous to one another in Scripture,[29] and no objections can be entertained against an analogy.[30] This is all very well on the supposition that one verse deals with a thief and the other with [a bailee falsely] alleging theft. But on the supposition that both of them deal with [a bailee falsely] alleging theft, whence can the law of double payment[31] be derived in the case of a thief himself? And should you say that it can be derived by means of an a fortiori argument from the law of [a bailee falsely] alleging theft, [we may ask], is it not sufficient for the object to which the inference is made to be placed on the same footing as the object from which it is made,[32] so that just as there[33] [the penalty is entailed only where there] is false swearing, so here also[34] [it should be entailed only] where there is false swearing? — It could be derived by the reasoning taught at the School of Hezekiah. For it was taught at the School of Hezekiah: Should not Scripture have mentioned only 'ox' and 'theft'[35] as everything would thus have been included? — If so, I might say that just as the specification[36] mentions an object which is eligible to be sacrificed upon the altar any [living] object which is eligible to be sacrificed upon the altar should be included. What can you include through this? A sheep[37] [as subject to double payment].

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(1) I.e., an article found by him and which he has to return to its owner.

(2) If he took an oath to substantiate his false plea.

(3) Ex. XXII, 8.

(4) Shebu. VIII, 3.

(5) Which amounts to an oath; cf. Shebu. 29b.

(6) But not double payment, as he did not allege theft.

(7) In accordance with Lev. V, 21-25.

(8) As by advancing the false plea of theft and substantiating it by an oath he became subject to the law applicable to theft.

(9) Ex. XXII, 6.

(10) I.e., unpaid.

(11) The clause therefore means this: if he (the bailee) be found to have been the thief, he should pay double.

(12) Whereas the bailee would never have to pay double.

(13) Ex. XXII, 7.

(14) Which should be construed thus: If it be not found as the bailee pleaded that it was stolen by a thief but that he himself was the thief etc.

(15) V. the discussion later.

(16) Who was found to have stolen the deposit, in which case the unpaid bailee is quit and the thief pays double.

(17) The bailee.

(18) That he became dispossessed of it by the thief.

(19) And be ordered to pay.

(20) Ibid. 10.

(21) For the text runs: The oath of the Lord be between them both to see whether he hath not put his hands unto his neighbour's goods.

(22) I.e., the second Baraitha.

(23) Ex. XXII, 6.

(24) Ex. XXII, 7.

(25) I.e., the first Baraitha.

(26) Presenting the same law.

(27) Thus pointing out that the liability for double payment is only where it was the plea of theft that was proved to have been false.

(28) Supra p. 364.

(29) To be subject to the law of double payment which may lead on to a liability of four-fold or five-fold payment.

(30) היקש infra 106b.

(31) For misappropriating either an animate or inanimate object.

(32) I.e., the principle of Dayyo, v. supra p. 126.

(33) In the case of the bailee falsely pleading theft.

(34) In the case of the thief himself.

(35) In Ex. XXII, 3.

(36) I.e., ox.

(37) Which is similarly eligible to be sacrificed upon the altar.

Talmud - Mas. Baba Kama 64a

But when the text continues ‘sheep’, we have sheep explicitly stated. How then am I to explain ‘theft’? To include any object. [If that is so] should Scripture not have mentioned only ‘ox’, ‘sheep’ and ‘theft’ since everything would have thus been included? — If so, I might still say that just as the specification[1] mentions an object which is subject to the sanctity of first birth,[2] so also any object which is subject to the sanctity of first birth [should be included].[3] Now what can you include through this? An ass [as subject to double payment]. But when the text goes on to mention ‘ass’, we have ‘ass’ explicitly stated. What then do I make of ‘theft’? To include any object. [If that is so], should Scripture not have mentioned only ‘ox’ ‘ass’, ‘sheep’ and ‘theft’ since everything would have accordingly been included? — If so, I might still say that just as the specification[4] mentions objects possessing life, so also any other objects possessing life [should be included]. What can you include through this? All other objects possessing life. But when the text continues ‘alive’, we have objects possessing life explicitly stated. How then am I to explain ‘theft’? [It must be] to include any other object whatsoever.[5]

The Master stated: ‘Should not Scripture have mentioned [only] "ox" and "theft"?’ — But does it say ‘ox’ and [then] ‘theft’? Is it not [first] ‘theft’ and [then] ‘ox’ which is written in the text?[6] And if you rejoin that the author of this argument took a hypothetical case, viz.: ‘If it were written [first] "ox" and [then] "theft", how in that case would you be able to say, ‘Just as the specification mentions etc.,’ since ‘ox’ would be the specification and ‘theft’ the generalisation, and in the case of a specification followed by a generalisation the generalisation is considered to add to the specification, so that all objects would be included? If, on the other hand, he based his argument on the actual order of the text, viz.: ‘theft’ and [then] ‘ox’, how again would you be able to say that ‘everything would have been included’, or ‘just as the specification mentions etc.’, since ‘theft’ would be the generalisation and ‘ox’ the specification, and in the case of a generalisation followed by a specification there is nothing included in the generalisation except what is explicit in the specification, [so that here] only ox [would be included] but no other object whatsoever? Raba thereupon said: This Tanna[7] based his argument upon the term ‘alive’ [that follows the specification], so that he argued on the strength of a generalisation[8] [followed by] a specification[9] [which was in its turn followed by] another generalisation.[10] But is the last generalisation[10] analagous in implication to the first generalisation?[11] There is, however, the Tanna of the School of R. Ishmael who did expound texts of this kind on the lines of generalisations and specifications.[12] The problem was therefore this: Why do I require the words in the text, ‘If to be found it be found?’[13] Should not Scripture have mentioned only ‘theft’ and ‘ox’ and ‘alive’, and everything would have then been included?[14] — If so, I might say that just as the specification mentions an object which is eligible to be sacrificed upon the altar, so also any object eligible to be sacrificed upon the altar is [included]. What does this enable you to include? Sheep.[15] But when the text

continues ‘sheep’, we have sheep explicitly stated. What then am I to make of ‘theft’? It must be to include any object. [If that is so] should Scripture not have mentioned only ‘theft’, ‘ox’, ‘sheep’ and ‘alive’ since everything would have then been included?[14] — If so, I might still say that just as the specification mentions an object which is subject to the sanctity of first birth, so also any object which is subject to the sanctity of first birth [should be included]. What does this enable you to include? Ass. But when the text continues ‘ass’, we have ass explicitly stated. What then am I to make of ‘theft’? It must be to include any object. [But in that case] should Scripture not have mentioned only ‘theft’, ‘ox’, ‘sheep’, ‘ass’ and ‘alive’, since everything would have then been included?[14] — If so I might still say that just as the specification mentions objects possessing life, so also any other object possessing life [should be included]. What does this enable you to include? All other objects possessing life. But when the text continues ‘alive’, objects possessing life are explicitly stated. What then am I to make of ‘theft’? [It must be] to include any other object whatsoever. And if so, why do I require the words ‘if to be found it be found[16] ?

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(1) I.e., ox and sheep.

(2) In accordance with Ex. XIII, 12.

(3) Ass would thus also be included; cf. Ex. XXII, 13.

(4) Ox, sheep and ass.

(5) [Hence the derivation of double payment in the case of the thief himself.]

(6) [Being thus a generalisation followed by a specification, in which case the former includes only what is contained in the latter, v. P.B. p. 13.]

(7) Of the School of Hezekiah.

(8) I.e., ‘theft’.

(9) I.e., ‘ox, ass, sheep’.

(10) I.e., ‘alive’. — The argument will be explained anon.

(11) I.e., ‘theft’, being more comprehensive than ‘alive’.

(12) Cf. Zeb. 4b; 8b; and Hul. 66a.

(13) Literal rendering of Ex. XXII, 3. (E.V.: If the theft be certainly found in his hand.)

(14) Why indeed this emphasis on the verb ‘found’?

(15) V. supra p. 370, n. 7.

(16) V. note 2. This concludes the argument of the School of Hezekiah.

Talmud - Mas. Baba Kama 64b

But if this is so, is not this a real difficulty?[1] — There is, however, a refutation of it.[2] For whence would you include any ‘other object’?[3] From [the implication of] the last generalisation.[4] Now, since this very generalisation consists in the term ‘alive’, of what service then is the argument based upon the generalisation followed by a specification which is in its turn followed by another generalisation? It can hardly be to add any [inanimate] object, since the word ‘alive’ is used there, implying only objects possessing life, but not any other object whatsoever. It was therefore because of this that it was necessary to state ‘if to be found it be found.’[5] It may however still be argued, does not this text contain two generalisations which are placed near each other?[6] — Rabina thereupon said: [We dispose of this difficulty] as stated in the West,[7] that wherever you find two generalisations near each other, place a specification between them and explain them as a case of a generalisation followed by a specification.[8] [Here then] place ‘ox’ between [the infinitive and the finite verb],[6] ‘if to be found it be found.’ Now, what additional objects would this introduce? If objects possessing life, are these not to be derived from the term ‘alive’? It must therefore be an object which does not possess life, and we expound thus: Just as the specification mentions an object which is movable and which has an intrinsic value, so also any object which is movable and which has an intrinsic value [should be included to be subject to the double payment]. Now, when you again place ‘ass’ between [the infinitive and the finite verb], ‘if to be found it be found’, what additional objects could this introduce? If an object not possessing life, was not this derived from [placing] ‘ox’ [between the two

generalisations]?[6] It must therefore serve to introduce an object having specification.[9] But if so why do I require the word 'sheep'? — It must therefore be taken as a case of an amplification preceding a diminution followed in its turn by another amplification,[10] as indeed taught at the School of R. Ishmael. For it was taught at the School of R. Ishmael:[11] [The words 'in the waters',[12] 'In the waters', occurring twice in the text should not be treated as a generalisation followed by a specification, but as an amplification followed by a diminution followed in its turn by another amplification, to add everything. What, then, does it add in this case?[13] It adds all objects, But if so, why do I require all these specifications?[14] — One to exclude real estate; the second to exclude slaves, and the third to exclude bills; while 'theft' and 'alive' furnish a basis for the view of Rab who said[15] that the value of the principal is to be resuscitated as it was at the time of theft.[16]

But according to the view that one verse[17] deals with a thief himself and the other[18] with a bailee [falsely] alleging theft, so that the liability of a thief himself to pay double payment is thus derived from the text 'if the thief be found', how is the text 'If to be found it be found' etc. to be expounded? — He may employ it for teaching the view expressed by Raba b. Ahilai; for Raba b. Ahilai said:[19] What was the reason of Rab who maintained that a defendant admitting an offence for which the penalty is a fine would [even] where witnesses subsequently appeared still be exempt? As it is written: 'If to be found it be found' implying that if at the very outset it is found by witnesses then it will 'be' [considered] 'found' in the consideration of the Judges, excepting thus a case where it was the defendant who incriminated himself. Now again, according to the view that both verses deal with a bailee [falsely] advancing a plea of theft, in which case the text 'If to be found it be found' is employed to teach that there is double payment in the case of a thief himself, whence [in Scripture] do we derive the rule regarding a defendant incriminating himself? — From the text, 'Whom the judges shall condemn'[20] [which implies], 'but not him who condemns himself.' But according to the view that one verse deals with a thief and the other with a bailee [falsely] advancing a plea of theft and that the text of 'if to be found it be found' is to introduce the law where the defendant incriminates himself, how could the text, 'whom the judges shall condemn', be expounded? — He might say to you: That text was in the first instance employed to imply that a defendant admitting [an offence entailing] a fine [without witnesses subsequently appearing] would be exempt;[21] whereas the other view, that both of the verses deal with a bailee [falsely] advancing a plea of theft holds that a defendant admitting [an offence entailing] a fine for which witnesses subsequently appear is liable.[22] According to the view that one verse[23] deals with a thief and the other with a bailee [falsely] advancing a plea of theft, so that the case of a thief is derived from the verse there,[24] we have no difficulty with the text 'if to be found it be found', which is employed as a basis for the statement of Raba b. Ahilai, but why do I require all these specifications?[25] — For the reason taught at the school of R. Ishmael,[26] that any section written in Scripture and then repeated is repeated only for the sake of a new point that is added to it.[27] But why not say that even the thief himself should be subject to double payment only after having taken an oath falsely?[28] — Let not this enter your mind, for it was taught: 'R. Jacob says, He shall pay double[29] [even] where he took no oath. Why not rather say only where he took a false oath?[28] You can safely say that this could not be so.' Why could this not be so? — Said Abaye: For the Divine Law should then not have written 'he shall pay double' in the case of a thief, as this would have been derived by an a fortiori from the law applicable to a bailee falsely advancing a plea of theft: If a bailee falsely advancing a plea of theft, into whose hands the article had come lawfully, is ordered by Scripture to pay twice, should this not apply all the more strongly in the case of the thief himself, into whose hands the article came unlawfully? Why then did Scripture say 'He shall pay double' in the case of a thief himself, unless to imply liability even in the absence of an oath!

But how could this [text] 'If to be found it be found' be employed to teach this?[30] Is it not required for what was taught: 'his hand':[31]

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(1) And how are we to meet the question of that Tanna?

(2) So that the emphasis on the verb becomes essential.
(3) To be subject to the law of theft.
(4) [It is a general principle that, in a proposition consisting of a generalisation followed by a specification which in its turn is followed by another generalisation, the inclusion of all things that are similar to the specification is in virtue of the last generalisation, since without it the proposition would include only what is included in the specification, v. p. 371, n. 3.]
(5) [To apply here the principle of generalisation, specification and generalisation.]
(6) I.e., the doubling of the verb expressing 'found'.
(7) In the Land of Israel.
(8) Cf. Shebu. 5a.
(9) To the exclusion of such as have no marks of identification. Cf. p. 367, n. 4.
(10) Cf. supra p. 366.
(11) V. p. 373, n. 6.
(12) Lev. XI, 9.
(13) Which would otherwise not have been subject to the law.
(14) [Strictly speaking, 'diminutions'.]
(15) Infra p. 376.
(16) I.e., that the payment of principal for a stolen article will be in accordance with its value at the time of the theft.
(17) Ex. XXII, 6.
(18) Ibid. 7.
(19) Infra 75a.
(20) Ex. XXI, 8.
(21) [While the other verse is to extend the exemption to the case where witnesses do subsequently appear. Had there been one verse only available, the exemption would have been limited to the former only.]
(22) As indeed maintained by Samuel, infra 75a.
(23) V. p. 374, n. 8.
(24) 'If the thief be found'.
(25) [Since the exclusion of 'real estate, slaves and bills' is already provided for in the verse, For all manner of trespass, etc,; v. supra p. 364.]
(26) Sot. 3a; Shebu. 19a.
(27) I.e., the exclusion of self-admission in case of a fine, as supra.]
(28) Since the law in this case is derived from the section dealing with the unpaid bailee who is not subject to pay double unless where he first took a false oath on the plea of alleged theft.
(29) Ex. XXII, 3.
(30) I.e., any of the above implications.
(31) Ex. XXII, 3.

Talmud - Mas. Baba Kama 65a

this gives me the rule only as applying to his hand. Whence do I learn that it applies to his roof, his courtyard and his enclosure? It distinctly lays down: If to be found it be found [i.e.] in all places'?[1] — But if so[2] the text should have said either 'if to be found, to be found', or 'if it be found, it be found'?[3] The variation in the text[4] enables us to prove two points from it.

The above text states: 'Rab said: "The principal is reckoned as at the time of the theft,"[5] whereas double payment or four-fold and five-fold payments are reckoned on the basis of the value when the case was brought into Court.' What was the reason of Rab? — Scripture says 'theft' and 'alive'. Why does Scripture say 'alive' in the case of theft? [To imply] that I should resuscitate the principal in accordance with its value at the time of theft.[6] Said R. Shesheth: I am inclined to say that it was only when he was half asleep on his bed[7] that Rab could have enunciated such a ruling.[8] For it was taught: [If a thief misappropriated] a lean animal and fattened it, he has to pay the double payment or four-fold and five-fold payments according to the value at the time of theft. [Is this not a

contradiction to the view of Rab?][9] — It might, however, be said [that the thief has to pay thus] because he can say, 'Am I to fatten it and you take it?'[10]

Come and hear: [If a thief misappropriated] a fat animal and caused it to become lean, he has to pay double payment or fourfold and five-fold payments according to the value at the time of theft. [Does this not contradict the ruling enunciated by Rab?][11] — There also [the thief has to pay thus] because we argue against him 'What is the difference whether you killed it altogether or only half-killed it.'[12] But the ruling enunciated by Rab[11] had reference to fluctuations in price. How are we to understand this? If we assume that it was originally worth one zuz and subsequently worth four zuz, would the statement 'the principal will be reckoned as at the time of theft not lead us to suppose that Rab differs from Rabbah? For Rabbah said:[13] If a man misappropriated from his fellow a barrel of wine which was then [worth] one zuz but which became subsequently worth four zuz, if he broke it or drank it he has to pay four,[14] but if it broke of itself he has to pay one zuz.[15] [Would Rab really differ from this view?][16] — It may however, be said that Rab's rule applied to a case where, e.g., it was at the beginning worth four [zuz] but subsequently worth one [zuz], in which case the principal will be reckoned as at the time of theft, whereas double payment or four-fold and five-fold payments will be reckoned on the basis of the value when the case came into Court. R. Hanina learnt in support of the view of Rab: If a bailee advanced a plea of theft regarding a deposit and confirmed it by oath but subsequently admitted his perjury and witnesses appeared and testified [to the same effect], if he confessed before the appearance of the witnesses, he has to pay the principal together with a fifth and a trespass offering;[17] but if he confessed after the appearance of the witnesses, he has to pay double payment[18] together with a trespass offering;[19] the fifth, however, is replaced by the doubling of the payment.[20] So R. Jacob.

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(1) B.M. 10b and 56b.

(2) That it was meant to imply only one point.

(3) I.e., the verb would have been doubled in the same tense.

(4) In the tense of the verb, the infinite followed by the finite.

(5) V. supra p. 374.

(6) V. p. 374, n. 7.

(7) Lit., 'when lying down'.

(8) For a similar expression cf. supra p. 268.

(9) According to whom four-fold and five-fold payments are reckoned on the basis of the value when the case comes into court.

(10) Whereas where there was an increase in price or where the animal became fatter by itself, the ruling of Rab may hold good.

(11) V. p. 376, n. 11.

(12) The liability thus began at the time when the thief caused the animal to become lean.

(13) B.M. 43a.

(14) As was its value at the time when he damaged it.

(15) As was its value at the time of the theft.

(16) And maintain to the contrary that even where the thief broke it or drank it he would still pay only one zuz, which was its value at the time of the theft.

(17) In accordance with Lev. V, 24-25. [But not the doubling, since it is a fine which is not payable on self-admission.]

(18) V. p. 634, n. 7.

(19) V. p. 634, n. 6.

(20) Provided, however, that the doubling and the fifth are equal in amount.

Talmud - Mas. Baba Kama 65b

The Sages, however, say: [Scripture says] In its principal and the fifth part thereof,[1] [implying that it is only] where money is paid as principal that a fifth has to be added, but where the money is not

paid as principal[2] no fifth will be added.[3] R. Simeon b. Yohai says: No fifth or trespass offering is paid in a case where there is double payment.[4] Now it is said here that 'the fifth is replaced by the doubling of the payment;' this being the view of R. Jacob. How are we to understand this? If we say it was at the beginning worth four and subsequently similarly worth four, how could the fifth be replaced by the doubling of the payment when the doubling of the payment amounts to four and the fifth to one?[5] Does it therefore not refer to a case where at the beginning the value was four but subsequently fell to one zuz, so that the doubling of the payment is one zuz[6] and the fifth of the payment is also one zuz,[5] proving thereby that the principal will be reckoned as at the time of theft, whereas double payment or four-fold and five-fold payments will be reckoned on the basis of the value when the case comes into court? — Raba thereupon said: It could still be maintained that at the beginning it was worth four and now it is similarly worth four, for as to the difficulty with respect to the doubling of the payment being four and the fifth of the payment one zuz,[5] it might be said that [we are dealing here with a case] where e.g., he took an oath and repeated it four times, after which he confessed, and as the Torah says 'and its fifths',[7] the Torah has thus assigned many fifths to one principal.[8]

The Master stated: 'The Sages however say: [Scripture says] In its principal and the fifth part thereof [implying that it is only] where money is paid as principal that a fifth has to be added, but where the money is not paid as principal, no fifth will be added.' The trespass offering will nevertheless have to be brought. Why this difference? If he has not to pay the fifth because it is written, In its principal and the fifth part thereof, why should he similarly not have to pay the trespass offering seeing it is written, In its principal and the fifth part thereof . . . and his trespass offering?[9] — The Rabbis might say to you that by the particle 'eth' [occurring before the term denoting his trespass offering][10] Scripture separates them.[11] And R. Simeon b. Yohai?[12] — He maintains that by the 'waw' [conjunctive placed before the particle] 'eth' Scripture combines them.[13] And the Rabbis? — They may say that if this is so, the Divine Law should have inserted neither the 'waw' nor the 'eth'. And R. Simeon b. Yohai? — He might rejoin that as it was impossible for Scripture not to insert 'eth' so as to make a distinction between a chattel due to Heaven[14] and money due to ordinary men,[15] it was therefore necessary to add the 'waw' so as to combine the verses.

R. Elai said: If a thief misappropriates a lamb and it grows into a ram,[16] or a calf and it grows into an ox,[16] as the article has undergone a change[17] while in his hands he would acquire title to it,[18] so that if he slaughters or sells it, it is his which he slaughters it is his which he sells.[19] R. Hanina objected to R. Elai's statement [from the following teaching]: If he misappropriates a lamb and it grows into a ram,[16] or a calf and it grows into an ox,[16] he will have to make double payment or four-fold and five-fold payments reckoned on the basis of the value at the time of theft. Now, if you assume that he acquires title to it by the change, why should he pay?[20] Is it not his which he slaughtered, is it not his which he sold? — He replied:[21] What then [is your opinion]? That a change does not transfer ownership? Why then pay on the basis of the value at the time of theft[22] and not of the present value?[23] — The other replied:[24] He does not pay in accordance with the present value for the reason that he can say to him,[25] 'Did I steal an ox from you, did I steal a ram from you?' Said the other:[21] 'May the All-Merciful save me from accepting this view!' The other one retorted,[24] 'May the All-Merciful save me from accepting your view.'[26] R. Zera demurred saying: Why should he not indeed acquire title to it through the change in name?[27] Raba, however, said to him: An ox one day old is already called 'ox', and a ram one day old is already called 'ram'. 'An ox one day old is called "ox",' as written: When an ox or a sheep or a goat is born.[28] 'A ram one day old is called "ram",' as written: And the rams of thy flocks have I not eaten.[29] Does he mean that it was only the rams that he did not eat, and that he did eat the sheep? [Surely not!] — This shows that a ram one day old is already called 'ram'. But all the same does the objection raised against R. Elai[30] still not hold good? — R. Shesheth thereupon said: The teaching [of the Baraitha] is in accordance with the view of Beth Shammai, that a change leaves the article in the previous position and will accordingly not transfer ownership, as taught:[31] If he gave her [the harlot] as her hire wheat of which she made flour, or

olives of which she made oil, or grapes of which she made wine, it was taught on one occasion that 'the produce is forbidden [to be sacrificed upon the altar],'[32] whereas on another occasion it was taught 'it is permitted',[33] and R. Joseph said: Gorion of Aspurak[34] learnt: 'Beth Shammai prohibit [the produce to be used as sacrifices],[35] whereas Beth Hillel permit it.' Now, what was the reason of Beth Shammai? — Because it is written 'Gam',[36] to include their transformations.[37] But Beth Hillel maintain that [the suffix them][38] implies 'them',[39] and not their transformations. And Beth Shammai? — They maintain that the suffix

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(1) Lev. V, 24.

(2) As here, where double payment has to be made.

(3) Under any circumstances, even where the doubling of the payment and the fifth are not equal in amount, though the trespass offering will have to be brought.

(4) Infra 106a; Shebu. 37b.

(5) The fifth is 25% of the general sum which will have to be paid as principal plus a fifth thereof amounting thus to a fourth of the principal.

(6) As was the value at the time of the coming into court.

(7) E.V.: 'and the fifth part thereof'.

(8) I.e., a fifth will be paid for each false swearing.

(9) Lev. ib., 24-25.

(10) E.V.: 'And . . . his trespass offering, v. 25.

(11) So that the law regarding the trespass offering is not governed by the condition made in verse 24.

(12) [Who holds that he neither brings a trespass offering. How will he meet the argument from the particle 'eth'?]

(13) Making them subject to the same law.

(14) I.e., the trespass offering.

(15) I.e., the fifth.

(16) While still in his possession.

(17) The technical term is Shinnuy.

(18) Having, however, to repay the principal together with the double payment for the act of theft.

(19) The fine for the slaughter or sale will thus not be imposed upon him.

(20) The fine for the slaughter or sale.

(21) R. Elai to R. Hanina.

(22) When it was merely a lamb or a calf.

(23) When it already became a ram, or an ox, if the ownership has not changed.

(24) R. Hanina to R. Elai.

(25) I.e., the thief against the plaintiff.

(26) Cf. Shab. 84b and Keth. 45b.

(27) [Though 'growth' confers no title.]

(28) Lev. XXII, 27.

(29) Gen. XXXI, 38.

(30) By R. Hanina from the teaching imposing the fine of four-fold and five-fold payments.

(31) Infra p. 544 and Tem. 30b.

(32) In accordance with Deut. XXIII, 19.

(33) As it was not the same article which was given as hire.

(34) [Not identified, but probably in Asia; v. Neubauer, p. 386.]

(35) V. p. 380, n. 15.

(36) E.V.: 'even', and which is generally taken as an amplification.

(37) I.e., to prohibit even the articles into which the hire was transformed.

(38) שניהם , 'both of them' (E.V.: 'both these').

(39) I.e., the original articles themselves.

indicates 'them' and not their offsprings.[1] And Beth Hillel? — They reply that you can understand the two points from it: 'Them' — and not their transformations; 'them' — and not their offsprings. But as to Beth Hillel surely it is written Gam? — Gam presents a difficulty according to the view of Beth Hillel.[2]

Their[3] difference extends only so far that one Master[4] maintains that a change transfers and the other Master[5] maintains that a change does not transfer ownership, but regarding payment they both agree that the payment is made on the basis of the original value, even as it is stated:[6] 'He has to make double payment or fourfold and five-fold payments on the basis of the value at the time of the theft.' Are we to say that this [Baraitha] confutes the view of Rab in the statement made by Rab that the principal will be reckoned as at the time of theft, whereas double payment or four-fold and five-fold payments will be reckoned on the basis of the value when the case comes into Court? — Said Raba: [Where he pays with] sheep, [he pays] in accordance with the original value,[7] but [where he pays with] money [he pays] in accordance with the present value.

Rabbah said: That a change[8] transfers ownership is indicated in Scripture and learnt in Mishnah. It is indicated in Scripture in the words, He shall restore the misappropriated object which he violently took away.[9] What is the point of the words 'which he violently took away'? — It is to imply that if it is still as [it was when] he violently took it[10] he shall restore it, but if not, it is only the value of it that he will have to pay.[11] It is learnt [in the Mishnah]: If one misappropriates timber and makes utensils out of it, or wool and makes it into garments, he has to pay in accordance with the value at the time of robbery.[12] Or as also [learnt elsewhere]: If the owner did not manage to give the first of the fleece to the priest[13] until it had already been dyed, he is exempt,[14] thus proving that a change transfers ownership. So has Renunciation[15] been declared by the Rabbis to transfer ownership. We, however, do not know whether this rule is derived from the Scripture, or is purely Rabbinical. Is it Scriptural, it being on a par with the case of one who finds a lost article?[16] For is not the law in the case of a finder of lost property that, if the owner renounced his interest in the article before it came into the hands of the finder the ownership of it is transferred to the finder? So in this case, the thief similarly acquires title to the article as soon as the owner renounces his claim. It thus seems that the transfer is of Scriptural origin! Or are we to say that this case is not comparable to that of a lost article?[16] For it is only in the case of a lost article that the law applies, since when it comes into the hands of the finder,[17] it does so lawfully, whereas in the case of the thief into whose hands it entered unlawfully, the rule therefore might be merely of Rabbinic authority, as the Rabbis might have said that ownership should be transferred by Renunciation in order to make matters easier for repentant robbers. But R. Joseph said: Renunciation does not transfer ownership even by Rabbinic ordinance.

R. Joseph objected to Rabbah's view [from the following:] If a man misappropriated leavened food [before Passover],[18] when Passover has passed[19]

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(1) Such as where, e.g., a cow was given as hire and it gave birth to a calf.

(2) V. supra 54a, and B.M. 27a.

(3) I.e., R. Elai's and R. Hanina's.

(4) R. Elai.

(5) R. Hanina.

(6) In the Baraitha cited supra p. 379.

(7) Rashi explains this to mean that as it was a sheep which he misappropriated it is a sheep which he has to return, but according to Tosaf. it does not refer to the object by which the payment is made but to the object of the theft, and means that if the change in price resulted from a change in the substance of the stolen object all kinds of payment will be in accordance with the value at the time of the theft, whereas where the change in the value was due to fluctuation in price the view of Rab would still hold good.

(8) In the substance of a misappropriated article.

(9) Lev. V. 23.

(10) I.e., without any change in the substance of the object.

(11) But not the misappropriated object itself.

(12) Infra p. 541.

(13) In accordance with Deut. XVIII, 4.

(14) On account of the change which took place in the colour of the wool. (Hul. 135a).

(15) Ye'ush, of the misappropriated article by its owner.

(16) Where Renunciation by the owner would release a subsequent finder from having to restore the article found by him, as derived in B.M. 22b from a Scriptural inference.

(17) After Renunciation.

(18) When it was permitted.

(19) So that the leavened food became forbidden for any use in accordance with Pes. 28a-30a.

Talmud - Mas. Baba Kama 66b

he can say to the plaintiff, 'Here is your stuff before you.'[1] Now, as this plaintiff surely renounced his ownership when the time for prohibiting leavened food arrived,[2] if you assume that Renunciation transfers ownership, why should the thief be entitled to say, 'Here is your stuff before you', when he has a duty upon him to pay the proper value?[3] — He replied:[4] I stated the ruling[5] only where the owner renounces ownership at the time when the thief is desirous of acquiring it, whereas in this case, though the owner renounced ownership, the thief had no desire to acquire it.[6]

Abaye objected to Rabbah's statement [from the following]: [The verse says,] 'His offering,[7] [implying] but not one which was misappropriated.'[8] Now, what were the circumstances? If we assume before Renunciation, why do I require a text, since this is quite obvious?[9] Should we therefore not assume after Renunciation, which would show that Renunciation does not transfer ownership?[10] Said Raba[11] to him: According to your reasoning [how are we to explain] that which was taught: [The verse says,] 'His bed[12] [implying] but not one which was misappropriated'? Under what circumstances? That, for instance, wool was misappropriated and made into a bed? But is there any [accepted] view[13] that a change [in substance] resulting from an act does not transfer ownership?[14] What you have to say is that it refers to a case where the robber misappropriated a neighbour's bed. So also here[15] it refers to a case where he misappropriated a neighbour's offering.[16] Abaye objected to R. Joseph's view [from the following]: In the case of skins belonging to a private owner, mere mental determination renders them capable of becoming [ritually] unclean[17] whereas in the case of those belonging to a tanner no mental determination[18] would render them capable of becoming unclean.[19] Regarding those in the possession of a 'thief', mental determination[20] will make them capable of becoming unclean,[21] whereas those in the possession of a 'robber' no mental determination[22] will render capable of becoming unclean.[23] R. Simeon says that the rulings are to be reversed: Regarding those in the possession of a 'robber', mental determination[22] will render them capable of becoming unclean,[24] whereas regarding those in the possession of a 'thief', no mental determination[20] will render them capable of becoming unclean, as in the last case the owners do not usually abandon hope of discovering who was the thief.[25] Does not this prove that Renunciation transfers ownership?[26] — He replied:[27] We are dealing here with a case where for example he had already trimmed the stolen skins [so that some change in substance was effected].[28] Rabbah son of R. Hanan demurred to this, saying: This was learnt here in connection with a [dining] cover,[29] and [skins intended to be used as] a cover do not require trimming as we have learnt:[30] Wherever there is no need for [finishing] work to be done, mental resolve[31] will render the article capable of becoming unclean, whereas where there is still need for [finishing] work to be done no mental resolve[31] will render it capable of becoming unclean, with the exception however, of a [dining] cover![32] — Raba therefore said: This difficulty was pointed out by Rabbah to R. Joseph for twenty-two years[33] without his obtaining any answer. It was only when R. Joseph occupied the seat as Head[34] that he explained it [by suggesting that] a change in name is equivalent [in the eye of the law] to a change in substance; for just as a change in substance has an effect because, for instance, what was previously

timber is now utensils, so also a change in name should have an effect as what was previously called skin is now called [dining] cover.[35] But what about a beam where there is similarly a change in name as previously it was called a post and now ceiling, and we have nevertheless learnt that 'where a misappropriated beam has been built into a house, the owner will recover only its value, so as to make matters easier for repentant robbers'.[36] The reason is, to make matters easier for repentant robbers,

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(1) As no change took place in the substance of the misappropriated article. (Infra p. 561.)
(2) I.e., on the eve of Passover.
(3) Since the misappropriated article became his.
(4) Rabbah to R. Joseph.
(5) That Renunciation transfers the ownership.
(6) As it was not in his interest to do so.
(7) Lev. I, 3.
(8) Infra p. 388.
(9) That a stolen object could not be brought to the altar.
(10) In contradiction to the view expressed by Rabbah.
(11) Var. lec., 'Rabbah'.
(12) Lev. XV, 5.
(13) With the exception of that of Beth Shammai (cf. supra p. 380). whose view is disregarded when in conflict with Beth Hillel (Tosaf.).
(14) Would the bed in this case not become the legal property of the robber?
(15) In the case of the sacrifice.
(16) [In which case the sacrifice is not acceptable even if offered after renunciation on the part of the original owner.]
(17) As his mental determination is final, and the skins could thus be considered as fully finished articles and thus subject to the law of defilement. (V. Kel. XXVI, 7.)
(18) To use them as they are.
(19) As a tanner usually prepares his skins for the public, and it is for the buyer to decide what article he is going to make out of them.
(20) On the part of the thief to use them as they are.
(21) For the skins became the property of the thief, as Renunciation usually follows theft on account of the fact that the owner does not know against whom to bring an action.
(22) On the part of the robber to use them as they are.
(23) For the skins did not become the property of the robber as robbery does not usually cause Renunciation, since the owner knows against whom to bring an action.
(24) For the skins became the property of the robber as the owner has surely renounced every hope of recovering them for fear of the robber who acted openly.
(25) Kel. XXVI, 8; infra p. 672.
(26) In contradiction to the view maintained by R. Joseph.
(27) R. Joseph to Abaye.
(28) On account of which the ownership was transferred.
(29) Since the case of the skins follows in the Mishnah that of the (dining) cover. [The dining cover (Heb. 'izba), was spread over the ground in the absence of a proper table from which to eat; cf. Rashi and Krauss, Talm. Arch., I, 376.]
(30) Kel. XXVI, 7.
(31) V. p. 384, n. 5.
(32) Since even without trimming the skins could be used as a cover.
(33) I.e., all the days when Rabbah was the head of the college at Pumbeditha; cf. Ber. 64a; Hor. 14a and Rashi Keth. 42b.
(34) In succession to Rabbah.
(35) Whereas mere Renunciation in the case of theft or robbery would not transfer ownership.
(36) 'Ed. VII, 9.

but if not for this, it would have to be restored intact?[1] — R. Joseph replied: A beam retains its name [even subsequently], as taught: 'The sides of the house';[2] these are the casings: 'and the thick planks'; these are the beams.[3] R. Zera said: A change which can revert to its original state is, in the case of a change in name, not considered a change.[4] But is a change in name that cannot revert to its original state[5] considered a change? What then about a trough, the material of which was originally called a plank but now trough, and we have nevertheless been taught[6] that a trough[7] which was first hollowed out and subsequently fixed [into a mikweh][8] will disqualify the mikweh,[9] but where it was first fixed [in to the mikweh] and subsequently hollowed out, it will not disqualify the mikweh![10] But if you maintain that a change in name has a legal effect, why then, even where he fixed it first and subsequently hollowed it out, should it not disqualify the mikweh![11] — The law regarding disqualification through drawn water[12] is different altogether, as it is only of Rabbinic sanction.[13] But if so, why even in the prior clause[14] should it not also be the same? — There, however, the law of a receptacle applied to it while it was still detached, whereas here it was never subject to the law of a receptacle while it was detached.

An objection was raised [from the following]: If a thief, a robber or an annas[15] consecrates a misappropriated article, it will be consecrated; if he sets aside a portion for the priest's gift,[16] it will be terumah;[17] or again if he sets aside a portion for the Levite's gift[18] the tithe will be valid.[19] [Now, does this not prove that Renunciation transfers ownership?][20] — It may be said that in that case there was also a change in name, as previously it was called tebel[21] while now it is called terumah.[17] So also in the case of consecration: previously it was called hullin,[22] but now it is called consecrated.

R. Hisda stated that R. Jonathan said: How do we learn [from Scripture] that a change transfers ownership? — Because it is said: He shall restore the misappropriated object.[23] What [then] is the point of the words, 'which he took violently away'?[23] [It must be to imply that] if it still is as when he took it violently[24] he shall restore it, but if not, it is only the value of it that he will have to pay.[25] But is this [text] 'which he took violently away'[23] not needed to exclude the case of robbery committed by a father, in which the son need not add a fifth [to the payment] for robbery committed by his father?[26] — But if so, the Divine Law should have written only 'he shall restore the misappropriated object.' Why should it further be written. 'which he took violently away'? Thus we can draw from it the two inferences. Some report: R. Hisda stated that R. Jonathan said: How do we learn [from Scripture] that a change does not transfer ownership? — Because it is said: He shall restore the misappropriated object, i.e., in all cases. But is it not written 'which he took violently away'? — That text is needed to indicate that it is only for robbery committed by himself that he has to add a fifth, but has not to add a fifth for robbery committed by his father.

'Ulla said: How do we learn [from Scripture] that Renunciation does not transfer ownership? Because it is said: And ye brought that which was misappropriated, and the lame and the sick.[27] 'That which was misappropriated' is thus compared to 'the lame': just as 'the lame' has no remedy at all

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(1) In spite of the fact that a change in name took place.

(2) Ezek. XLI, 26.

(3) Hence after it became part of the ceiling it is still called beam.

(4) A beam by becoming part of a ceiling did not therefore really undergo a change in name, as the beam could be taken out and thus revert to its original state.

(5) Such as in the case of the skins made into covers.

(6) B.B. 65b.

(7) Through which rain or well water was conducted to a mikweh which should be a gathering of well or rain water that has not passed through a receptacle.

(8) Lit., ‘a gathering of water’ for ritual immersion; cf. Glos.
(9) As the trough in this case was considered a receptacle before it was fixed to the ground.
(10) As when the trough was fixed it was not a receptacle in the eye of the law and could not become such after it became part of the ground to which it was fixed.
(11) As by hollowing out the material which was originally called plank the name was changed into trough, and it should thus become a receptacle in the eye of the law. [Although this change was effected after it had been fixed to the soil, the fact that it goes by the name of a trough should in itself be sufficient to disqualify it for the use of the Mikweh; v. Asheri and Shittah Mekubezeth, a.l.]
(12) In receptacles poured into a mikweh.
(13) Cf. B.B. (Sonc. ed.) pp. 263 ff.
(14) Where he first hollowed it out and subsequently fixed it.
(15) The same as the hamsan, who, as explained supra p. 361 is prepared to pay for the objects which he misappropriates.
(16) In accordance with Num. XVIII, 11-12.
(17) V. Glos.
(18) Cf. Num. XVIII, 21.
(19) V. infra p. 674.
(20) For otherwise what right have they to consecrate or set aside the portions for the priest and Levite?
(21) I.e., produce from which the priest's and Levite's portion has not been set aside.
(22) I.e., unconsecrated property.
(23) Lev. V. 23.
(24) V. p. 382, n. 3.
(25) V. p. 382, n. 4.
(26) I.e., that the son should in this case not be subject to Lev. V, 24-25.
(27) Mal. I, 13.

Talmud - Mas. Baba Kama 67b

[to render it qualified for the altar],[1] so also ‘that which was misappropriated’ has no remedy at all, no matter before Renunciation or after Renunciation. Raba said: [We derive it] from the following: ‘His offering,[2] but not one which was misappropriated.’[3] When is this? If we say before Renunciation, is this not obvious?[4] What then is the point of the verse? It must therefore apply to the time after Renunciation, and it may thus be proved from this that Renunciation does not transfer ownership. But did not Raba himself say[5] that the text referred to a robber misappropriating an offering of his fellow — If you wish I may say that he changed his mind on this matter.[6] Or if you wish I may say that one of these statements was made by R. Papa.[7]

THE MEASURE OF FOUR-FOLD AND FIVE-FOLD PAYMENTS DOES NOT APPLY EXCEPT IN THE CASE OF AN OX OR A SHEEP ALONE. But why not compare [the term] ‘ox’ to ‘ox’ in the case of Sabbath,[8] so that just as there beasts and birds are on the same footing with them [i.e. ox and ass],[9] so also here beasts and birds should be on the same footing with them [i.e. ox and sheep]? — Raba said: Scripture says ‘an ox and a sheep’, ‘an ox and a sheep’[10] twice, [to indicate that] only ox and sheep are subject to this law but not any other object whatsoever. I may ask: Which of these[11] would otherwise be superfluous? Shall we say that ‘ox and sheep’ of the concluding clause would be superfluous, and the Divine Law should have written ‘if a man shall steal an ox or a sheep and slaughter it or sell it, he should restore five oxen instead of it and four sheep instead of it’? Were the Divine Law to have thus written, would I not have thought that he should pay nine for each of them? And should you rejoin that it is written ‘instead of it’, ‘instead of it’ [twice in the text, so that] one ‘instead of it’ would then have been superfluous,[12] [I might retort that] this is required for a further exposition, as taught: It might be maintained that one who stole an ox worth a mina[13] would be able to restore for it five frail oxen. The text says, however, ‘instead of it’, ‘instead of it’ twice.[14] [‘Ox and sheep’ of the concluding clause is thus indispensable]. It thus

appears that it is 'ox and sheep' of the prior clause which would have been superfluous, as the Divine Law should have written: 'If a man shall steal and slaughter it or sell it, he shall restore five oxen for the ox and four sheep for the sheep.' But had the Divine Law to have thus written, I might have thought that it was only where he stole the two animals and slaughtered them [that liability would be attached]! — But surely it is written 'and slaughtered it', implying one animal! It might still be thought that it was only where he stole the two animals and sold them [that liability would be attached]! — But surely it is written, 'and he sold it' implying one animal! It could still be argued that I might have thought that it was only where he stole the two animals and slaughtered one and sold the other [that liability would be attached]! — But surely it is written, 'or he sold it' [indicating that slaughtering and selling were alternative]! I might nevertheless still argue that it was only where he stole the two of them and slaughtered one and left the other, or sold one and left the other![15] — We must say therefore that it is 'ox' of the concluding clause and 'sheep' of the first clause which would have been superfluous, as the Divine Law should have written: 'If a man shall steal an ox and slaughter it or sell it, he shall restore five oxen instead of it and four sheep instead of the sheep.' Why then do I require 'ox' of the concluding clause and 'sheep' of the first clause? To prove from it that only ox and sheep are subject to this law,[16] but not any other object whatsoever.

ONE WHO STEALS FROM A THIEF [WHAT HE HAS ALREADY STOLEN] NEED NOT MAKE DOUBLE PAYMENT etc. Rab said: This Mishnaic ruling applies only where the theft took place before Renunciation; for if after Renunciation, the first thief would have acquired title to the article and the second thief would have had to make double payment to the first thief.[17] Said R. Shesheth: I am inclined to say that it was only when he was half asleep and in bed that Rab could have enunciated this ruling. For it was taught: R. Akiba said: Why has the Torah laid down that where the thief slaughtered or sold [the sheep or ox] he would have to make fourfold and five-fold payments [respectively]? Because he became thereby rooted in sin.[18] Now, when could this be said of him? If before Renunciation,

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(1) Cf. Lev. XXII, 19-25.

(2) V. p. 353, n. 9.

(3) Supra p.383.

(4) V. p. 383, n. 11.

(5) Supra p. 384.

(6) As was the case with the same sage in Shab. 27a; Bez. 18a; Keth. 11b; B.B. 24a; Bek. 54b and Ker. 7a.

(7) Who was a disciple of Raba, and the views of the disciples were regarded as those of the Master. [This supports the reading (on p. 383), 'Raba', instead of 'Rabbah', given in our edition; v. Tosaf.]

(8) Deut. V, 14.

(9) As supra 54b.

(10) Ex. XXI, 37.

(11) 'An ox and sheep', whether on the first or second occasion.

(12) [I.e., if we were to assume that there is a payment of nine in each case.]

(13) V. Glos.

(14) That the payment should be in accordance with the animal slaughtered or sold, but this would still afford no proof against the assumption that there is a payment of nine in each case.

(15) ['Ox and sheep' of the earlier clause are therefore similarly indispensable.]

(16) Of five-fold and four-fold payments respectively.

(17) Who through Renunciation on the part of the owner became the legal possessor of the article.

(18) [His sin struck root in that he has deprived beyond retrieve the owner of his belongings.]

could he then be called 'rooted in sin' [since the sale is of no validity]? It must therefore be after Renunciation.[1] But if you assume that Renunciation transfers ownership, why should he make

four-fold and five-fold payments,[2] when it is his that he slaughters and his that he sells? — It may, however, be said as Raba stated elsewhere,[3] that it means 'because he doubled[4] his sin,' so likewise here it means, 'because he doubled his sin.'[5]

Come and hear: 'He slaughtered it and sold it;[6] just as the slaughter cannot be undone so the sale cannot be undone.' Now, when could this be so? If before Renunciation, why can it not be undone?[7] It must surely therefore be after Renunciation.[1] But if you assume that Renunciation transfers ownership, why should he pay fourfold and five-fold[8] when it is his that he slaughters and his that he sells? — As R. Nahman stated elsewhere, that it means to except a case where he transferred the animal for thirty days,[9] so also here it means to except a case where he transferred the beast for thirty days.[10]

An objection was raised [against this]: If a man steals an article and another comes and steals it from him, the first thief has to make double payment, whereas the second will not pay [anything] but the principal alone.[11] If, however, one stole [a sheep or an ox] and sold it, after which another one came and stole it, the first thief has to make four-fold and five-fold payments [respectively], while the second has to make double payment.[12] If one stole [a sheep or an ox] and slaughtered it, and another one came and stole it, the first thief will make four-fold and five-fold payments [respectively], whereas the second has not to make double payment but to repay the principal only.[11] Now, it has been taught in the middle clause: 'If however, one stole [a sheep or an ox] and sold it, after which another came and stole it, the first thief has to make four-fold and five-fold payments [respectively], while the second has to make double payment.'[12] But when could this be? If before Renunciation, why should the second make[12] double payment?[13] Is there any authority who maintains that a change in possession without Renunciation transfers ownership? It must therefore be after Renunciation. But if you assume that Renunciation transfers ownership, why then has he to make four-fold and five-fold payments,[14] seeing that it is his which he sold? And further, it was taught in the opening clause: 'If a man steals an article and another comes and steals it from him, the first thief has to make double payment, but the second will not pay [anything] but the principal.'[11] Now, since it is the time after Renunciation with which we are dealing, if you assume that Renunciation transfers ownership, why should the second 'not pay anything but the principal'?[15] Does not this show that Renunciation does not transfer ownership, in contradiction to the view of Rab? — Raba said: Do you really think that the text of this teaching is correct? For was it not taught in the concluding clause: 'If one stole [a sheep or an ox] and slaughtered it and another came and stole it, the first thief will make fourfold and five-fold payments [respectively], whereas the second has to pay nothing but the principal'? Now, is there any authority who maintains that a change in substance does not transfer ownership?[16] It must therefore surely still be said that the whole teaching refers to the time before Renunciation, but we have to transpose the ruling of the concluding clause to the case in the middle clause, and the ruling of the middle clause to the case in the concluding clause and read thus: If one stole [a sheep or an ox] and sold it, and another came and stole it, the first thief has to make four-fold and five-fold payments [respectively], but the second has not to pay anything but the principal, as a change in possession without Renunciation transfers no ownership. If, however, one stole [a sheep or an ox] and slaughtered it and another came and stole it, the first thief makes four-fold and five-fold payments [respectively], and the second makes double payment,[17] as ownership was transferred [to the first thief] by the change in substance.' R. Papa, however, said: All the same[18] you need not transpose [the rulings], since [we may say that] the concluding clause is in accordance with Beth Shammai, who maintain[19] that a change leaves the article in its previous status. But if so [that it was after Renunciation], will not the opening clause and middle clause be in contradiction to the view of Rab? — R. Zebid therefore said: The whole text could still refer to the time before Renunciation, as we are dealing here with a case where the owner abandoned hope [of regaining the stolen object] when it was already in the possession of the buyer, but had not abandoned it while it was still in the possession of the thief, so that [so far as the buyer was concerned] there was Renunciation [as well as a change in possession].[20] You should, however,

not think [that this is so] because we need both Renunciation and a change in possession for the purpose of transferring ownership, as even Renunciation alone would also transfer ownership[21] to the thief.[22] It is, however, impossible to find a case in which both the first thief and the second thief should simultaneously pay except in this way.[23]

It was stated: If the thief sells before Renunciation, R. Nahman said that he is liable, while R. Shesheth said that he is exempt. R. Nahman who said that he would be liable held that since the Divine Law says 'and he sold it' and as the thief [in this case] did sell it, it makes no difference whether it was before Renunciation or after Renunciation, while R. Shesheth, who said that he would be exempt, held that the liability was only where he sold it after Renunciation,[24] where the act has a legal validity, whereas before Renunciation, when the act has no legal validity,[25] there could be no liability, as selling is compared to slaughter where it is necessary that the act should be of practical avail. R. Shesheth said: Whence have I inferred the view expressed by me? It was taught: 'R. Akiba said: Why does the Torah say that where the thief slaughtered and sold the stolen [sheep or ox] he should make four-fold and five-fold payments respectively? Because he became thereby rooted in sin.' Now, when could this be said of him? If before Renunciation, could he then be called 'rooted in sin' [since the sale is of no legal validity]?[25] Must it therefore not be after Renunciation?[24] — Raba said: It only means, because he doubled his sin.[26]

Come and hear: 'And he slaughtered it or sold it,'[27] just as slaughter cannot be undone, so the sale [must be one] which cannot be undone.' Now, when could this be so? If before Renunciation, why can it not be undone?[28] Must it therefore not be after Renunciation,[29] thus proving that the liability is only if it is sold after Renunciation?[29] — But R. Nahman interpreted it merely to except a case where he transferred the animal for thirty days.[30] Also R. Eleazar maintained that the liability would be only after Renunciation, as R. Eleazar stated:

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(1) In which case the article will have to remain with the purchaser, as a transfer of possession taking place after Renunciation certainly transfers ownership.

(2) For slaughtering or selling after Renunciation when the thief has already become the legal owner of the animal.

(3) Infra p. 393.

(4) Lit., 'repeated'.

(5) By selling the animal even though the sale is of no validity.

(6) V. p. 388, n. 11.

(7) For a transfer of possession before Renunciation will certainly transfer no ownership to the buyer.

(8) P. 390, n. 5.

(9) V. p. 394, n. 4.

(10) Not to be subject to the law of selling or slaughtering.

(11) To the first thief.

(12) To the purchaser.

(13) For a transfer of possession before Renunciation will certainly transfer no ownership to the buyer.

(14) For selling after Renunciation when the thief has already become the legal owner of the animal.

(15) Why not pay double to the first thief who had already become the legal owner of the object through Renunciation?

(16) [Why not pay double to the first thief who had already become the legal owner through effecting a change in the substance of the article stolen?]

(17) V. p. 391, n. 4.

(18) Even though the teaching refers to the time after Renunciation.

(19) Supra p. 380.

(20) And for this reason the second in the middle clause has to make double payment to the buyer.

(21) In accordance with the view of Rab.

(22) [Mss. omit rightly 'to the thief'; v. D.S. a.l.]

(23) For if Renunciation took place while the article was still in the hands of the first thief, he would not have to make four-fold and five-fold payments for a subsequent sale or slaughter.

(24) In which case the article will have to remain with the purchaser, as a transfer of possession taking place after Renunciation certainly transfers ownership.
(25) V. p. 391, n. 6.
(26) By selling the animal even though the sale is of no validity.
(27) Ex. XXI, 37.
(28) V. p. 391, n. 6.
(29) I.e., where the sale is of legal avail.
(30) But not any other case.

Talmud - Mas. Baba Kama 68b

'You can take it for granted that in the ordinary run of thefts there is Renunciation on the part of the owner; since the Torah has laid down that where the thief slaughtered or sold [the stolen sheep or ox] he should pay fourfold or five-fold payments [respectively]. For is there not a possibility that the owner had not abandoned hope? We must therefore say that in the ordinary run of thefts there is Renunciation on the part of the owner.'[1] But why should the liability not hold good even where hope was not abandoned?[2] — I would say, let not this enter your mind. For selling is placed on a par with slaughter: just as in the case of slaughter his act is of practical avail, so also in the case of selling his act should be of practical validity; and if it takes place before Renunciation, what would be the legal validity?[1] But again can it not be [that the liability is confined to cases] where we actually heard the owner abandoning hope? — I would reply, let not this enter your mind. For selling is put on a par with slaughter, and just as slaughter involves liability [if carried out] immediately [after the theft], so would selling similarly involve liability soon after the theft.[3]

R. Johanan said to him:[4] The law in the case of stealing a man[5] could prove that even where there is no Renunciation on the part of the owner[6] there will be liability. This statement seems to show that R. Johanan held that selling before Renunciation involves liability.[7] What then about selling after Renunciation?[8] — R. Johanan said that the thief is liable, but Resh Lakish said he is exempt. R. Johanan who said that he would be liable held that the liability was both before Renunciation and after Renunciation. But Resh Lakish, who said that he would be exempt,[9] maintained that the liability was only before Renunciation, whereas after Renunciation he would have already acquired title to the animal, and it was his that he slaughtered and his that he sold.

R. Johanan objected to Resh Lakish's view [from the following:] If he stole [a sheep or an ox] and after consecrating it slaughtered it, he should make double payment[10] but would not make four-fold and five-fold payments.[11] Now, when could this be? If before Renunciation, how does the animal become consecrated? Does not the Divine Law say 'And when a man shall sanctify his house to be holy',[12] [implying that] just as his house is his,[13] so also anything he consecrates must be his?[14] It must therefore apply to the time after Renunciation.[15] Now the reason is that he consecrated it: he has not to make four-fold and five-fold payments because when he slaughtered the animal it was a consecrated animal that he slaughtered; had he not, however, consecrated it he would have had to make four-fold and five-fold payments if he would have slaughtered it. Now, if you assume that Renunciation transfers ownership why should he[16] pay since it was his that he slaughtered and his that he sold? — He replied:[17] We are dealing here with a case where, for instance, the owner[18] consecrated the animal while it was in the possession of the thief.[19] But will it in that case become consecrated? Did not R. Johanan say[20] that where a robber misappropriated an article and the owner has not abandoned hope of recovering it, neither of them is able to consecrate it: the one[21] because it is not his, the other[22] because it is not in his possession? — We might reply that he[23] had in mind the practice of the virtuous, as we have learnt: The virtuous[24] used to set aside money and to declare that whatever has been gleaned [by passers-by] from this [vineyard][25] shall be redeemed by this money.[26] But [if the owner consecrated the animal], has not the principal thus been restored to the owner? [Why then should a thief pay double on it? — We assume a case where the consecration took place]

after the case came into court [and evidence had already been given against the thief]. What were the circumstances? If the judges had already ordered him to go and pay the owner, why should exemption be only where he consecrated the animal? Why even where the owner did not consecrate it should the thief be liable? For did Raba not say that if [after the judges said], 'Go forth and pay him,' the thief slaughtered or sold the animal, he would be exempt, the reason being that since the judges had given their final sentence on the matter, when he sold or slaughtered the animal, he became [in the eye of the law] a 'robber', and a 'robber' has not to pay four-fold and five-fold payments,[27]

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(1) [Since he conditions the liability of the fourfold and five-fold by the fact that the owner had despaired of the stolen article, it is evident that he agrees with R. Shesheth.]

(2) [Even where the sale is of no legal avail.]

(3) R. Eleazar thus inferred from this that in ordinary thefts there is immediate Renunciation on the part of the owner.

(4) I.e., R. Eleazar.

(5) Ex. XXI, 16.

(6) For surely no human being will abandon himself.

(7) As also maintained by R. Nahman.

(8) Does he agree in this with Rab, supra p. 390?

(9) V. p. 390, n. 5.

(10) For the theft.

(11) For the slaughter as it was a consecrated animal that he slaughtered, and there is no liability for stealing and selling and slaughtering consecrated animals (infra p. 427; Git. 55b).

(12) Lev. XXVII, 14.

(13) For immovables even when misappropriated always remain in the possession of the owner

(14) Excluding thus a thief consecrating misappropriated property.

(15) In which case the article could become consecrated, as a transfer of possession following Renunciation transfers ownership.

(16) V. p. 390, n. 2.

(17) I.e., Resh Lakish to R. Johanan.

(18) Not the thief.

(19) [Before Renunciation.]

(20) Infra p. 397; B.M. 7a.

(21) The robber.

(22) The owner.

(23) I.e., Resh Lakish.

(24) [צניע (plur. צנועים) 'denotes a positive quality, probably nothing else but discretion or modesty', Buchler, Types (contra Kohler, who identifies the Zenu'im with Essenes) pp. 59 ff.]

(25) In its fourth year, the fruit of which is prohibited unless redeemed, cf. Lev. XIX, 24.

(26) Which seems to show that fruits already misappropriated could also be redeemed by the owner and thus also consecrated. (M.Sh. V, 1).

(27) For the distinction between robber and thief in this respect cf. infra p. 452.

Talmud - Mas. Baba Kama 69a

but if they merely said to him, 'You are liable to pay him,' and after that he slaughtered or sold the animal, he would be liable to pay four-fold or five-fold payment, the reason being that since they have not pronounced final sentence upon the matter he is still a thief?[1] — No, its application is necessary where they have as yet merely said to him, 'You are liable to pay him'.

The above text states:[2] 'R. Johanan said: If a robber misappropriated an article and the owner has not abandoned hope of recovering it neither of them is able to consecrate it: the one[3] because it is not his, the other[4] because it is not in his possession.' Could R. Johanan really have said this? Did not R.

Johanan say[5] that the halachah is in accordance with an anonymous Mishnah; and we have learnt:[6] 'In the case of a vineyard in its fourth year, the owners used to mark it with clods of earth', the sign implying an analogy to earth: just as in the case of earth a benefit may ensue from it,[7] so also the fruit of this vineyard[8] will after being redeemed be permitted to be enjoyed. 'That of 'orlah[9] used to be marked with potsherds', the sign indicating a similarity with potsherds: just as in the case of potsherds no benefit ensues from them,[10] so also the fruit of 'orlah[9] could not be enjoyed for any use whatever. 'A field of graves used to be marked with lime', the sign having the colour of white, like corpses. 'The lime was dissolved in water and then poured out' so as to make its colour more white. 'R. Simeon b. Gamaliel said: These practices were recommended only for the Sabbatical year,' when the fruits on the trees were ownerless;[11] 'for in the case of the other years of the Septennate,[12] you may let the wicked stuff themselves with it till they die.[13] The virtuous however used to set aside money and to declare that whatever has been gleaned from this [vineyard] shall be redeemed by this money.'[14] Does not this contradict R. Johanan? Nor can you urge in reply that the Tanna who recorded the practice of the virtuous was R. Simeon b. Gamaliel,[15] [and R. Johanan might therefore not have concurred with this anonymous view stated by a single Tanna] for did not Rabbah b. Bar Hanah say[16] that R. Johanan stated that whenever R. Simeon expressed a view in a Mishnah the halachah is in accordance with him, with the exception of his view regarding 'Suretyship'.[17] 'Sidon'[18] and the 'last [case dealing with] evidence'?[19] — I may reply that you should not read,[20] 'whatever has been gleaned'[21] but read 'whatever will be gleaned'[22] from this [vineyard]. But could R. Johanan have said this: Did not R. Johanan say that the virtuous and R. Dosa said the same thing, and, as we know, R. Dosa definitely stated 'whatever has been gleaned'?[21] For was it not taught:[23] R. Judah says: In the morning the owner of the field should get up and say 'whatever the poor shall glean during the day should be considered ownerless[24] [from the present moment]'.[25] whereas R. Dosa says: It is at eveningtide that he should say, 'Whatever the poor have gleaned shall be ownerless'![26] — I must transpose the view of R. Judah to R. Dosa[27] and the view of R. Dosa to R. Judah. But why transpose this teaching, and not transpose instead[28] the statement of R. Johanan, assigning to 'the virtuous and to R. Judah the same thing'? — It may, however, be said that it was impossible not to transpose this teaching,[29] since in this teaching[29] it is stated that R. Judah upholds bererah[30] and we find R. Judah holding in other places that there is not bererah as we have learnt[31]

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(1) Subject to the law of paying four-fold and five-fold payments.

(2) Supra p. 396.

(3) The robber.

(4) The owner.

(5) Shab. 46a.

(6) M.Sh. V, I.

(7) In time, as after tilling, sowing and reaping.

(8) Cf. Lev, XIX, 24.

(9) I.e., during the first three years when the fruits are totally forbidden in accordance with Lev. XIX, 23.

(10) As nothing could grow in them properly.

(11) Cf. Lev. XXV, 6-7.

(12) When the fruits were not ownerless.

(13) As it was wrong for passers-by to misappropriate the fruits, they need not be warned by all these signs to abstain from using them in the forbidden manner. [This last passage occurs only in the Jerusalem version of the Mishnah, not in the Babylonian.]

(14) V. p. 396, n. 8.

(15) Who made the immediately preceding statement.

(16) B.M. 38b.

(17) In B.B. 174a.

(18) In Git. 77a.

(19) In Sanh. 31a.

(20) In the words of the 'virtuous'.

(21) In the past.
(22) In the future, so that the redemption will take effect retrospectively from the moment this statement was made, when the gleanings were still in the possession of the owner.
(23) Tosef. Pe'ah II, 4.
(24) As each two ears falling together may be gleaned by the poor who need not tithe them, but not so is the case regarding three ears falling together. Not all the poor, however, know this distinction. It is therefore meritorious on the part of the owner to abandon those which are gleaned by the poor unlawfully.
(25) I.e., retrospectively.
(26) [From this it follows that the declaration of the virtuous was likewise related to the past.]
(27) So that it was R. Dosa who said 'whatever the poor shall glean.'
(28) Of 'the virtuous and R. Dosa.'
(29) Where R. Judah and R. Dosa differ.
(30) I.e., Retrospective designation of that which was abandoned at a time when it was not defined; cf. also supra 51b.
(31) Tosef. Dem. VIII, 5.

Talmud - Mas. Baba Kama 69b

: 'If a man buys wine from among the Cutheans[1] [and it was late on Friday towards sunset and he has no other wine for the Sabbath][2] may say 'two logs [out of a hundred[3]] which I intend to set aside are terumah,[4] ten are the first tithe[5] and nine the second tithe,' and these he may redeem [upon money anywhere in his possession],[6] and he may commence drinking at once. So R. Meir.[7] But R. Judah, R. Jose and R. Simon prohibit this.[8] To this I may rejoin: When all is said and done, why have you transposed [the views mentioned in the Baraitha]? Because R. Judah would otherwise contradict R. Judah! But would not now R. Johanan contradict R. Johanan? For you stated according to R. Johanan that we should not read 'whatever has been gleaned'[9] but read 'whatever will be gleaned',[10] thus proving that he upholds bererah[11] whereas in fact R. Johanan does not uphold bererah. For did not R. Assi say[12] that R. Johanan stated that brothers dividing an inheritance are like purchasers[13] [in the eye of the law], so that they will have to restore the portions to one another on the advent of the jubilee year?[14] — We must therefore still read[15] 'whatever has been gleaned',[9] and [say that] R. Johanan[16] found another anonymous Mishnah, as we have indeed learnt: ONE WHO STEALS [ARTICLES ALREADY STOLEN] IN THE HANDS OF A THIEF NEED NOT MAKE DOUBLE PAYMENT.[17] Why should this be? We grant you that he need not pay the first thief, [since Scripture says:] And it be stolen out of the man's house,[18] [implying] 'but not out of the house of the thief'. But why not pay the owner? We must say that this shows that the one[19] is not entitled to payment because the stolen article is not his, and the other one[20] is not entitled to payment as the article is not in his possession.[21] — But what induced him[22] to follow that anonymous Mishnah?[17] Why should he not act in accordance with the anonymous Mishnah dealing with the virtuous?[23] — Because he was supported by the verse: And when the man shall sanctify his house to be holy unto the Lord,[24] just as his house is in his possession,[25] so anything also which is in his possession can be sanctified.[26]

Abaye said: If R. Johanan had not stated that the virtuous[27] and R. Dosa[28] said the same thing,[29] I might have said that while the virtuous accepted the view of R. Dosa, R. Dosa did not uphold the practice of the virtuous. The virtuous accepted the view of R. Dosa; for if the Rabbis made things easier for a thief,[30] need we say they did so for the poor?[31] But R. Dosa did not uphold the practice of the virtuous: for it was only for the poor[31] that the Rabbis made things easier, whereas for the thief they did not make things easier.[30] Raba said: Had R. Johanan not stated that the virtuous and R. Dosa said the same thing, I should have said that the Tanna followed by the virtuous was R. Meir. For did not R. Meir say[32] that the [second] tithe[33] is Divine property,[34] and even so the Divine Law placed it in the owner's possession in respect of redemption, as written: And if a man will redeem aught of his tithe, he shall add unto it the fifth part thereof,[35] the Divine Law thus designating it 'his tithe' and ordering him to add a fifth.[36] The same applies to the vineyard in the fourth year, as can be derived from the occurrence of the term 'holy' there[37] and in the case of the tithe.[38] For it is written

here 'shall be holy to praise',[37] and it is written in the case of tithe, 'And all tithe of the land whether of seed of the land or of the fruit of the tree it is holy':[38] just as the 'holy' mentioned in connection with tithe although it is divine property, has nevertheless been placed by the Divine Law in the possession of the owner for the purpose of redemption, so also the 'holy' mentioned in connection with a vineyard of the fourth year, although the property is not his own, has been placed by the Divine Law in his possession for the purpose of redemption; now seeing that even when it is in his possession it is not his and yet he may redeem it; hence he may be able to redeem it [also when out of his possession]. But in the case of the gleaning [of ears of corn] which is his own property,[39] it is only when it is [still] in his [own] possession that he is able to declare it ownerless, whereas when not in his possession he should not be entitled to declare it ownerless.[40]

Rabina said: Had R. Johanan not stated that the virtuous and R. Dosa said the same thing, I should have said that the Tanna stating the case of the virtuous was R. Dosa, so that this anonymous Mishnah would not refute the view of R. Johanan, for R. Johanan

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(1) And has thus to set aside both the priestly portion, called terumah, and the first tithe for the Levite and the second tithe to be redeemed or partaken of in Jerusalem.

(2) And without having the time to separate the portions to be set aside.

(3) Logs (v. Glos.) which he bought.

(4) For the priests, (v. Glos.).

(5) For the Levites, v. Num. XVIII, 21.

(6) Cf. Deut. XIV, 22-25.

(7) Maintaining retrospective designation, so that the wine set aside after Sabbath for the respective portions will be considered the very wine which was destined at the outset to be set aside.

(8) As they maintain no retrospective designation which would make the wine drunk the unconsecrated and that which remained the part originally consecrated. [This shows that R. Judah does not uphold Bererah, thus necessitating the transposition of the Baraitha in Pe'ah.]

(9) V. p. 398, n. 7.

(10) V. p. 398, n. 8.

(11) V. p. 398, n. 16.

(12) Bez. 37b; Git. 25a and 48a.

(13) For the portion chosen by each brother for himself could not be considered as having thus retrospectively become the very inheritance designated for him.

(14) In accordance with Lev. XXV, 13.

(15) In the words of the 'virtuous'.

(16) [In maintaining that a consecration made by the owner even before renunciation is not valid, in opposition to the principle underlying the declaration of the 'virtuous'.]

(17) Supra p. 363.

(18) Ex. XXII, 6.

(19) The first thief.

(20) The owner.

(21) This proves that the lack of possession is a defect in the very ownership, and if an article out of possession is not subject to double payment it could neither be subject to the law of consecration and alienation which are incidents of ownership.

(22) V. I.e., R. Johanan.

(23) V. p. 396, n. 8.

(24) V. Lev. XXII, 14.

(25) V. p. 395, n. 8.

(26) Excluding thus an owner consecrating movables out of his possession; and because of this Scriptural authority R. Johanan deviated from the view of the 'virtuous'.

(27) Dealing with the vineyard in the fourth year misappropriated by passers by.

(28) Dealing with the gleaning of the poor.

(29) V. supra p. 398.
(30) To safeguard him from partaking of forbidden fruits.
(31) Who are not out to commit theft and should consequently the more so be safeguarded from partaking of produce that has not been tithed.
(32) Kid. 24a.
(33) To be partaken of in Jerusalem, cf. Deut. XIV, 22-26.
(34) So that the original owner is but an invitee without possessing any legal ownership.
(35) Lev. XXVII, 31.
(36) Whereas one redeeming the second tithe of another person does not add a fifth.
(37) Lev. XIX, 24.
(38) Ibid. XXVII, 30.
(39) In the case of each three ears falling together.
(40) [Thus, had not R. Johanan said that the virtuous and R. Dosa said the same thing, it could rightly be argued that the virtuous would not apply their principle to the gleaning.]

Talmud - Mas. Baba Kama 70a

would have been right in not concurring with an anonymous statement of a single Tanna. The Nehardeans said: We do not execute an assignment on movables[1] [which are outside the possession of the parties].[2] Said R. Ashi to Amemar: On what ground? He replied: Because of the view of R. Johanan. For R. Johanan said: If a robber has misappropriated an article and the owner has not abandoned hope of recovering it, neither of them is able to consecrate it; the one because it is not his, the other because it is not in his possession. Some read that the Nehardeans said: We do not execute an assignment on movables [the claim upon which] was denied [by a bailee]. The reason is that the claim was denied, as the deed of assignment would then appear a lie,[3] whereas where it is not denied, we would be able to execute. The Nehardeans further said: An assignment which does not contain the words, 'Go forth and take legal action so that you may acquire title to it and secure the claim for yourself' is of no validity, the reason being that the defendant might say to him:[4] 'You have no claim against me'. But Abaye said: If it is written, 'You will be entitled to a half or a third or a fourth of the claim', it would be valid, for since he is entitled to litigate regarding the half, he is also entitled to litigate regarding the whole.[5] Amemar said: [In any case] where the assignee became possessed of articles belonging to the defendant, we would not take them away from him.[6] But R. Ashi said: Since it was written for him,[7] 'Whatever will be imposed by the Court of Law I accept upon myself', he was surely appointed but an agent.[8] Some, however, say that he is made a partner. What is the practical difference?[9] Whether he may remain possessed of a half. The law is that he is appointed only an agent.[10] MISHNAH. IF A THIEF IS CONVICTED OF THE THEFT [OF A SHEEP OR AN OX] ON THE EVIDENCE OF TWO WITNESSES,[11] AND OF THE SLAUGHTER OR SALE [OF IT] BY THE SAME TWO, OR ON THE EVIDENCE OF ANOTHER TWO WITNESSES, HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.[12] IF HE STEALS AND SELLS ON THE SABBATH DAY,[13] OR IF HE STEALS AND SELLS FOR IDOLATROUS PURPOSES, OR IF HE STEALS AND SLAUGHTERS ON THE DAY OF ATONEMENT,[14] OR IF HE STEALS FROM HIS OWN FATHER, AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED,[15] OR AGAIN, WHERE HE STEALS AND SLAUGHTERS AND THEN CONSECRATES IT, HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.[16] IF HE STEALS AND SLAUGHTERS TO USE THE MEAT FOR CURATIVE PURPOSES OR TO GIVE TO DOGS, OR IF HE SLAUGHTERS AND FINDS THE ANIMAL TREFA,[17] OR IF HE SLAUGHTERS IT AS UNCONSECRATED IN THE 'AZARAH,[18] HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.[19] R. SIMEON, HOWEVER, RULES THAT THERE IS EXEMPTION IN THESE [LAST] TWO CASES.[20]

GEMARA. Are we to say that the Mishnah is not in accordance with R. Akiba? For how could it be in accordance with R. Akiba who said that [the Scriptural term] 'Matter'[21] implies 'not half a

matter'? As indeed taught:[22] R. Jose said: 'When [my] father Halafta went to R. Johanan b. Nuri to learn Torah, or as others, when R. Johanan b. Nuri went to [my] father

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(1) Shebu. 33b and Bek. 49a.

(2) But if they are in the possession of a bailee they could be assigned as they are considered in the possession of the depositor (Tosaf.).

(3) Since the bailee denies them.

(4) The assignee.

(5) V. B.M. 8a.

(6) For the benefit of the defendant even where the prescribed clause 'to go forth and secure for himself' etc. was not inserted in the instrument of assignment. According, however, to Gaonic interpretation it means that the assignee may retain the articles against the assignor (v. Rashi).

(7) By the assignor.

(8) And could therefore not retain the articles either against the defendant in the circumstances dealt with in the first interpretation, or against the assignor in accordance with the Gaonic interpretation.

(9) Whether he was made a partner or an agent.

(10) [Asheri and Alfasi omit, 'The law is, etc.']

(11) Cf. Deut. XIX, 15.

(12) Respectively.

(13) For though it is prohibited to do any business transactions on the Sabbath day, no capital charge is thereby involved, and civil liability could thus be established; cf. Gemara.

(14) As for desecrating the Day of Atonement in contradistinction to the Sabbath no capital charge is involved, the sole punishment at the hand of man being thirty-nine lashes.

(15) And the thief became an heir to the estate.

(16) For the slaughter which preceded the consecration.

(17) I.e., ritually unfit to be eaten owing to an organic defect in the animal; v. Glos.

(18) I.e., the precincts of the Temple where only sacrificial animals might be slaughtered.

(19) As the ritual unfitness of the animal in the last two cases is not due to a defect in the act of slaughter but arises through other circumstances.

(20) For he is of the opinion that if the slaughter does for any reason whatsoever not effect the ritual fitness of the animal to be eaten, it is not considered in the eye of the law as a slaughter.

(21) A matter shall be established by two witnesses, Deut. XIX, 15.

(22) V. B.B. 56a.

Talmud - Mas. Baba Kama 70b

Halafta, he said to him: Suppose a man had the use of a piece of land for one year as testified by two witnesses, for a second year as testified by two other witnesses, and for a third year as testified by still two other witnesses, what is the position? — He replied: 'This is a proper usucaption'.[1] Whereupon the other rejoined: 'I also say the same, but R. Akiba joins issue on the matter for R. Akiba used to say: [Scripture states] A matter [implying] "but not half a matter"'![2] — Abaye, however, said: You may even say that this is in accordance with R. Akiba. For would R. Akiba not agree in a case where two witnesses state that a certain person had betrothed a woman[3] and two other witnesses testify that another person had subsequently had intercourse with her,[4] that though the evidence regarding the intercourse presupposes the evidence regarding the betrothal [in order to become relevant], nevertheless, since the evidence of betrothal does not presuppose the evidence of intercourse, each testimony should be considered a matter [complete in itself]? So also here, though the evidence regarding the slaughter presupposes the evidence regarding the theft [if it is to be relevant] nevertheless since the evidence regarding the theft does not presuppose the evidence regarding the slaughter, each testimony should be considered a matter [complete in itself].[5] But according to the Rabbis[6] what will this term 'matter' [implying] 'but not half a matter' exclude? — It will exclude a case where one witness testified that there was one hair on her back[7] and the other

states that there was one hair in front. But [since each hair is testified to by one witness],[8] would this not be both half a matter and half a testimony?[9] — [We must say] therefore that it excludes a case where two witnesses testify that there was one hair on her back and two other witnesses state that there was one hair in front, as in this case the one set testify that she was still a minor[10] and the others similarly testify that she was still a minor.

IF HE STEALS AND SELLS ON THE SABBATH DAY . . . [HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT]. But has it not been taught [elsewhere] that he would be exempt? — Said Rami b. Hama: If it was taught there that he would be exempt, it was only where the purchaser said to him:[11] 'pluck figs off my fig-tree[12] and transfer to me [in consideration of them] the objects you have stolen.'[13] It may however, be argued that seeing that if the purchaser claimed from him before us in the court[14] we would be unable to order him to go and to pay since [at the time of the alleged liability,] he became subject to a capital charge, why should not even the sale itself be declared no sale at all?[15] — R. Papa therefore said: There would be exemption [where the purchaser said to him], 'Throw your stolen objects [from a public thoroughfare] into my private courtyard,[16] and transfer to me [thereby][17] the objects you have stolen.'[18] Whom does this follow? R. Akiba,[19] who said that an object intercepted in the air is on the same footing [regarding the law of Sabbath] as if it had already come to rest.[20] For if we were to follow the other Rabbis,[21] while the possession of the stolen objects would be transferred as soon as they reached the air of the court-yard of the purchaser's house,[22] in regard to Sabbath the capital liability would not be incurred until they have reached the actual ground![19] — Raba thereupon said: It may still be in accordance with Rami b. Hama.[23] For the hire [of a harlot] was prohibited by the Torah[24] [from being used for the Temple] even [when given by a son] for having incestuous intercourse with his mother, irrespective of the fact that were she to have claimed it from him before us in the court, we should not have been able to order him to go and give her the hire.[25] We see then that although were she to have claimed it from him by law, we should have been unable to order him to go and pay her,[25] nevertheless when he of his own accord pays her [the hire] it will be subject to the law of the hire [of a harlot].[24] So also here regarding payment [for the figs plucked by the thief on the Sabbath], if the purchaser had claimed it by law in our presence, we should have been unable to order the thief to go and pay;[25]

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(1) [In accordance with B.B. III, 1, that three years of undisturbed possession are required to establish a presumptive title on the part of a possessor.]

(2) [And here no two witnesses testify to more than one year of occupation, which is only a third of the matter in hand. And in our Mishnah the second set of witnesses testify to no more than half a matter, i.e. the slaughter, and according to R. Akiba, should not be able to convict the thief.]

(3) By a valid act of Kiddushin (v. Glos.), thus making her his wife.

(4) Lev. XX, 10.

(5) In which case even R. Akiba will allow such evidence to be given independently by separate sets.

(6) Who even in the case of undisturbed possession admit evidence given independently by three sets of witnesses testifying to each of the three years respectively.

(7) The reference is to the two hairs which are the sign of puberty in a girl. V. Nid. 52a.

(8) Whose evidence in such a case is of no effect whatsoever; cf. Deut. XIX, 15.

(9) And it is quite obvious that evidence of this kind is of no avail.

(10) As the appearance of one hair is no sign of puberty; but where different witnesses testify to different years, each year is considered a 'whole matter'.

(11) To the thief who sold him the animal.

(12) Which is a capital offence if done on the Sabbath; v. Shab. VII, 2.

(13) It thus follows that at the very moment when the sale was completed the thief was desecrating the Sabbath by an act which renders him liable to a capital charge in which all possible civil liabilities to take effect at that time have to merge.

(14) To give some consideration for the fig.

(15) For since the thief would have by law to pay nothing for the consideration given him on the part of the purchaser, there should in the eye of the law be lacking any consideration at all rendering the purchase null and void.

(16) And it is a capital offence to throw anything on Sabbath from a public thoroughfare to private premises; cf. Shab. XI, 1.
(17) I.e., by the animal entering into the premises of the prospective purchaser in accordance with B.M. 11a and supra p. 283.
(18) V. p. 405, n. 7.
(19) Shab. 4b; 97a and Git. 79a.
(20) So that the capital offence was committed at the very moment the transaction of sale became complete by the animal entering the air of the purchaser's court-yard; cf. B.M. 12a and Git. 79a.
(21) Who maintain that the capital offence of desecrating the Sabbath by throwing anything from a public thoroughfare into private premises will be committed only at the moment when the object thrown falls upon the ground.
(22) B.M. 12a and Git. 79a.
(23) That the purchaser said to the thief, 'Pluck off a fig of my fig-tree' etc., despite your objection as to the lack of consideration.
(24) Deut. XXIII, 19.
(25) As the very act that should cause pecuniary liability is a capital offence in which all possible civil liabilities have to merge.

Talmud - Mas. Baba Kama 71a

nevertheless, since the thief was prepared to transfer the possession [of the stolen objects] to him by this procedure it should be considered a sale.

IF HE STEALS AND SLAUGHTERS ON THE DAY OF ATONEMENT etc. I would ask, why [should this be so]? It is true that no capital punishment is attached here,[1] but there will at least be the punishment of lashes, and is it not an established ruling[2] that no man who is lashed can be ordered to pay?[3] — It may, however, be said that the Mishnah is in accordance with R. Meir who said[4] that a person who is lashed may also be ordered to pay.[3] But if in accordance with R. Meir, why should there be no liability even for slaughtering on the Sabbath?[5] And should you affirm that while he holds that one may be lashed and be ordered to pay, he[6] does not hold that one may be condemned to death and also ordered to pay. [I would ask,] does he really not [maintain this second ruling]? Was it not taught:[7] 'If he steals and slaughters on the Sabbath or if he steals and slaughters to serve idols,[8] or if he steals an ox condemned to be stoned[9] and slaughters it, he has to make four-fold or five-fold payment according to R. Meir,[10] but the Rabbis rule that there is exemption'? — I might reply that this ruling applies to all cases save this, for it was stated with reference to it that R. Jacob stated that R. Johanan said, or as others say, that R. Jeremiah stated on behalf of R. Simeon b. Lakish that R. Ile'a and the whole company[11] said in the name of R. Johanan that the slaughter [in that case] was carried out by another person [acting on behalf of the thief].[12] But how could the one[13] commit an offence[14] and the other[15] be liable to a fine?[16] — Raba replied: This offence here is different, as Scripture says: And slaughter it or sell it:[17] just as selling [becomes complete] through the medium of another person,[18] so also slaughter may be effected by another person. The School of R. Ishmael taught: [The term] 'or'[19] [inserted between 'slaughter' and 'selling' was meant] to include the case of an agent.[20] The School of Hezekiah taught: The term 'instead'[19] [was intended] to include the case of an agent.

Mar Zutra demurred to this. Is there [he said] any action for which a man is not liable if done by himself but for which he is liable if done by his agent? — R. Ashi said to him: In that case[21] it was not because he should not be subject to liability, but because he ought to be subject to a penalty[21] severer than that. But if the slaughter was carried out by another one, what is the reason of the Rabbis who ruled that there was exemption? — We might say that the Sages [referred to] were R. Simeon who stated that a slaughter through which the animal would not ritually become fit for food could not be called slaughter [in the eyes of the law].[22] But I would say, I grant you this in regard to serving idols and an ox condemned to be stoned, as [through the slaughter] the animal will in these

cases not become fit for food,[23] but in the case of the Sabbath, does not the slaughter render the animal fit for food? For did we not learn that if a man slaughters on the Sabbath or on the Day of Atonement, though he is liable for a capital offence,[24] his slaughter is ritually valid?[25] — It may, however, be said that he[26] concurred with R. Johanan ha-Sandalar, as we have learned, If a man cooks [a dish] on the Sabbath, if inadvertently, [even] he himself[27] may partake of it,[28] but if deliberately, he should not partake of it[29] [on that day]. So R. Meir. R. Judah says: If inadvertently, he may eat it only after the expiration of the Sabbath,[30] whereas if deliberately he should never partake of it.[31] R. Johanan ha-Sandalar says: If inadvertently, the dish may be partaken of after the expiration of the Sabbath, only by other people, but not by himself, whereas if deliberately, it should never be partaken of either by him or by others.[32] What was the reason of R. Johanan ha-Sandalar? — R. Hiyya expounded at the entrance of the house of the prince:[33] Scripture says: Ye shall keep the Sabbath therefore, for it is holy unto you.[34] Just as holy food is forbidden to be eaten,[35] so also what is unlawfully prepared on the Sabbath is forbidden to be partaken of. But, [you might argue,] just as holy food is forbidden for any use,[35] so should whatever is [unlawfully] prepared on the Sabbath also be forbidden for any use.[36] It is therefore stated further: 'Unto you',[34] implying that it still remains yours for general use.[37] It might [moreover] be thought that the prohibition extends even where prepared inadvertently, it is therefore stated: Everyone that profaneth it shall surely be put to death,[34] [as much as to say], I speak only of the case when it is done deliberately, but not when done inadvertently.

R. Aha and R. Rabina differ in this matter. One said that whatever is [unlawfully] prepared on the Sabbath is forbidden on Scriptural authority whereas the other [Rabbi] said that whatever is [unlawfully] prepared on the Sabbath is forbidden on Rabbinic authority. He who said that it was on Scriptural authority bases his view on the exposition just stated, whereas he who said that it was on Rabbinic authority holds that when Scripture says, 'It is holy', it means that it itself[38] is holy, but that which is [unlawfully] prepared on it is not holy. Now I grant you that according to the view that the prohibition is based on Scriptural authority, the Rabbis because

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(1) V. p. 403, n. 4.

(2) Keth. 32a and B.M. 91a.

(3) For a civil liability arising out of an act done at the time when the transgression for which he is to be lashed was committed.

(4) Keth. 33b.

(5) Why then is it stated infra p. 427, that in this case there would be exemption?

(6) R. Meir.

(7) Keth. loc. cit.

(8) Which is a capital offence; cf. Ex. XXII, 19.

(9) Which is thus forbidden for any use; v. supra p. 234.

(10) Which shows that in R. Meir's opinion liability to pay may he added to capital punishment.

(11) [חבורתא , a term employed in designation of the corporate body of members of the Palestinian schools, primarily of the School of Tiberias. V. Bacher, MGWJ, 1899, p. 345.]

(12) In which case it is not the thief but the other person who is liable to the capital punishment.

(13) I.e., the agent.

(14) Of slaughtering a stolen animal.

(15) I.e., the thief.

(16) Of four-fold or five-fold payment.

(17) Ex. XXI, 37.

(18) For two parties are needed to a sale: one to sell and the other to buy.

(19) Ibid.

(20) To make the principal liable to the fine.

(21) I.e., capital punishment for desecrating the Sabbath or serving idols.

(22) V. p. 403, n. 10.

(23) For serving idols see A.Z. 54a; and Hul. 40a.
(24) In the case of Sabbath the offender would be subject to be stoned as in Ex. XXXV, 2 and Num. XV, 32-36, but in the case of the Day of Atonement he would only be subject to a heavenly punishment of being cut off from among his people, in accordance with Lev. XXIII, 30 and Ker. I, 1.
(25) Hul. 14a.
(26) I.e., R. Simeon.
(27) I.e., he who cooked it.
(28) Even on the same day.
(29) Nor anybody else.
(30) But on the same day neither he nor anybody else may partake of it.
(31) Though others may partake of it after the expiration of the Sabbath.
(32) V. Ter. II, 3. It thus follows that according to R. Johanan an animal deliberately slaughtered on the Sabbath will be forbidden as food; and since such a slaughter renders the animal unfit for food, it involves no liability of the fourfold or fivefold payment.
(33) [The reference is to R. Hiyya b. Abba II and R. Judah the Prince III whose home was at Sepphoris. V. zuri, Mishpat hazibburi, I, 281 ff.]
(34) Ex. XXXI, 14.
(35) Cf. Lev. V, 15-16.
(36) Not only for food to Israelites but also for any use whatever.
(37) For surely if it becomes forbidden for any use there would be no practical purpose in retaining ownership.
(38) I.e., the Sabbath itself.

Talmud - Mas. Baba Kama 71b

of this have rightly ruled that there is exemption,[1] but according to the view that it is based on Rabbinic authority, why did the Rabbis rule that there is exemption?[2] — [Their exemption applies] to the other cases; to serving idols, and an ox condemned to be stoned.

But why does R. Meir impose liability in the case of slaughtering for the service of idols? For as soon as he starts the act of slaughtering in the slightest degree he renders the animal forbidden,[3] so that the continuation of the slaughter is done on an animal already forbidden for any use whatever, and as such, was he therefore not slaughtering that which no longer belonged to the owner?[4] — Raba replied: The rule applies to one who declares that it is only at the very completion of the act of slaughter that he intends to serve idols therewith. But what about an ox condemned to be stoned? Is it not forbidden for any use whatever, so that he slaughters that which does not belong to the owner?[4] — Raba thereupon said: We are dealing here with a case where the owner had handed over the ox to a bailee, and as it did damage [by killing a person] in the house of the bailee it was declared Mu'ad in the house of the bailee and its final verdict was issued while it was in the house of the bailee; R. Meir thus on one point concurred with R. Jacob and on another point he concurred with R. Simeon: On one point he concurred with R. Jacob who said that if even after its final verdict was issued the bailee restored it to the owner, it would be a legal restoration;[5] and on another point he concurred with R. Simeon who stated[6] that an object the absence of which entails money loss is regarded as possessing an intrinsic value,[7] as we have learned: R. Simeon says: In the case of consecrated animals[8] for the loss of which the owner is liable to replace them by others, the thief has to pay,[9] thus proving that an object whose absence entails money loss is regarded as possessing an intrinsic value.[10] R. Kahana said: When I reported this discussion in the presence of R. Zebid of Nehardea, I asked: How could you explain our Mishnah[11] to be [only] in accordance with R. Meir[12] but not in accordance with R. Simeon, since it is stated in the concluding clause, R. SIMEON HOWEVER RULES THAT THERE IS EXEMPTION IN THE LAST TWO CASES,[13] thus implying that in the other cases of the whole Mishnah he agrees? — He[14] however said to me; No, it merely implies that he agrees in the case of slaughtering or selling to use the meat for curative purposes or to give to dogs.[15]

IF HE STEALS FROM HIS OWN FATHER AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED, etc. Raba inquired of R. Nahman: If he steals an ox of two partners and after slaughtering it he confesses to one of them,[16] what would be the law?[17] — Shall we say that the Divine law says: 'Five oxen',[18] [implying] 'but not five halves of oxen', or do the 'five oxen' mentioned by the Divine Law include also five halves of oxen? — He replied:[19] The Divine Law says 'five oxen' [implying] 'but not five halves of oxen'.[20]

He, however, raised an objection against him [from the following]: IF HE STEALS FROM HIS FATHER AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED, HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT. Seeing that the father died,[21] is not this case here on a par with a case where he went[22] and confessed to one of the partners, and it is yet stated that he has to make four-fold or five-fold payment? — He replied: Here we are dealing with a case where, for instance, his father has already appeared in the court before he died.[23] Had he not appeared in court, the son would not have had to make four-fold or five-fold payment. If so, instead of having the subsequent clause 'Where he steals of his father [who subsequently died] and afterwards he slaughters or sells, he has not to pay four-fold and five-fold payments,'[24] why should not [the Mishnah] make the distinction in the same case itself by stating, 'This ruling[25] applies only where the father appeared in court, whereas if he did not manage to appear in court, the thief would not have to make four-fold and five-fold payments'?[26] — He replied:[27] This is indeed so, but since the opening clause runs 'IF HE STEALS FROM HIS FATHER AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED', the later clause also has the wording, 'where he steals from his father and after his father died he slaughters or sells'. In the morning, however, he said to him:[27] When the Divine Law said 'five oxen' it also meant even five halves of oxen, and the reason why I did not say this to you on the previous evening

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(1) As the slaughter of the animal on the Sabbath day would on Scriptural authority render the animal unfit for food and could according to R. Simeon not be considered a slaughter at all.

(2) Since according to substantive law the animal would be fit for use.

(3) Cf. Hul. 40a.

(4) V. p. 409, n. 8.

(5) Supra p. 255.

(6) Infra 437.

(7) So that since if the ox would not have been slaughtered the bailee would have been able to restore it intact without paying anything for its value, whereas now that the ox was stolen and slaughtered he would have to pay for the full value of the ox, the ox is considered of an intrinsic value though it was condemned to be stoned, and the thief has to pay the fine accordingly.

(8) Which as such are not subject to the law of the fine of double and four-fold and five-fold payment, as infra p. 427.

(9) The owner the full fine, v. Mishnah p. 427.

(10) To the one who would be liable to make the outlay of money, and for this reason R. Meir makes the thief liable for the payment of the four-fold or five-fold.

(11) Regarding the case of slaughtering on the Day of Atonement.

(12) Who holds one could be both lashed and ordered to pay.

(13) Supra p. 403.

(14) I.e., R. Zebid.

(15) Which forms a part of the last paragraph which is complete in itself.

(16) So that he will not have to pay any fine to this partner, as a confession in a matter of a fine carried exemption; v. supra p. 62 and infra p. 427.

(17) Regarding the other partner when witnesses will appear.

(18) Ex. XXI, 37.

(19) I.e., R. Nahman to Raba.

(20) There will therefore be here total exemption.

(21) And the thief becomes a partner together with the other brothers in the whole estate.

(22) Lit., 'forestalled' (witnesses).

(23) And the liability was already then fully established.

(24) Infra p. 427. For at the time of the slaughter or sale the thief was a joint owner of the animal.

(25) Of liability.

(26) Even where he slaughtered the animal or sold it before the death of his father.

(27) R. Nahman to Raba.

Talmud - Mas. Baba Kama 72a

was because I had not yet partaken of [a dish of] beef [and felt too feeble to arrive at a carefully thought out conclusion]. But why then this difference between the earlier clause[1] and the later clause?[2] — He replied: In the earlier clause[1] we can rightly apply to the offence [the words] 'and he slaughters it', [in the sense that] the whole act is unlawful,[3] whereas in the concluding clause we cannot apply to the offence [the words] 'and he slaughters it' [in the sense that] the whole act is unlawful.[4]

IF HE SLAUGHTERS AND FINDS THE ANIMAL TREFA [OR WHERE HE SLAUGHTERS IT AS UNCONSECRATED IN THE 'AZARAH HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT]. R. Habibi of Huzna'ah said to R. Ashi: This shows that [from the legal point of view] the term 'slaughter' applies to the act only at its completion for if it applied to the whole process from the beginning to the end, would he not as soon as he started the act of slaughtering in the slightest degree[5] render the animal ritually forbidden for any use,[6] so that what follows the beginning would amount to slaughtering an animal no more belonging to the owner?[7] — R. Huna, the son of Raba,[8] said to him: The liability might have been just for that commencement in the slightest degree.[9] R. Ashi, however, said to him: This is no refutation,[10] [since it says] 'and he slaughters it, we require the whole act of the slaughter, which is absent here. But what about the original difficulty?[11] — He thereupon said to him: R. Gamda stated thus in the name of Raba: We are dealing here with a case where, for instance, he cut a part of the organs of the animal outside of the 'Azarah, but completed the slaughter inside of the 'Azarah.[12]

Some attach this argument to the following statement: R. Simeon[13] said in the name of R. Levi the Elder: The term 'slaughter' applies to the act only at its very completion. R. Johanan, however, said it applies to the whole process from the beginning to the end. R. Habibi of Huzna'ah thereupon said to R. Ashi: Are we to say that R. Johanan held that [the prohibition of slaughtering] unconsecrated animals in the 'Azarah is not based on Scripture?[14]

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(1) Where liability is stated.

(2) Stating exemption, since 'five oxen' imply also 'five halves' of oxen why then should he not pay the part due to his coheirs?

(3) As the slaughter took place while the father was still alive.

(4) For at the time of the slaughter the thief was already a joint owner of the animal.

(5) In the precincts of the Temple.

(6) Cf. Pes. 22a.

(7) For surely after it becomes forbidden for any use, there would be no practical use in retaining ownership.

(8) [Read with MS.M., 'R. Aba b. Raba' as on p. 414, v. D.S. a.l.]

(9) Before the animal became forbidden for any use.

(10) Of the proof suggested by R. Habibi.

(11) That, since the animal became forbidden for any use at the commencement of the slaughter, there should be no liability to pay the fine.

(12) So that the animal became forbidden for any use only at the completion of the slaughter, for which the thief has to pay the fine.

(13) [Read ‘Simeon b. Lakish’, v. D.S. a.l.]
(14) V. p. 413, n. 4.

Talmud - Mas. Baba Kama 72b

For if you assume that it has Scriptural authority, then as soon as he starts the act of slaughtering in the slightest degree would he not render the animal ritually forbidden for any use, so that what follows the beginning would amount to slaughtering an animal no more belonging to the owner? — R. Aha, the son of Raba, said to him: The liability might be just for that commencement in the slightest degree. R. Ashi, however, said to him: This is no refutation;[1] [since it says] ‘and he slaughters it’ we require the whole act of the slaughter, which is absent here. But what about the original difficulty?[2] — He, thereupon, said to him that R. Gamda stated thus in the name of Raba: When does he become liable? When for instance he cuts a part of the organs of the animal outside of the ‘Azarah but completes the slaughter inside of the ‘Azarah.[3]

MISHNAH. IF A THIEF [IS CONVICTED OF THE THEFT OF AN OX] ON THE EVIDENCE OF TWO WITNESSES, AND OF THE SLAUGHTER OR SALE OF IT ON THE EVIDENCE OF THE SAME TWO, AND THESE WITNESSES ARE SUBSEQUENTLY PROVED ZOMEMIM,[4] THEY MUST PAY [THE ACCUSED] IN FULL.[5] IF, HOWEVER, THE THEFT [HAS BEEN ESTABLISHED] BY THE EVIDENCE OF ONE PAIR OF WITNESSES, AND THE SLAUGHTER OR SALE BY THAT OF ANOTHER PAIR,[6] AND BOTH PAIRS ARE PROVED ZOMEMIM, THE FIRST PAIR MAKES [THE ACCUSED] DOUBLE PAYMENT[7] AND THE SECOND PAIR THREEFOLD PAYMENT.[8] WHERE [ONLY] THE SECOND PAIR WERE PROVED ZOMEMIM, THE THIEF MAKES DOUBLE PAYMENT,[9] WHEREAS THEY PAY [HIM] THREEFOLD.[8] SHOULD ONE OF THE SECOND PAIR OF WITNESSES BE PROVED ZOMEM, THE TESTIMONY OF THE SECOND PAIR BECOMES NULL AND VOID.[10] SHOULD ONE OF THE FIRST PAIR OF WITNESSES BE PROVED ZOMEM, THE WHOLE TESTIMONY [OF BOTH PAIRS] BECOMES NULL AND VOID, FOR IF THERE WAS NO THEFT THERE COULD BE NO [ILLEGAL] SLAUGHTER OR SALE.[11]

GEMARA. It has been stated:[12] If a witness has been proved a zomem, Abaye says that he becomes disqualified retrospectively [from the time when he gave his evidence in court],[13] whereas Raba says that he is disqualified only for the future [from the time when he is proved zomem]. Abaye makes the disqualification retrospective on the ground that the witness has been shown to have been wicked at the time when he gave evidence, and the Torah says: Do not accept the wicked as a witness.[14] Raba, on the other hand, holds that the disqualification begins only from the moment when his deceit is proved, because the whole procedure of proving witnesses zomemim is anomalous. For this is a case of two witnesses against two; why then accept the evidence of the one pair rather than that of the other? At least let it take effect only from the time when the anomalous procedure is employed.

Some say that Raba really agrees with Abaye that the disqualification is retrospective, but rejects here this principle on practical grounds, because its adoption

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(1) V. p. 413, n. 8.
(2) V. p. 413, n. 9.
(3) V. p. 413, n. 10.
(4) Lit., ‘plotters’, ‘schemers’ (plural of Zomem), i.e., witnesses proved by the subsequent evidence of two witnesses to have been absent at the time of the alleged offence; their punishment is by the law of retaliation. V. Deut. XIX, 18-19 and Mak. I, 2-4.
(5) I.e., five times the value of the alleged theft. V. Ex. XXI, 37.
(6) For which cf. supra pp. 403-5.

(7) Which he would have to pay through them for the alleged theft.
(8) I.e., the difference between the 'double' and the 'fivefold' payment intended by them to have been inflicted on the accused.
(9) As the evidence regarding the theft still holds good.
(10) Cf. Mak. I, 7.
(11) For the fine of fivefold includes the double payment for the theft so that when the latter could not be established as in the case here no fine could be imposed for the slaughter or sale.
(12) Cf. Sanh. 27a.
(13) Any evidence he gave in the intervening period becomes invalidated.
(14) An interpretation of Ex. XXIII, 1.

Talmud - Mas. Baba Kama 73a

might adversely affect purchasers.[1] What practical difference is there between the two versions?[2] — Where two witnesses have proved one of a pair zomem, and other two witnesses have proved the other one of the pair zomem;[3] or again, where the disqualification of the witnesses is based upon an accusation of larceny brought by a subsequent pair.[4] According to the version which makes Raba base his view[5] on the fact of the procedure being anomalous, he would not apply it here, whereas according to the version which makes his reason the fear of adversely affecting purchasers, it would hold good even here.[6]

R. Jeremiah of Difti said: R. Papa decided in an actual case in accordance with the view of Raba. R. Ashi, however, stated that the law agrees with Abaye. And the law agrees with Abaye [against Raba] on [the matters known as] Y'AL KGM.[7]

We have learnt: IF A THIEF [IS CONVICTED OF THE THEFT OF AN OX] ON THE EVIDENCE OF TWO WITNESSES, AND OF THE SLAUGHTER OR SALE OF IT ON THE EVIDENCE OF THE SAME TWO, AND THESE WITNESSES ARE SUBSEQUENTLY PROVED ZOMEMIM, THEY MUST PAY [THE ACCUSED] IN FULL. Does this not mean that they first gave evidence regarding the theft and then[8] gave evidence again regarding the slaughter, and that they were proved zomemim regarding their evidence about the theft and then were proved zomemim regarding their evidence about the slaughter? Now, if you assume that a witness proved zomem becomes disqualified retrospectively, [it would surely follow that] as soon as these witnesses were declared zomemim regarding the theft, it became clear retrospectively that when they gave evidence regarding the slaughter[9] they were already disqualified.[10] Why then should they pay [the retaliation penalty regarding their evidence] about the slaughter?[11] — It may be said that we are dealing here with a case where they were first declared zomemim regarding their evidence about the slaughter. But it may still be argued that after all since when they were subsequently declared zomemim regarding the theft, it became clear retrospectively that when they gave evidence regarding the slaughter, they had already been disqualified. Why then should they pay the retaliation penalty for the slaughter?[12] — This law would apply only when they testified at one and the same time to both theft and slaughter,[13] and were afterwards declared zomemim.[14]

May we say that this matter[15] formed the point at issue between the following Tannaim: If two witnesses gave evidence against a person that he had stolen an ox and the same witnesses also testified against him that he had slaughtered it, and were declared zomemim regarding the theft, as their evidence became annulled in part[16] it became annulled altogether. But if they were declared zomemim regarding the slaughter, the thief would still have to make double payment and they would have to pay [him] three-fold. R. Jose, however, said: These rulings[17] apply only in the case of two testimonies,[18] for in the case of one testimony the law is that a testimony becoming annulled in part becomes annulled altogether. Now, what is meant by 'two testimonies' and what is meant by 'one testimony'? Are we to say that 'two testimonies' means two absolutely independent testimonies, as

in the case of two separate sets, and 'one testimony' means one set giving the two testimonies after each other, in which case R. Jose would hold that in the case of one testimony, i.e. where one set gave testimonies after each other, as, for instance where they had first given evidence about the theft and then gave evidence again about the slaughter, if they were subsequently declared zomemim with reference to their evidence about the slaughter, the law would be that a testimony becoming annulled regarding a part of it becomes annulled regarding the whole of it, and the witnesses would thus be considered zomemim also regarding the theft? On what could such a view be based? [Why indeed should the testimony given first about the theft be annulled through the annulment of a testimony given later?][19] Must we not therefore say that 'two testimonies' means one evidence resembling two testimonies, that is to say, where one set gives two testimonies one after the other[20] but not where there is one testimony in which all the statements are made at the same time? Now it was assumed that there was agreement on all hands that statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement. The point at issue therefore between them[21] would be as follows: The Rabbis[22] would maintain that a witness proved zomem is disqualified only for the future, and since it is from that time onwards that the effect of zomem will apply it is only with reference to the slaughter regarding which they were declared zomemim that the effect of zomem will apply, whereas with reference to the theft regarding which they were not declared zomemim the effect of zomem will not apply.[23] R. Jose would on the other hand maintain that a witness proved zomem would become disqualified retrospectively, so that from the very moment they had given the evidence, regarding which they were proved zomemim, they would be considered disqualified; from which it would follow that when they were declared zomemim regarding the evidence about the slaughter the effect of zomem should also be extended to the evidence regarding the theft, for statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement. [Would the view of Abaye thus be against that of the Rabbis?] — To this I might reply: Were statements following one another within the minimum of time [sufficient for the utterance of a greeting] equivalent in law to a single undivided statement, it would have been unanimously held [by these Tannaim] that the pair proved zomemim should become disqualified retrospectively. But here it is this very principle whether statements following one another within the minimum of time [sufficient for the utterance of a greeting] should or should not be equivalent in law to a single undivided statement that was the point at issue between them: The Rabbis maintained that statements following one another within the minimum of time [sufficient for the utterance of a greeting]

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(1) Who innocently invited the same witnesses to attest the deeds of purchase.

(2) Regarding the view of Raba.

(3) Thus not being a case of two against two but two against one, and the procedure could not be termed anomalous.

(4) In which case the accused two or more cease to act in the strict capacity of witnesses, but become a party interested and partial in the accusation brought against them personally, and the procedure could no more be considered anomalous.

(5) Regarding witnesses proved zomemim.

(6) For so long as the witnesses were not officially disqualified it would be a great hardship to disqualify deeds signed by them at the invitation of innocent purchasers.

(7) A mnemonic composed of Y for 'Yeush, Abandonment, B.M. 21b-22b; E for 'Ed, Witness proved zomem, here under consideration; L for Lehi, pole forming a mark of an enclosure, 'Er. 15a; K for Kiddushin, a case of betrothal, Kid. 51a-52a; G for Gilluy, intimation affecting agency in the case of a bill of divorce, Git. 34a; and M for Mumar, a Defiant Transgressor whether or not he be eligible as witness, Sanh. 27a.

(8) On a subsequent occasion.

(9) I.e., on a subsequent occasion.

(10) From the moment they had given evidence regarding the theft.

(11) Since their evidence regarding slaughter fell to the ground even before they were proved zomemim with reference to it.

(12) Since their evidence regarding slaughter should have fallen to the ground even without their having to be proved zomemim with reference to it.
(13) In which case the retrospective disqualification through their becoming zomemim with reference to both slaughter and theft begins at the same time.
(14) [But first with reference to their evidence about the slaughter. MSS. rightly omit, 'and were . . . zomemim'.]
(15) In which Abaye and Raba differ.
(16) I.e., the theft.
(17) That the accused will still have to pay double payment.
(18) V. the discussion that follows.
(19) For surely a wrong committed at a later date could not affect the presumed integrity of a man on an earlier occasion.
(20) I.e., on different occasions.
(21) I.e., R. Jose and the other Rabbis.
(22) Representing the anonymous opinion cited first.
(23) And the accused will still have to pay double payment.

Talmud - Mas. Baba Kama 73b

are not equivalent in law to a single undivided statement,[1] whereas R. Jose maintained that statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement.[2] But did R. Jose really maintain that statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement? For we have learnt: If a man declares: Let this animal be a substitute[3] for a burnt-offering, a substitute for a peace-offering, it will be a substitute for the burnt-offering,[4] according to the view of R. Meir, whereas R. Jose says: If from the outset he intended this,[5] his words would have to be acted upon,[6] as it was impossible for him to utter two terms at the same time, but if he first declared; 'Substitute for a burnt-offering', and then changed his mind and said, 'Substitute for a peace-offering', it will be a substitute for a burnt-offering only.[7] Now this statement we found strange; for is not the case of a change of mind obvious?[8] And R. Papa therefore said: We assume that the change of mind took place within the minimum of time [required for the utterance of a greeting]![9] [Does this not prove that R. Jose maintained that statements following one another within the minimum of time sufficient for the utterance of a greeting would not be equivalent in law to a single undivided statement?][10] — It may be said that there are two different minimums of time [within which two different kinds of greetings could be uttered], one sufficient for the greeting given by a disciple to his master, and the other sufficient for the greeting of the master to the disciple. Where[11] R. Jose does not hold [the two statements to be one] is where the interval is sufficient for the greeting of a disciple to the master, viz. 'peace [upon] thee, master [and] teacher,' as this is too long,[12] but where it is only sufficient for the greeting of the master to the disciple, 'peace [upon] thee,[13] he holds that they do [form one].

Raba stated: Witnesses [testifying to a capital charge] who have been proved wrong[14] [by a pair of other witnesses][15] and subsequently also proved zomemim, would be put to death, as the confutation was a first step in the subsequent proof of an alibi,[16] though the proof of this was not yet complete at that time. Raba said: [The authority] on which I base this is that which has been taught: [If a set of witnesses declare], We testify that so-and-so has put out the eye of his slave[17] and[18] knocked out his tooth[19] (and so indeed the master himself says), and these witnesses are [by subsequent witnesses] proved zomemim, they would have to pay[20] the value of the eye to the slave.[21] How are we to understand this? If we assume, according to the apparent meaning of the text, that there was here no other pair of witnesses,[22] why should they pay the value of the eye to the slave? After they have done their best to get him [undeservedly] freed, are they also to pay him the value of his eye? Moreover, should they in such a case not have to pay the owner for the full value of the slave [as they falsely demanded his freedom]? Furthermore, 'and so indeed the master himself says,' — how could the master be satisfied [with such a false allegation to his detriment]? Does it therefore not

mean a case, e.g., in which a pair of witnesses had already appeared [previously] and stated that the master knocked out the slave's tooth and then put out his eye so that the master would have to pay him the value of his eye,[23] and a middle pair of witnesses appeared later and stated that the first put out the slave's eye and then his tooth, so that he would not have to give him anything but the value of his tooth,[24] so that the first set of witnesses confuted the middle set, and it is to this that the words refer 'and so indeed the master himself says', for he was well satisfied with the statement alleged by the middle set? The text then goes on: 'And these are [by subsequent witnesses] proved zomemim' — that is, the middle set — 'they would have to pay the value of the eye to the slave'.[25] Does not this show that the confutation is the first step in a subsequent proof of an alibi?[26] — Abaye said: No; [what we can assume is] that the statement of these witnesses was transposed by a [second] set of witnesses, who also proved them zomemim.[27] That this was so is evident,

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(1) So that the evidence as to the theft and the evidence as to the slaughter could in no manner be considered as one, but are completely independent testimonies, and if the accusation of zomem was proved regarding the latter the former could not be affected.

(2) So that the evidence as to the theft and the evidence as to the slaughter form one testimony to all intents and purposes.

(3) See Lev. XXVII, 10.

(4) The earlier expression being the decisive one.

(5) I.e., that it should be a substitute for both offerings.

(6) And the animal will have to be kept until it becomes blemished when it will be sold and half of the money realised will be utilised for a burnt-offering, and the other half for a peace-offering.

(7) Tem. V, 4.

(8) V. p. 419, n. 4.

(9) Where it might have been suggested that the two utterances constituted a single indivisible statement.

(10) For if otherwise why should the first utterance be more decisive than the second?

(11) In the case of Tem. V, 4.

(12) Consisting as it does of four words. [MS.M. and Asheri omit '(and) teacher,' making it thus consist of three words.]

(13) Consisting only of two words.

(14) On the subject matter of their evidence, after sentence had been passed.

(15) For which, however, no retaliatory punishment could be imposed upon them, as Deut. XIX, 19, does not refer to witnesses who were contradicted on the subject matter of their evidence but against whom the accusation (in a sense) of an alibi was proved, i.e. where they were declared zomemim.

(16) [The term 'alibi' is used here for convenience sake, as it deals here with the presence or absence of the witnesses of the alleged crime at the time when it was committed, rather than with the presence or absence of the accused, as the term is generally understood.]

(17) For which he has to let him go free, cf. Ex. XXI, 26-27.

(18) Subsequently.

(19) For which he has to pay the five items in accordance with infra p. 473.

(20) In retaliation.

(21) Tosef. Mak. 1.

(22) Giving evidence for the slave.

(23) Which is of course more than that of his tooth.

(24) Which is less than that of his eye and thus giving evidence for the benefit of the master and against the slave.

(25) I.e., the difference between the value of the eye and the value of the tooth of which they conspired to deprive the slave.

(26) And that after the accusation of an alibi was proved, the law of retaliation will apply despite the fact that their evidence had already been previously impaired.

(27) [There were, that is to say, only two sets of witnesses, the former set testifying that the injury was done to the eye first and then to the tooth, while the second set giving evidence to the contrary and at the same time proving the first set zomemim, in which case the first would have to pay the slave the value of his eye.]

since, the later clause deals with witnesses whose statements were transposed by the same set of witnesses that proved them zomemim, so also the earlier clause deals with a case where the statements of the witnesses were transposed by the same subsequent set of witnesses who proved their alibi. For it says in the later clause: If a set of witnesses declare: We testify against so-and-so that he had first knocked out his slave's tooth and then put out his eye — as indeed the servant says — and they were by subsequent witnesses proved zomemim, they would have to pay the value of the eye to the master. Now how are we to understand this? If we assume that the witnesses of the second set did not agree [with those of the first set] regarding any injury at all, why then should the first witnesses not have to pay the master the whole value of the slave?[1] Does it therefore not mean that all the witnesses agreed that an injury was inflicted, but that the witnesses of the second set reversed the order stated by the first set of witnesses[2] while they also proved them zomemim? But still, what were the circumstances? If the witnesses of the second set post-dated the injury, why should the witnesses of the first set still not have to pay the master the whole value of the slave, since they falsely alleged liability to have rested upon a man at the time when that man was in fact not yet subject to any liability? — We must therefore say that the witnesses of the second set antedated the injury. But again, if [at the time when the witnesses of the first set gave evidence] the master had not yet appeared before the Court [on the matter], why should they still not have to pay him the whole value of the slave as at that time he was still a man subject to no liability?[3] — It must therefore deal with a case where he had already made his appearance before the Court.[4]

R. Aha the son of R. Ika said to R. Ashi: Whence could Raba prove this point?[5] It could hardly be from the earlier clause, for were the witnesses of the middle set[6] those who were confuted?[7] For indeed were they not proved zomemim; their statements would have remained the decisive evidence[8] as the case would have been decided according to their allegations, on the principle that in the total of two hundred[9] the sum of a hundred[10] is included. Does it not then clearly follow that it was the first set of witnesses[11] who were thus confuted[7] whereas the middle set of witnesses were not confuted at all?[12] — He replied: Raba maintained that as the earlier clause dealt with three sets [of witnesses giving evidence] the later clause similarly presented the law in a case where three sets [gave evidence], and tried thus to prove his point from the later clause. [For this clause would thus have dealt with a case] where e.g., a set of two witnesses had appeared and alleged that the master first knocked out his [slave's] tooth and then put out his eye, and after the verdict was given in accordance with their testimony a set of other witnesses arrived and stated that the first put out his [slave's] eye and then his tooth, thus contradicting the witnesses of the first set, and as these [latter] were also proved zomemim they would have to pay the value of the slave's eye[13] to the master. Now if you assume that a confutation is not considered a first step in a subsequent proof of an alibi, why should they have to pay anything[14] after they had already been confuted? Does this therefore not prove that a confutation does constitute a first step in a subsequent proof of an alibi? And Abaye? — He might have rejoined: I grant you that the earlier clause cannot be explained save on the assumption that there were three sets, for it was stated there ‘as indeed the master also says’,[15] but so far as the later clause is concerned, what need have I for three sets, since the statement ‘as indeed the slave also says’[16] is perfectly natural as the slave would surely say anything, being satisfied at the prospect of going free?[17]

R. Zera demurred [to the general implication]:[18] Why not say that when the master puts out his [slave's] eye

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(1) Whom they wanted without proper ground to set free.

(2) I.e., while the former stated that the master first knocked out his slave's tooth and then put out his eye the second set testified that he first put out the slave's eye and then knocked out his tooth.

(3) And it was they who conspired to allege liability against him; cf. Rashi and Tosaf. a.l. and Mak. 5a.

(4) And he was ordered to let the slave go free on the strength of some testimony by earlier witnesses, without any direction as to any payment to be made to the slave who now seeks to recover from the master compensation for the eye or tooth.
(5) Even according to his interpretation that three sets of witnesses took part in the controversy.
(6) Stating that the master first put out the eye of his slave and then knocked out his tooth.
(7) I.e., the effect of their evidence invalidated.
(8) Against the earlier set testifying that the master first knocked out his slave's tooth and then put out his eye.
(9) I.e., e.g. the value of the eye, testified by the first.
(10) I.e., the value of the tooth, testified by the middle set.
(11) Stating that the master first knocked out his slave's tooth and then put out his eye.
(12) [And this clause can thus afford no proof to Raba's ruling.]
(13) I.e., the difference between the value of the eye and that of the tooth.
(14) Even when proved zomemim.
(15) Corroborating the witnesses stating that he put out the slave's eye and knocked out his tooth, for if these witnesses were the first to give evidence on the matter it would surely not be in the interest of the master to corroborate them. [R. Ashi does not accept as authentic the explanation given above in the name of Abaye, which was based on the assumption that Raba proved his ruling from the earlier clause, v. Tosaf. supra 73b. s.v. אמר .]
(16) In corroboration of the witnesses stating that the master knocked out his tooth and put out his eye.
(17) How much the more so in this case where the evidence of the witnesses is completely for the benefit of the slave.
(18) That a master knocking out the tooth of his slave and putting out his eye should do both — let him go free for the tooth and pay compensation for the eye.

Talmud - Mas. Baba Kama 74b

the slave goes out free in lieu of his eye;[1] when he knocks out his slave's tooth the slave goes out in lieu of his tooth;[2] and so also when he puts out his eye and knocks out his tooth the slave should go out in lieu of both his eye and his tooth [and no payment for either of these should have to be made]? — Abaye said to him: It is to rule out this idea of yours that Scripture says: 'For his eye's sake',[3] implying 'not for the sake of both his eye and tooth'; 'for his tooth's sake'[4] but not for the sake of both his tooth and his eye.

R. Idi b. Abin said: We have also learnt to the same effect:[5] IF A THIEF [IS CONVICTED OF THE THEFT OF AN OX] ON THE EVIDENCE OF TWO WITNESSES, AND OF THE SLAUGHTER OR SALE OF IT ON THE EVIDENCE OF THE SAME TWO, AND THESE WITNESSES ARE SUBSEQUENTLY PROVED ZOMEMIM, THEY MUST PAY [THE ACCUSED] IN FULL. Does this not mean that the witnesses have first given evidence regarding the theft and then [some time later] testified to the slaughter, and that they were first proved zomemim regarding the theft and then [some time later] proved zomemim [also] regarding the slaughter? Now, the fact that they were proved zomemim regarding the theft is in itself a confutation of their evidence regarding the slaughter,[6] and it is nevertheless stated that 'THEY MUST PAY THE ACCUSED IN FULL'. But if you assume that a confutation is not the first step in a subsequent proof of an alibi, why should they pay the retaliation penalty for the slaughter? Does not this then show confutation is a first step in a subsequent proof of an alibi? — It may, however, be said that we are dealing here with a case where for example they were first proved zomemim regarding the slaughter.[7]

In this argument [between Raba and Abaye, earlier Sages already differed]: In the case where witnesses [testifying to a capital charge] were first contradicted by another set of witnesses and subsequently also proved zomemim [by a third set of witnesses] R. Johanan and R. Eleazar differed: one said they would be subject to the death penalty,[8] whereas the other said they would not be subject to the death penalty. There is proof that R. Eleazar was the one who said they would not be subject to the death penalty; for R. Eleazar said: 'If witnesses were confuted [but not proved zomemim] as to their evidence regarding a charge of murder, they would be lashed.[9] Now, if you

assume that R. Eleazar was the one who said that [were they subsequently to be proved zomemim] they would be subject to the death penalty, why should they be lashed [when confuted]? Should we not regard the prohibition here laid down[10] as a preliminary warning that the death penalty will be exacted by a court of law,[11] and every prohibition which can serve as a preliminary warning of a death penalty to be exacted by a court of law does not entail liability for lashes?[12] Does not this show that R. Eleazar was the one who said that[13] they would be subject to the death penalty?[14] — This may indeed be regarded as proved.

[It has been stated that where witnesses were confuted but not proved zomemim as to their evidence regarding a capital charge] 'they would be lashed'.[9] But as this is a case where two witnesses contradict other two witnesses, how then could it appear right to you to rely upon those of the second set? Why not rely upon the others? — Abaye replied: This could be so only where the alleged victim came to us on his own feet [thus disproving the evidence of the first set].[15]

MISHNAH. IF THE THEFT [OF AN OX OR A SHEEP] WAS TESTIFIED TO BY TWO WITNESSES,[16] WHEREAS THE SLAUGHTER OR SALE OF IT WAS TESTIFIED TO BY ONLY ONE WITNESS OR BY THE THIEF HIMSELF, HE WOULD HAVE TO MAKE DOUBLE PAYMENT[17] BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS.[18] IF HE STOLE IT AND Slaughtered IT ON THE SABBATH DAY,[19] OR IF HE STOLE IT AND SLAUGHTERED IT FOR THE SERVICE OF IDOLS,[19] OR IF HE STOLE IT FROM HIS OWN FATHER WHO SUBSEQUENTLY DIED AND THE THIEF THEN SLAUGHTERED IT OR SOLD IT,[20] OR IF HE STOLE IT AND CONSECRATED IT [TO THE TEMPLE],[21] AND AFTERWARDS HE SLAUGHTERED IT OR SOLD IT, HE WOULD HAVE TO MAKE DOUBLE PAYMENT BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS. R. SIMEON, HOWEVER, SAYS: IN THE CASE OF CONSECRATED CATTLE, THE LOSS OF WHICH THE OWNER HAS TO MAKE GOOD, THE THIEF HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT,[22] BUT IN THE CASE OF THOSE THE LOSS OF WHICH THE OWNER HAS NOT TO MAKE GOOD, THE THIEF IS EXEMPT.

GEMARA. Is it not obvious that a testimony from the mouth of one witness [should impose no liability to pay]? — It may, however, be said that what we are told here is that confession by the thief himself is analogous to evidence borne by one witness: just as in the case of evidence given by one witness, if another witness should come along and join him, the thief would be made liable;[23] so also in the case of confession by the thief himself, if witnesses should come along [and corroborate it], he would become liable. This deviates from the view of R. Huna stated on behalf of Rab. For R. Huna stated that Rab said: If a man confessed to a liability for a fine, even though witnesses subsequently appeared [and gave evidence to the same effect], he would be exempt.[24]

The above text states: R. Huna stated that Rab said: If a man confessed to a liability for a fine, even though witnesses subsequently appeared [and gave evidence to the same effect], he would be exempt. R. Hisda objected to [this view of] R. Huna [from the following]: It happened that R. Gamaliel [by accident] put out the eye of Tabi[25] his slave.[26] He rejoiced over it very much, [as he was eager to have this meritorious slave set free],[27] and when he met R. Joshua he said to him: 'Do you know that Tabi my slave has obtained his freedom?' 'How was that'? said the other. 'Because', he replied, 'I have [accidentally] put out his eye.' Said R. Joshua to him.' 'Your words have no force in law, since there were no witnesses for the slave.'[28] This of course implies that had witnesses at that time been available for the slave, R. Gamaliel would have been under obligation [to set him free]. Does not this show us that if a man confesses to a liability for a fine, if subsequently witnesses appear and testify to the same effect, he would be liable?[29] — R. Huna, however, said to him[30] that this case of R. Gamaliel was different altogether, as he made his confession not in the presence of the court of Law.[31] But was R. Joshua not the president of the Court of law?[32]

(1) Ex. XXI, 26.
(2) Ibid. 27.
(3) V. p. 427. n. 7.
(4) V. p. 427, n. 8.
(5) In the case made out by Raba where a contradiction of the subject matter of evidence was followed by proof of an alibi.
(6) For if the evidence regarding the theft fell to the ground it carried with it the evidence regarding the slaughter of the stolen animal.
(7) Which of course did not affect their evidence regarding the theft which was given on an earlier occasion.
(8) Agreeing thus with view of Raba.
(9) Because they transgressed the negative commandment, 'Thou shalt not bear false witness against thy neighbour'. Ex. XX, 13. and the punishment of thirty-nine lashes is administered for breaking such and similar negative commandments.
(10) Ex. XX. 13.
(11) Should the same witnesses afterwards become zomemim.
(12) Cf. Sanh. 86b; Mak. 13b and Shebu. 4a.
(13) Were they even subsequently proved zomemim.
(14) In which case the prohibition of this offence could thus never be able to serve as a warning of a pending execution at a court of law and lashes could therefore be administered.
(15) In which case their falsity has been proved beyond any doubt.
(16) Cf. Deut. XIX, 15.
(17) For the act of stealing testified to by two witnesses.
(18) As the act of slaughter or sale was testified to by one witness who, in matters of fine, could be of no effect at all even for the purpose of imposing an oath. [V. J. Shebu. VI, and S. Strashun's Glosses, a.1.] so also is the admission of the thief himself of no avail in these matters.
(19) Being a capital offence in which all possible civil liabilities have to merge.
(20) So that at the time of the slaughter or sale the thief was a joint owner of the animal.
(21) Temple property is not subject to the law of the fine.
(22) V. the discussion in Gemara.
(23) Cf. B.B. 32a and Sanh. 30a.
(24) From the fine; cf. supra p. 62.
(25) V. Suk. II,1 and Ber. II, 7.
(26) Who would thereby receive his freedom in accordance with Ex. XXI. 26.
(27) He was, however, unable to manumit him as it was considered a sin to manumit heathen slaves. V. Ber. 47b and Git. 38a.
(28) And the obligation imposed on a man to let his slave go free for his eye's sake and for his tooth's sake is only a matter of fine.
(29) In contradiction to the view of Rab stated by R. Huna.
(30) I.e., R. Hisda.
(31) And is therefore not considered in the eye of the law a legal confession to bar subsequent evidence.
(32) [Shortly after the death of R. Johanan b. Zakkai, v. Halevy, Doroth, I.e., p. 154, contra Weiss, Dor, 130.]

Talmud - Mas. Baba Kama 75a

— He was, however, at that time not sitting in the court of law. But has it not been taught that he said to him: 'Your words have no force in law, as you have already confessed'?[1] Must we not then say that Tannaim were divided on this matter, so that the Tanna who reported 'as there are no witnesses for the slave',[2] would maintain that if one confessed to liability for a fine and subsequently witnesses appeared and testified [to the same effect], he should be liable, whereas the Tanna who reported 'as you have already confessed', would maintain that if one confessed to liability for a fine, though witnesses subsequently appeared [and corroborated the confession], he would be exempt? — No, they might both have agreed that if one confessed to the liability of a fine, though witnesses subsequently appeared [and testified to the same effect], he would be exempt, and the point on which

they differed might have been this: the Tanna, who reported 'as there are no witnesses for the slave', was of opinion that the confession took place outside the court of law,[3] whereas the Tanna, who reported 'as you already confessed', was of opinion that the confession was made at the court of law.

It was stated: If a man confesses to liability for a fine, and subsequently witnesses appear [and corroborate the confession], Rab held that he would be quit, whereas Samuel held that he would be liable. Raba b. Ahilai said: The reason of Rab was this. [We expound]: If it [was to] be found[4] by witnesses, it be [considered] found[4] in the consideration of the judges, excepting thus a case where a defendant incriminates himself.[5] Now why do I require this reasoning, seeing that this ruling can be derived from the text 'whom the judges shall condemn',[6] which implies 'not him who condemns himself'? It must be to show that if a man confesses to liability for a fine, even though witnesses subsequently appear [and testify to the same effect], there would be exemption. Samuel, however, might say to you that the doubling of the verb in the verse 'If to be found it be found' was required to make the thief himself subject to double payment, as taught at the School of Hezekiah.[7] Rab objected to [this view of] Samuel [from the following Baraitha:][8] If a thief notices that witnesses are preparing themselves to appear[9] and he confesses 'I have committed the theft [of an ox] but I neither slaughtered it nor sold it', he would not have to pay anything but the principal?[10] — He [Samuel] replied: We are dealing here with a case where, for instance, the witnesses drew back from giving any evidence in the matter. But since it is stated In the concluding clause: 'R. Eleazar son of R. Simeon says that the witnesses should still come forward and testify,' must we not conclude that the first Tanna maintained otherwise?[11] — Samuel thereupon said to him: Is there at least not R. Eleazar son of R. Simeon who concurs with me? I follow R. Eleazar son of R. Simeon. Now according to Samuel, Tannaim certainly differed in this matter. Are we to say that also according to Rab Tannaim differed in this?[12] — Rab might rejoin: My statement can hold good even according to R. Eleazar son of R. Simeon. For R. Eleazar son of R. Simeon would not have expressed the view he did there save for the fact that the thief made his confession because of his fear of the witnesses, whereas here he confessed out of his own free will, even R. Eleazar son of R. Simeon might have agreed [that the confession would bar any pending liability].[13]

R. Hamnuna stated: It stands to reason that the ruling of Rab was confined to the case of a thief saying, 'I have committed a theft' and witnesses then coming [and testifying] that he had indeed committed the theft, in which case he is quit, as he had [by the confession] made himself liable at least for the principal.[14] But if he first said, 'I did not commit the theft,' but when witnesses appeared and declared that he did commit the theft, he turned round and said, 'I even slaughtered [the stolen sheep or ox] or sold it,' and witnesses subsequently came [and testified] that he had indeed slaughtered it or sold it, he would be liable to pay [four-fold or five-fold payment], as [by this confession][15] he was trying to exempt himself from any liability whatever. [But] Raba said: I got the better[16] of the elders of the School of Rab,[17] for R. Gamaliel [by confessing the putting out of his slave's eye] was but exempting himself from any liability, and yet when R. Hisda stated this case [as a proof] against R. Huna[18] he was not answered thus.

It was similarly stated.[19] R. Hiyya b. Abba said in the name of R. Johanan, [that if a thief confessed] 'I have committed a theft', and witnesses then came along [and testified] that he had indeed committed the theft, he would be exempt, as in this case he had [by the confession] made himself liable at least for the principal; for where he had first said 'I did not commit the theft', but when witnesses appeared and declared that he did commit the theft he again came and said, 'I even slaughtered [the stolen sheep or ox] or sold it, and witnesses again came and testified that he had indeed slaughtered it or sold it, he would be liable to pay [four-fold or five-fold payment], as by his confession he was but exempting himself from any liability whatever. R. Ashi said: [Texts from] our Mishnah and the [above] Baraitha tend likewise to prove this distinction. From our Mishnah [the proof is] as we have learnt: IF THE THEFT [OF AN OX OR SHEEP] WAS TESTIFIED TO BY TWO WITNESSES, WHEREAS THE SLAUGHTER OR SALE OF IT WAS TESTIFIED TO BY

ONLY ONE WITNESS OR BY THE THIEF HIMSELF, HE WOULD HAVE TO MAKE DOUBLE PAYMENT BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS. Now, what is the need for the words. IF THE THEFT WAS TESTIFIED TO BY TWO WITNESSES? Why not simply state: 'If the theft and slaughter or [theft and] sale were testified to by one witness or by the thief himself, he would not have to pay anything but the principal alone'?

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(1) Which implies that even if witnesses would subsequently appear and testify to the same effect, it would still be of no avail, thus agreeing with the view of Rab.

(2) As the text runs in the former teaching and which implies that if witnesses should come and testify for the slave he would obtain his freedom, in apparent contradiction to the view of Rab.

(3) [Where a confession is not regarded in the eye of the law as legal so as to bar subsequent evidence.]

(4) Ex. XXII. 3.

(5) V. supra 64b.

(6) Ex. XXII, 8.

(7) Supra p. 370.

(8) Cf. Shebu. VIII, 4, and Tosaf. infra 75b, s.v. בריתא .

(9) Before the court to give evidence against him.

(10) As confession to the liability for a fine carries exemption from the fine.

(11) I.e., that the evidence of the witnesses would be of no avail.

(12) And that R. Eleazar was against him.

(13) And no witnesses should be permitted to give evidence in the matter.

(14) Which proves that the confession was genuine.

(15) Which was thus not a genuine confession.

(16) In this matter.

(17) As R. Hamnuna was of the elders of the School of Rab; v. Sanh. 17b. [Var. lec.:. Raba said to him (to R. Hamnuna). You have got the better of the elders of the school of Rab (viz. R. Huna), v. Tosaf.]

(18) [I.e., against the ruling R. Huna reported in the name of Rab.]

(19) In support of the distinction made by R. Hamnuna.

Talmud - Mas. Baba Kama 75b

Is not the purpose to indicate to us that it was only where the theft was testified to by two witnesses and the slaughter by one or by the thief himself, in which case it was not the confession[1] which made him liable for the principal, that we argue that confession by the thief himself is meant to be analogous to the testimony borne by one witness? So that just as in the case of testimony by one witness, as soon as another witness appears and joins him liability would be established, so also in the case of confession by the thief himself, if witnesses subsequently appear and testify to the same effect he would become liable. If, however, the very theft and slaughter [or theft and] sale were testified to by one witness or by the thief himself, in which case the confession made him liable at least for the principal, we would not argue that confession by the thief himself should be analogous to the testimony borne by one witness.[2] [The proof] from the Baraitha [is] as it was taught: If a thief notices that witnesses are preparing themselves to appear and he confesses, 'I have committed a theft [of an ox] but I neither slaughtered it nor sold it' he would not have to pay anything but the principal.[3] Now, what need is there for the words, 'and he confessed, I have committed the theft [of an ox] but I neither slaughtered it, nor sold it'? Why not simply state 'I have committed the theft [of an ox], or I slaughtered it or I sold it'? Is not the purpose to indicate that it was only where the thief confessed, 'I have committed the theft [of an ox]'. where it was he who by confession made himself liable for the principal, that he would be exempt from the fine, whereas if he had stated 'I have not committed any theft',and when witnesses arrived and testified that he did commit a theft, he turned round and confessed 'I have even slaughtered it or sold it', and witnesses subsequently appeared [and testified] that he had indeed slaughtered it or sold it, in which case it was not he who made

himself liable for the principal, he would have to be liable for the fine, thus proving that a confession merely regarding the act of slaughter should not be considered a confession [to bar the pending liability of a fine]![4] — It may, however, be said that this is not so,as the purpose [of the apparently superfluous words] might have been to indicate to us the very ruling that since he confessed 'I have committed the theft [of an ox or a sheep]' even though he still said 'I have neither slaughtered it nor sold it' and witnesses appeared [and testified] that he did slaughter it or sell it, he would nevertheless be exempt from any fine, the reason being that the Divine Law says: 'Five-fold or four-fold payment[5] respectively, but not 'four-fold or three-fold payment'[6] respectively.

Shall we say that the following Tannaim differed on this point? [For it has been taught:] Where two witnesses testified to a theft [of an ox] and other two witnesses subsequently gave evidence that the thief had slaughtered it or sold it, and the witnesses regarding the theft were proved zomemim,[7] since the testimony became annulled regarding a part of it,[8] it would become annulled regarding the whole of it.[9] But if [only] the witnesses to the slaughter were proved zomemim, he would have to make double payment,[10] whereas they[11] would [have to pay him three-fold payment as restitution].[12] In the name of Symmachus it was, however, stated that they would have to make double payment,[13] whereas he would have to make three-fold payment for an ox and double payment for a ram.[13] Now, to what did Symmachus refer? It could hardly be to that of the opening clause,[14] for would Symmachus not agree that a testimony becoming annulled regarding a part of it should become annulled regarding the whole of it? If again he referred to the concluding clause,[15] did the Rabbis not state correctly that the thief should make double payment while the false witnesses would have to make three-fold payment? It must therefore be that there was another point at issue between them,[16] viz., where a pair of witnesses came and said to him: 'You have committed the theft [of an ox]'. and he said to them: 'It is true that I have committed the theft [of an ox] and even slaughtered it or sold it, but it was not in your presence that I committed the theft', and he in fact brought witnesses who proved an alibi[17] against the first witnesses that it was not in their presence that he committed the theft, while the plaintiff brought further witnesses who gave evidence against the thief that he had committed the theft [of an ox] and slaughtered it or sold it. They would thus differ as to the confession regarding the slaughter, the Rabbis holding that though in regard to the theft it was certainly because of the witnesses[18] that he confessed, the confession regarding the slaughter[19] should have the usual effect of confession and exempt him from the fine, whereas Symmachus held that since regarding the theft it was because of witnesses that he confessed, the confession of the slaughter should not have the [full] effect of a confession [as it did not tend to establish any civil liability], so that the first witnesses who were found zomemim[20] would have to pay him[21] double, whereas he[21] would have to pay three-fold for an ox and double for a ram![22] — R. Aha the son of R. Ika said: No, all might agree that the confession regarding the slaughter would not have the [exempting] effect of a confession, and where they differ here is regarding evidence given by witnesses whom you would be unable to make subject to the law applicable to zomemim, as e.g., where two witnesses came and said to him: 'You have committed the theft [of the ox]', and he said to them: 'I did commit the theft [of the ox] and even slaughtered it or sold it; it was, however, not in your presence that I committed the theft, but in the presence of so-and-so and so-and-so,' and he in fact brought witnesses who proved an alibi against the first witnesses, that it was not in their presence that he committed the theft, but so-and-so and so-and-so [mentioned by the thief] came and testified against him that he did commit the theft [of the ox] and slaughtered it or sold it. The point at issue in this case would be as follows: The Rabbis maintain that this last evidence was given by witnesses whom you would [of course] be unable to make subject to the law applicable to zomemim [as they were pointed out by the thief himself],[23] and any evidence given by witnesses whom you would be unable to make subject to the law applicable to zomemim could not be considered valid evidence,[24] whereas Symmachus maintained that evidence given by witnesses whom you would be unable to make subject to the law applicable to zomemim would be valid evidence.[25] But is it not an established tradition with us[26] that any evidence given by witnesses whom you would be unable to make subject to the law applicable to zomemim could not be considered valid evidence? — This is

the case only where the witnesses do not know the exact day or the exact hour of the occurrence alleged by them,[27] in which case there is in fact no evidence at all, whereas here [your inability to make them subject to the law applicable to zomemim was only because] the thief himself was in every way corroborating their statements.

The Master stated: 'They[28] would have to make double payment. But since in this case the thief admitted that he did commit the theft, so that he would surely be required to pay the principal, [why should the witnesses proved zomemim have to make double payment?][29] — Said R. Eleazar in the name of Rab: Read:

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(1) But the testimony of two witnesses.
(2) But a confession of this nature bars subsequent evidence in accordance with the view of Rab.
(3) Shebu. 49a.
(4) Supporting thus the distinction made by R. Hamnuna.
(5) Ex. XXI, 37.
(6) I.e., since he confessed regarding the theft, in which case he will only have to pay the principal, since the doubling of it is a fine, he will not be subject to the fine of slaughter or sale even when denied by him and testified to by two witnesses, on account of the fact that the payment in this case would have to be not five-fold but four-fold for an ox and not four-fold but three-fold for a sheep.
(7) V. Glos.
(8) I.e., regarding the theft.
(9) I.e., regarding also the slaughter or sale, for surely if there was no theft there, no slaughter and sale of a stolen animal could have been there.
(10) For the theft which was testified to by the other set of witnesses.
(11) The second set proved zomemim.
(12) In accordance with Deut. XIX, 19.
(13) V.. the discussion later on.
(14) Where the witnesses to the theft were proved zomemim.
(15) Where the witnesses to the slaughter or sale were proved zomemim.
(16) I.e., Symmachus and the Rabbis.
(17) V. p. 421, n. 1.
(18) I.e., the first set of witnesses.
(19) Which was not made through any fear.
(20) Regarding the theft.
(21) The thief.
(22) I.e., the prescribed fine for the slaughter or sale. This therefore proves that the Rabbis maintained that a confession which does not involve the liability of the principal should still have the effect of a confession, in contradiction to R. Hamnuna, whereas Symmachus would maintain that it should be devoid of the absolute exempting effect of a confession to liability for a fine.
(23) Against whom they gave evidence.
(24) [The thief would accordingly be exempt from the fine for the slaughter and sale of which he stands convicted, as it were on his own evidence.]
(25) [Hence the thief, on his part. would have to pay the exclusive fine for the slaughter or sale.]
(26) Cf. Sanh. 41a and 78a.
(27) Cf. Sanh. 40a.
(28) I.e., the witnesses who gave evidence regarding the theft and were proved zomemim.
(29) They should have to pay no more than the amount of a single payment.

the payment of doubling.[1]

IF HE STOLE IT AND CONSECRATED IT [TO THE TEMPLE] AND AFTERWARDS SLAUGHTERED IT OR SOLD IT, HE WOULD HAVE TO MAKE DOUBLE PAYMENT BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS. I would here Say: I grant you that he should not be liable for the slaughter, as when he slaughtered it, it was a consecrated animal which he slaughtered and he did not slaughter that which belonged to the owner. But why should he not be made liable for the very act of consecration?[2] For indeed what difference does it make to me whether he disposed of it to a private owner or whether he disposed of it to the ownership of Heaven? — This represents the view of R. Simeon who said[3] that consecrated objects, the loss of which the consecrator would have to make good, should be considered as if still remaining in the possession of the consecrator.[4] But since the concluding clause gives the view of R. Simeon,[3] the view stated in the previous clause is surely not that of R. Simeon. [Why then no liability for the act of consecration?] — We must therefore be dealing here with a case of minor sacrifices[5] and in accordance with R. Jose the Galilean, who declared[6] that minor sacrifices are private property and thus still remain in the possession of the consecrator. But what would be the law [where the thief consecrated the stolen sheep or ox] for most holy sacrifices?[7] Would he then have to make four-fold or five-fold payment for the act of consecration? If so, why read in the opening clause: 'If he steals and slaughters and consecrates it, he has to make four-fold or five-fold payment'?[8] Why not make the distinction in stating the very case itself: 'This ruling applies only in the case of minor sacrifices, but where he sanctified it for the most holy sacrifices he would have to make four-fold or five-fold payment [for the very act of consecration]'? — We must therefore still say that there is no difference whether [the animal was consecrated for the] most holy sacrifices or merely for minor sacrifices, and to the difficulty raised by you. 'What difference does it make to me whether he disposed of it to a private owner or whether he disposed of it to the ownership of Heaven', [it might be said in answer that] where he disposed of it to a private owner it was previously the ox of Reuben and has now become the ox of Simeon,[9] whereas where he disposed of it to the ownership of Heaven it was previously the ox of Reuben and still remains the ox of Reuben.[10]

R. SIMEON HOWEVER SAYS: IN THE CASE OF CONSECRATED CATTLE THE LOSS OF WHICH THE OWNER HAS TO MAKE GOOD, THE THIEF HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT, BUT IN THE CASE OF THOSE THE LOSS OF WHICH THE OWNER HAS NOT TO MAKE GOOD, THE THIEF IS EXEMPT. I would here say: Granted that in the opinion of R. Simeon it makes no difference whether he disposed of it to a private owner or whether he disposed of it to Heaven,[11] has not the text to be transposed [so as to read as follows]: '[For consecrating the stolen animals as] sacrifices the loss of which he would have to make good the thief should be exempt, as they have not yet been removed altogether from his possession, whereas [for consecrating them as] sacrifices the loss of which he would not have to make good he should be liable, as in this case they have already been removed from his possession'?

It may be said that R. Simeon referred to a different case altogether, and the text [of the Mishnah] is to be read thus: If a man misappropriates an article [already stolen] in the hands of a thief he has not to make four-fold and five-fold payments. So also he who misappropriates a consecrated object from the house of the owner is exempt, the reason being that [the words] 'and it be stolen out of the man's house'[12] imply 'but not from the possession of the sanctuary'. R. Simeon, however, says: In the case of consecrated objects, the loss of which the owner has to make good, the thief is liable to pay, the reason being that to this case [the words of the text] 'and it be stolen out of the man's house'[12] [apply].[13] But in the case of those the loss of which the owner has not to make good, the thief is exempt, as we cannot apply the words 'and it be stolen out of the man's house'. Let us see. We have heard R. Simeon say[14] that a slaughter through which the animal would not ritually become fit for food could not be called slaughter [in the eye of the law]. Is the slaughter [outside the Temple precincts] of sacrifices not similarly a slaughter which would not render the animal fit for food?[15] [Why then should there be liability for slaughtering them thus?] — When R. Dimi arrived[16] he stated

on behalf of R. Johanan [that the liability would arise] if the thief slaughtered the sacrifices while unblemished within the precincts of the Temple in the name of the owner. But has not the principal thus been restored to the owner [since the sacrifice produced atonement for him]?[17] — Said R. Isaac b. Abin: We presume that the blood was poured out [and thus not sprinkled upon the altar, so that no atonement was effected for the owner].[18] When Rabin arrived[16] he said on behalf of R. Johanan that the liability would only be where he slaughtered the sacrifices while unblemished within the precincts of the Temple but not in the name of the owner,[19]

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(1) I.e., a single payment.

(2) As if he would have sold it.

(3) Mishnah supra p. 427.

(4) As they are still under his charge and the transfer was thus incomplete.

(5) Such as peace. offerings and thank-offerings and the like.

(6) Supra p. 50.

(7) Such as burnt-offerings, sin-offerings and the like.

(8) Supra p. 403.

(9) I.e., the transfer from the thief to the purchaser was complete in every respect.

(10) I.e., the transfer from the thief to the Temple was not so complete. as the sacrifice is still credited to him.

(11) So that for the very act of sanctification the thief will become liable for the fine as if he had sold the animal.

(12) Ex. XXII, 6.

(13) For since the loss of these consecrated objects would involve an outlay of money on the part of the original owner, they are in this respect in his ownership as they are under his charge; cf. supra p. 410.

(14) Supra p. 408.

(15) Cf. Lev. XVII. 3-9; Hul. 78a-80b.

(16) From Palestine to Babylon.

(17) Why then should liability for the fine be attached?

(18) Cf. Zeb. 25a.

(19) In which case the owner derives no benefit, as the sacrifice is not credited to him though otherwise it is perfectly valid; cf. Zeb. I,1.

Talmud - Mas. Baba Kama 76b

whereas Resh Lakish said that there will be liability also if the thief slaughtered blemished sacrifices[1] outside the precincts of the Temple.[2] R. Eleazar was astonished at the statement of R. Johanan: Is it the slaughter that renders the sacrificed animal permissible for food?[3] Is it not the sprinkling of the blood that renders it permissible to be partaken of?[4] So also he was astonished at the statement of Resh Lakish: Is it the slaughter that renders the sacrificed animal permissible for food?[5] Is it not its redemption[6] that renders it permissible for food?[5] — It, however, escaped his memory that R. Simeon has laid down that whatever is ready to be sprinkled is considered as if it has already been sprinkled, and whatever is designated for being redeemed is considered as if it had already been redeemed[7] . 'Whatever is ready to be sprinkled is considered as if it had already been sprinkled' — as taught: R. Simeon says: There is nothar[8] which may be subject to defilement in accordance with the law applicable to the defilement of food,[9] but there is also nothar which is not subject to defilement in accordance with the law applicable to the defilement of food. How is this so? If it remains over night before the sprinkling of the blood,[10] it would not be subject to become defiled in accordance with the law applicable to the defilement of food,[11] but if after the sprinkling of blood,[12] it would be subject to become defiled in accordance with the law applicable to the defilement of food.[13] Now, it is an accepted tradition that the meaning of 'before sprinkling' is 'without it first having become fit to be sprinkled' and of 'after sprinkling', 'after it became fit for sprinkling'. Hence, 'where it remained overnight without having first become fit for sprinkling' could only be where there was no time during the day to sprinkle it, such as where the sacrifice was slaughtered close upon sunset, in which case it would not be subject to become defiled in accordance

with the law applicable to the defilement of food; and 'where it remained over night after it had already become fit for sprinkling,' [could only be] where there was time during the [previous] day to sprinkle it, in which case it would be subject to become defiled in accordance with the law applicable to the defilement of food.[14] This proves that whatever is ready to be sprinkled is considered as if it had already been sprinkled.[15] 'Whatever is designated for being redeemed is considered as if it had already been redeemed,' — as taught: 'R. Simeon says:

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(1) [I.e., an animal which became afflicted with a lasting blemish before it was dedicated (Rashi).]

(2) As these may be slaughtered outside the precincts of the Temple, even without being first redeemed.

(3) In the case of unblemished sacrifices slaughtered in the precincts of the Temple.

(4) It accordingly follows that the slaughter as such did not at that time render the animal ritually fit for food.

(5) In the case of blemished sacrifices slaughtered outside the precincts of the Temple.

(6) Subsequent to the slaughter thereof. Cf. Hul. 84a.

(7) So that the slaughter is considered fit; cf. Pes. 13b; Men. 79b and 102b.

(8) Lit., 'That which remaineth'; cf. Ex. XII, 10 and Lev. XIX, 6. denoting portions of sacrifices that had not been eaten or sacrificed upon the altar within the prescribed time and could then no more be sacrificed upon the altar or partaken of or put to any use but had to be burnt in a special place.

(9) Cf. Lev. XI, 34.

(10) In which case the portions have never been allowed to be partaken of.

(11) As according to Bek. 9b, food cannot become defiled unless it was permitted to be made use of as food.

(12) It was left over, in which case there was a time when the portions were ritually fit as food.

(13) Tosef. 'Uk. III, 7' in accordance with Lev. XI, 34.

(14) V. p. 439. n. 9.

(15) And made the sacrifice as if ritually fit to be partaken of.

Talmud - Mas. Baba Kama 77a

The red heifer is subject to become defiled in accordance with the law applicable to the defilement of food,[1] since at one time it had ritual fitness to be used for food',[2]

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(1) Cf. Lev. XI, 34.

(2) Tosef. Par. VI, 9; Shebu. 11b.

Talmud - Mas. Baba Kama 77b

and Resh Lakish observed that R. Simeon used to say that the red heifer could be redeemed even after [it was slaughtered and] placed upon the wood for burning[1] thus proving that whatever has the possibility of being redeemed[2] is considered as if it had already been redeemed.

We can understand why R. Johanan did not give the same answer [to the difficulty[3] propounded] as Resh Lakish,[4] as he was anxious to explain the ruling [of our Mishnah] even in the case of unblemished sacrifices. But why did Resh Lakish not give the same answer as R. Johanan?[5] — He could say: [Scripture says.] 'And he slaughtered it or sold it'[6] implying that it was only an animal [subject to this law] in the case of a sale that could be [subject to it] in the case of slaughter, whereas an animal which would not be [subject to this law] in the case of sale could similarly not be [subject to it] in the case of slaughter either. Now, in the case of these unblemished sacrifices, since if the thief had sold the sacrifices it would not have been a sale [to all intents and purposes],[7] they could not be [subject to this law even] when they were slaughtered. R. Johanan and Resh Lakish indeed followed their own lines of reasoning [elsewhere]. For it was stated: If a thief sells a stolen ox which is trefa,[8] according to R. Simeon,[9] R. Johanan said that he would be liable, whereas Resh Lakish said that he would be exempt. R. Johanan. who said that he would be liable, held that though this ox could not be subject to the law of slaughter it could yet be subject to the law of sale, whereas Resh Lakish who said that he would be exempt maintained that since this ox could not be subject to the law of slaughter, it could similarly not be subject to the law of sale either.

R. Johanan objected to [the view of] Resh Lakish [from the following]: If he stole a hybrid animal and slaughtered it, or a trefa animal and sold it, he would have to make double payment. Now, does not this ruling follow the view of R. Simeon,[10] thus proving that though this ox would not be subject to the law of slaughter it could nevertheless be subject to the law of sale? — He replied: No; this is the view of the Rabbis .[11] But if this is the view of the Rabbis, why should a trefa ox be subject only to the law of sale and not to the law of slaughter? — You say then that it is the view of R. Simeon.[9] Why then should a hybrid animal be subject only to the law of slaughter and not to that of sale? We must say therefore that though slaughter is mentioned[12] the same law was meant to apply also to sale; so also according to the Rabbis, though sale is stated in the text,[13] the same law was meant to apply to slaughter.[14] R. Johanan, however, might say that this does not follow. It is true that if you say that the ruling follows R. Simeon, there is no difficulty: since it was necessary to state liability regarding trefa in the one case [of sale] only, it states liability regarding a hybrid animal also in the one case [of slaughter] only. But if you say that this ruling follows the Rabbis, why not join them together, and state thus: 'If the thief misappropriated a hybrid animal and a trefa [sheep or ox] and slaughtered them or sold them, he would have to make four-fold or five-fold payment'! This indeed is a difficulty.

[But why should there be liability for four-fold or five-fold payment in the case of] a hybrid animal since Scripture says 'sheep'.[15] and Raba [elsewhere] said that this[16] is a locus classicus for the rule that wherever it says 'sheep', the purpose is to exclude a hybrid animal? — This case here is different, as Scripture says 'or',[17] implying the inclusion of a hybrid animal. [Does this mean to say that] the term 'or' everywhere implies an amplification? Was it not taught:[18] 'When a bullock or a

sheep:[19] this excepts a hybrid; or a goat:[19] this excepts an animal looking like a hybrid'? — Said Raba: The term 'or' in the one case is expounded in accordance with the subject matter of the verse, and the term 'or' in the other case is similarly expounded in accordance with the subject matter of that verse. Here in connection with theft where it is written 'an ox or a sheep', since it is impossible to produce a hybrid from the union of these two,[20] the term 'or' should be expounded to include[21] a hybrid [of a different kind], whereas in connection with sacrifices where it is written 'a sheep or a goat',[19] where it is possible for you to produce a hybrid from their union,[22] the term 'or' should rightly be taken to exclude[23] [the hybrid].

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(1) And this is the ritual fitness as food.

(2) Though it was in fact never redeemed.

(3) As to how could the slaughter in the case of a sacrifice render the stolen animal ritually fit for food and thus make the thief liable for the fine.

(4) Who stated that the animal was blemished and slaughtered outside the precincts of the Temple.

(5) That an unblemished animal was slaughtered in the precincts of the Temple but not in the name of the owner.

(6) Ex. XXI, 37.

(7) Cf. Pes. 89b.

(8) V. Glos.

(9) Who in the case of slaughtering such an animal maintains exemption; v. supra p. 403.

(10) For if otherwise, why not state slaughter also in the case of trefa.

(11) According to whom even for slaughter in the case of trefa there is liability for the fine (supra p. 403).

(12) In the case of a hybrid animal.

(13) Dealing with trefa.

(14) [But according to R. Simeon a trefa is not subject even to the law of sale.

(15) In Ex. XXI, 37.

(16) The word 'sheep' in Lev. XXII, 28; v. Hul. 78b.

(17) Ex. XXI, 37.

(18) Hul. 38b.

(19) Lev. XXII, 27.

(20) As an ox could not possibly be the father of the offspring of a sheep.

(21) For if to exclude there was no need for this 'or'.

(22) As a sheep could be the father of the young of a goat.

(23) For if to include there was no need for this 'or' to be inserted.

Talmud - Mas. Baba Kama 78a

But in connection with sacrifices it is also written 'a bullock or a sheep', in which case it is impossible for you to exclude a hybrid born from these two, why then should we not employ the term 'or' to include [a hybrid of a different kind]? — Since the term 'or' in the later phrase[1] is to 'be employed to exclude, the term 'or' in the earlier phrase[2] should similarly be employed to exclude. But why not say on the contrary that, as the term 'or' in the earlier phrase has to be employed to amplify, so also should the term 'or' in the later phrase? — Would this be logical? I grant you that if you say that the term 'or' meant to exclude, then it would be necessary to have two [terms 'or'] to exclude, for even when a hybrid has been excluded, it would still be necessary to exclude an animal looking like a hybrid. But if you say it is meant to amplify, why two amplifications [in the two terms 'or']? For once a hybrid is included, what question could there be of an animal looking like a hybrid. To what halachah then would the statement made by Raba refer, that this is a locus classicus for the rule that wherever it says 'sheep'. the purpose is to exclude a hybrid? If to sacrifices, is it not explicitly said: 'A bullock or a sheep which excepts a hybrid' ? If to the tithes [of animals] , is not the term 'under'[3] compared to 'under' used in connection with sacrifices [making it subject to the same law]? If to a firstling, is the verb expressing 'passing'[4] not compared to 'passing'[3] used in connection with tithe? Or again we may say, since where the animal only looks like a hybrid you say

that it is not [subject to the law of firstling], since it is written: 'But the firstling of an ox'[5] [which implies that the rule holds good] only where the parents were of the species of 'ox' and the firstling was of the species of 'ox', what question can there be regarding a hybrid itself? — The statement made by Raba must therefore have referred to the firstling of an ass,[6] as we have learnt:[7] It can not be redeemed either by a calf or by a wild animal or by a slaughtered sheep or by a trefa sheep or by a hybrid or by a koy.[8] But if we accept the view of R. Eleazar, who allows redemption with a hybrid sheep, as we have learnt: R. Eleazar allows the redemption to be made with a hybrid, for it is a sheep,[7] to what halachah [can we refer the statement of Raba] ? — R. Eleazar might reply that the statement made by Raba is to teach [the prohibition of] an unclean animal[9] born from a clean animal[10] which became pregnant from an unclean animal [being forbidden as food].[11] this opinion not being in accordance with R. Joshua. for R. Joshua derived[12] this prohibition from the verse 'the sheep of sheep and the sheep of goats'.[13] which implies that unless the father was a 'sheep' and the mother a 'sheep' [the offspring is forbidden for food]. But could a clean animal become pregnant from an unclean animal? — Yes, since it is known to us

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(1) Dealing with 'sheep' and 'goat'.

(2) Where 'bullock' and 'sheep' are mentioned.

(3) Lev. XXVII, 32.

(4) Ex. XIII, 12.

(5) E.V. 'a cow'. Num. XVIII. 17.

(6) Which has to be redeemed by a sheep (Ex. XIII. 13). so that a hybrid would therefore not be eligible.

(7) Bek. 1,5.

(8) I.e., a kind of an antelope about which there was a doubt whether it belongs to the species of cattle or to that of beasts of the forest. [V. Lewysohn. Zoologie, p. 115 ff. who identifies it with the Gr. **, 'goat-stag' mentioned by Plinius.]

(9) E.g.. a swine; v. Lev. XI, 7.

(10) Such as a sheep.

(11) Such as where a cow became pregnant from a horse and gave birth to a foal or where a sheep became pregnant from a swine and gave birth to a swine.

(12) Cf. Bek. 7a.

(13) Deut. XIV, 4.

Talmud - Mas. Baba Kama 78b

that it could become pregnant from an animal with uncloven hoofs, [which though born from parents belonging to the species of ox, is considered unclean] in accordance with the view of R. Simeon.[1]

Raba asked: [If one vowed.] 'I take upon myself to sacrifice a burnt — offering.'[2] and he set aside an ox and somebody came and stole it , should the thief be entitled to free himself[3] by paying for a sheep, if we follow the Rabbis, or even for a burnt-offering of a bird, if we follow R. Eleazar b. Azariah, as we have learnt:[4] [If one vowed.] 'I take it upon myself to bring a burnt-offering.' he may bring a sheep;[5] R. Eleazar b. Azariah says that he may even bring a turtle — dove or a young pigeon?[6] What should be the legal position? Shall we say that since he undertook to bring something called a burnt-offering [the thief may be entitled to restore the minimum burnt-offering], or perhaps the donor might be entitled to say to him: 'I am anxious to do my duty in the best manner possible'? After he put the question, on second thoughts he decided that the thief might free himself by paying a sheep, according to the view of the Rabbis, or even a burnt-offering of a bird, according to the view of R. Eleazar b. Azariah. R. Aha the son of R. Ika taught this as a definite ruling, [as follows]: Raba said: [If one vowed.] 'I take it upon myself to sacrifice a burnt-offering.' and he set aside an ox and somebody came and stole it, the thief may free himself by paying for a sheep, if we follow the Rabbis, or even for a burnt-offering of a bird, if we follow R. Eleazar b. Azariah.

MISHNAH. IF HE SOLD [THE STOLEN SHEEP OR OX] WITH THE EXCEPTION OF ONE

HUNDREDTH PART OF IT,[7] OR IF HE HAD SOME PARTNERSHIP IN IT[8] [BEFORE HE STOLE IT] OR IF HE SLAUGHTERED IT AND IT BECAME NEBELAH[9] UNDER HIS HAND, OR IF HE STABBED IT OR TORE LOOSE [THE WIND PIPE AND GULLET BEFORE CUTTING],[10] HE WOULD HAVE TO MAKE DOUBLE PAYMENT[11] BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS.

GEMARA. What is meant by 'with the exception of one hundredth part of it'? — Rab said: With the exception of any part that would be rendered permissible [for food] together with the bulk of the animal through the process of slaughter.[12] Levi, however, said: With the exception even of its wool. It was indeed so taught in a Baraitha: 'With the exception of its wool.'

An objection was raised [from the following]: 'If he sold it with the exception of its fore-paw, or with the exception of its foot, or with the exception of its horn, or with the exception of its wool, he would not have to make four-fold and five-fold payments. Rabbi, however, says: [If he reserved for himself] anything the absence of which would prevent a [ritual] slaughter, he would not have to pay four-fold and five-fold payments, but [if he reserves] anything which is not indispensable for the purposes of [ritual] slaughter[13] he would have to make four-fold or five-fold payment. But R. Simeon b. Eleazar says: If he reserved its horn he would not have to make four-fold or five-fold payment; but if he reserved its wool he would have to make four-fold or five-fold payment'. This presents no difficulty to Levi, as he would concur with the first Tanna, but with whom does Rab concur?[14] — It may he said that Rab concurs with the following Tanna, as taught: R. Simeon b. Eleazar said:[15] 'If he sold it with the exception of its fore-paw or with the exception of its foot he would not have to make four-fold or five-fold payment. But if with the exception of its horn or with the exception of its wool he would have to make four-fold and five-fold payments'. What is the point at issue between all these Tannaim? — The first Tanna held that [to fulfil the words] 'and he slaughter it'[16] we require the whole of it, as also [to fulfil the words] 'and he sell it' we require the whole of it.[17] Rabbi, however, held that 'and he slaughter it' refers only to those parts the absence of which would render the slaughter ineffective, excluding thus anything which has no bearing upon the slaughter, while 'and he sell it' is of course analogous to 'and he slaughter it'. R. Simeon b. Eleazar, on the other hand, maintained that the horn not being a part which is usually cut off could be reckoned as a reservation, so that he would not have to make four-fold and five-fold payments, whereas the wool of the animal being a part which is usually shorn off could not be reckoned as an reservation, and he would thus have to make four-fold or five-fold payment. But the other Tanna of the School of R. Simeon b. Eleazar maintained that its fore-paws or feet which require slaughter [to render them permissible] form a reservation, and he would not have to pay four-fold and five-fold payments, whereas its horns or its wool, as they do not require slaughter [to render them permissible] would not constitute a reservation. But does R. Simeon b. Eleazar not contradict himself? — Two Tannaim report differently the view of R. Simeon b. Eleazar.

Our Rabbis taught: He who steals a crippled, or a lame, or a blind [sheep or ox], and so also he who steals an animal belonging to partners [and slaughters it or sells it] is liable [for four-fold and five-fold payments]. But if partners committed a theft they would be exempt.[18] But was it not taught: 'If partners committed a theft, they would be liable'?[19] — Said R. Nahman: This offers no difficulty, as the former statement deals with a partner stealing from [the animals belonging to him and] his fellow — partner, whereas the latter states the law where a partner stole from outsiders.[20] Raba objected to [this explanation of] R. Nahman [from the following]: 'Lest you might think that if a partner steals from [the animals belonging to himself and to] his fellow — partner, or if partners commit the theft, they should be liable, it is definitely stated, 'And slaughter it',[21] showing that we require the whole of it, which is absent here' — [Does this not prove that partners stealing from outsiders are similarly exempt?] — R. Nahman therefore said: The contradiction [referred to above] offers no difficulty, as the statement [of liability] referred to a partner slaughtering[22] with the authorisation of his fellow — partner,[23] whereas the other ruling referred to a partner slaughtering

without the authorization of his fellow-partner.[24]

R. Jeremiah inquired: If the thief sold a stolen animal with the exception of the first thirty days,[25] or with the exception of its work[26] or with the exception of its embryo,what would be the law?[27] If we accept the view that an embryo is [an integral part like] the thigh of its mother,[28] there could be no question that this would be a sure reservation. The question would arise only if we accept the view that an embryo is not like the thigh of its mother. What indeed should be the law? Shall we say that since it is joined to it, it should count as a reservation, or perhaps since it is destined to be separated from it, it should not be considered a reservation? Some state the question thus: [Shall we say that] since it is not like the thigh of its mother, it should not count as a reservation, or perhaps since at that time it requires [the union with] its mother to become permissible for food through the process of slaughter[29] it should be equal to a reservation made in the actual body of the mother? — Let this stand undecided.

R. papa inquired: If the thief after stealing mutilated it and then sold it, what would be the law?[30] Shall we say that [since] all that he stole he did not sell [he should be exempt], or perhaps [since] in what he sold he reserved nothing [for himself he should be liable]? — Let this [also] stand undecided.

Our Rabbis taught: If he stole [a sheep or an ox] and gave it to another person who slaughtered it, or if he stole it and gave it to another person who sold it,

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(1) Cf. Bek. 6b.

(2) In which case he would be responsible for the loss of the sacrifice which he set aside, having to replace it with another sacrifice, and the thief would therefore according to R. Simeon be liable to the donor.

(3) So far as the owner is concerned.

(4) Men. 107a.

(5) Which could also be brought as a burnt offering; cf. Lev. 1,10.

(6) Cf. ibid. 14.

(7) The exemption here is because the sale did not extend to the whole animal.

(8) In which case not the whole act of the sale was unlawful.

(9) V. Glos.

(10) Thus rendering the animal nebelah.

(11) For the act of theft.

(12) This law would thus not extend to a case where the wool or the horns were excepted from the sale.

(13) E.g., the fore-paw.

(14) For he could not follow the views of Rabbi according to whom even where the fore-paw (which is rendered permissible through the process if slaughter) was excepted, the thief would still have to make four-fold or five-fold payment.

(15) According to the tradition if another School, v. discussion which follows.

(16) Ex. XXI, 37.

(17) Without any exception whatever. (5) Where he excepted it from the sale.

(18) Tosef. B.K. VII, 4.

(19) B.M. 8a.

(20) Where there is liability.

(21) Ex. XXI, 37.

(22) An animal stolen by both of them and for which they both have to share the fine for the theft.

(23) And since in this case the law of agency applies even for the commission of a sin (v. supra 71a), they would both have to share the fine for the slaughter too.

(24) In which case the fellow-partner could certainly not be made liable to pay anything for the slaughter nor again the one who slaughtered the animal, since we could not make him liable for the whole of the slaughter, as though he slaughtered the whole of the animal he was a thief but of half of it.

(25) During which period the thief should still retain it.

(26) The vendee may slaughter it forthwith, but any work done by it should be credited to the vendor.

(27) Regarding the payment of the fine.

(28) Cf. Tem. 30b and also supra p. 265.

(29) In accordance with Hul. 74a.

(30) Regarding the payment of the fine.

Talmud - Mas. Baba Kama 79a

or if he stole it and consecrated it, or if he stole it and sold it on credit, or if he stole it and bartered it, or if he stole it and gave it as a gift, or if he stole it and paid a debt with it, or if he stole it and paid it for goods he had obtained on credit, or if he stole it and sent it as a betrothal gift to the house of his father-in-law, he would have to make four-fold and five-fold payments.[1] What is this meant to tell us? [Is not all this obvious?] — The new point lies in the opening clause: 'If he stole [a sheep or an ox] and gave it to another person who slaughtered it', [which implies] that in this case the law of agency has application even for a matter involving transgression.[2] Though in the whole of the Torah [there is] no [case of an] agent entrusted with a matter involving transgression [rendering the principal liable], sin this case an agent entrusted with a matter involving transgression would render his principal liable, the reason being [that Scripture says]: 'And he slaughter it or sell it', implying that just as a sale cannot be effected without the intervention of some other person,[3] so also where the slaughter was effected [by some other person authorised by the thief to do so the thief would be liable]. There is also a new point in the concluding clause: 'Where he stole it and consecrated it', which tells us that it makes no difference whether he disposed of it to a private person or whether he disposed of it to the ownership of Heaven.[4]

MISHNAH. IF HE STOLE [A SHEEP OR AN OX] IN THE PREMISES OF THE OWNERS AND SLAUGHTERED IT OR SOLD IT OUTSIDE THEIR PREMISES, OR IF HE STOLE IT OUTSIDE THEIR PREMISES AND SLAUGHTERED IT OR SOLD IT ON THEIR PREMISES, OR IF HE STOLE IT AND SLAUGHTERED IT OR SOLD IT OUTSIDE THEIR PREMISES, HE WOULD HAVE TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.[5] BUT IF HE STOLE IT AND SLAUGHTERED IT OR SOLD IT IN THEIR PREMISES, HE WOULD BE EXEMPT.[6] IF AS HE WAS PULLING IT OUT IT DIED WHILE STILL IN THE PREMISES OF THE OWNERS, HE WOULD BE EXEMPT,[6] BUT IF IT DIED AFTER HE HAS LIFTED IT UP[7] OR AFTER HE HAD ALREADY TAKEN IT OUT OF THE PREMISES OF THE OWNERS,[8] HE WOULD BE LIABLE.[9] SO ALSO IF HE GAVE IT TO A PRIEST FOR THE REDEMPTION OF HIS FIRST-BORN SON[10] OR TO A CREDITOR, TO AN UNPAID BAILEE, TO A BORROWER, TO A PAID BAILEE OR TO A HIRER, AND AS HE WAS PULLING IT OUT[11] IT DIED WHILE STILL IN THE PREMISES OF THE OWNERS, HE WOUld BE EXEMPT; BUT IF IT DIED AFTER HE HAD LIFTED IT UP OR ALREADY TAKEN IT OUT OF THE PREMISES OF THE OWNERS, HE[12] WOULD BE LIABLE.

GEMARA. Amemar asked: Was the formality of pulling instituted[13] also in the case of bailees[14] or not? — R. Yemar replied: Come and hear: IF HE GAVE IT TO A PRIEST FOR THE REDEMPTION OF HIS FIRST-BORN SON, TO A CREDITOR, TO AN UNPAID BAILEE, TO A BORROWER, TO A PAID BAILEE OR TO A HIRER AND AS HE WAS PULLING IT OUT IT DIED WHILE IN THE PREMISES OF THE OWNERS HE WOULD BE EXEMPT. Now, this means, does it not, that the bailee was pulling it out, thus proving that the requirement of pulling was instituted also in the case of bailees?[15] — No, he rejoined; the thief was pulling it out.[16] But was not this already stated in the previous clause?[17] — There it was stated in regard to a thief stealing from the house of the owners, whereas here it is stated in regard to a thief stealing from the house of a bailee. Said R. Ashi to him [Amemar]: Do not bring such arguments; what difference does it make whether the thief stole from the house of the bailee or from the house of the owners?[18] No; it must

mean that the bailee was pulling it out, thus proving that pulling was instituted also in the case of bailees.[15] This can indeed he regarded as proved.

It was also stated that R. Eleazar said: Just as the Sages instituted pulling in the case of purchasers, so also have they instituted pulling in the case of bailees.[19] It has in fact been taught likewise: Just as the Sages instituted pulling in the case of purchasers, so have they instituted pulling in the case of bailees, and just as immovable property is transferred by the medium of money payment, a deed or possession,[20] so also is the case with hiring which is similarly acquired by the medium of money, a deed or possession. The hire of what? If you say

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(1) Tosef. B.K. VII.

(2) For which cf. supra 71a, so that the principal will be liable to the fine for the act of slaughter committed by his agent.

(5) Cf. Kid. 42b and supra 51a.

(3) I.e. the purchaser.

(4) Provided, however, that he did not consecrate it to be sacrificed as an offering upon the altar, in which case the transfer would not he complete as supra 76a, but where the animal was blemished and he consecrated it to become a permanent asset of the Temple treasury (Tosaf.).

(5) For as soon as he removed it from the premises of the owners the act of theft became complete.

(6) As in this case the theft has never become complete.

(7) As by lifting up possession is transferred even while in the premises of the owner; cf. Kid. 25b.

(8) By the act of pulling possession is not transferred unless the animal has already left the premises of the owners.

(9) For as soon as the animal came into the possession of the thief the theft became complete.

(10) I.e., for the five shekels; v. Num. XVIII. 16.

(11) V. the discussion in Gemara.

(12) The thief.

(13) As it was instituted in the case of purchasers for which cf. B.M. IV. 1 and 47b.

(14) So that the act of pulling would be essential for making the contract of bailment complete.

(15) So that by the act of pulling carried out by the bailee the contract of bailment became complete and the animal could thus be considered as having been transferred from the possession of the owner to that of the thief represented by the bailee who acted on his behalf.

(16) After the owner handed over the animal to any one of those enumerated in the Mishnah.

(17) That the act of pulling is one of the requirements essential to make the theft complete.

(18) Why then deal with them separately.

(19) B.M. 99a.

(20) Cf. Kid. 27a.

the hire of movables, are movables transferred by a deed?[1] — Said R. Hisda: The hire of immovable property.

R. Eleazar stated: If a thief was seen hiding himself in forests [where flocks pasture] and slaughtering or selling [there sheep or oxen], he would have to make four-fold or five-fold payment. But why so, since he did not pull the animal?[2] — Said R. Hisda: We suppose that he struck it with a stick [and thus drew it towards himself]. But I would still ask, since he was seen doing this [publicly], should he on this account not be [subject to the law applicable to] a robber [who has not to pay any fines]?[3] — Since [at the same time] he was hiding himself from the public he is [subject to the law applicable to] a thief.[4]

How then would you define a robber? — Said R. Abbahu: One, for instance, like Benaiah the son of Jehoiadah, of whom we read:[5] And he plucked the spear out of the Egyptian's hand and slew him with his own spear. R. Johanan said: Like the men of Shechem of whom we read:[6] And the men of

Shechem set liers in wait for him on the tops of the mountains, and they robbed all that came along that way by them: and it was told Abimelech. Why did R. Abbahu not give his instance from this last source? He could say that since these were hiding themselves they could not be called robbers. And R. Johanan? — He could argue that the reason they were hiding themselves was so that people should not notice them and run away from them.[7] The disciples of R. Johanan b. Zakkai asked him why the Torah was more severe on a thief[8] than on a robber.[9] He replied: The latter[10] puts the honour of the slave[11] on the same level as the honour of his owner,[12] whereas the former[13] does not put the honour of the slave on the same level as the honour of the master [but higher], for, as it were, he acts as if the eye of Below[14] would not be seeing and the ear of Below would not be hearing, as it says: Woe unto them that seek deep to hide their counsel from the Lord, and their works are in the dark, and they say, Who seeth us? and who knoweth us?[15] Or as it is written: And they say, The Lord will not see, neither will the God of Jacob give heed;[16] or, as again it is written, For they say, the Lord hath forsaken the earth and the Lord seeth not.[17] It was taught:[18] R. Meir said: The following parable is reported in the name of R. Gamaliel. What do the thief and the robber resemble? Two people who dwelt in one town and made banquets. One invited the townspeople and did not invite the royal family, the other invited neither the townspeople nor the royal family.[19] Which deserves the heavier punishment? Surely the one who invited the townspeople but did not invite the royal family.

R. Meir further said: Observe how great is the importance attached to labour, for in the case of an ox [stolen and slaughtered] where the thief interfered with its labour[20] he has to pay five-fold, while in the case of a sheep where he did not disturb it from its labour[21] he has to pay only four-fold. R. Johanan b. Zakkai said: Observe how great is the importance attached to the dignity of Man, for in the case of an ox which walks away on its own feet[22] the payment is five-fold, while in the case of a sheep which was usually carried on the thief's shoulder only four-fold has to be paid.[23]

MISHNAH. IT IS NOT RIGHT TO BREED SMALL CATTLE[24] IN ERETZ YISRAEL.[25] THEY MAY HOWEVER BE BRED IN SYRIA OR IN THE DESERTS OF ERETZ YISRAEL. IT IS NOT RIGHT TO BREED HENS[26] IN JERUSALEM ON ACCOUNT OF THE SACRIFICES,[27] NOR MAY PRIESTS DO SO THROUGHOUT THE WHOLE OF ERETZ YISRAEL, ON ACCOUNT OF THEIR FOOD[28] WHICH HAS TO BE RITUALLY CLEAN.[29] IT IS NOT RIGHT TO BREED PIGS IN ANY PLACE WHATEVER.[30] NO MAN SHOULD BREED A DOG[31] UNLESS IT IS ON A CHAIN. IT IS NOT RIGHT TO PLACE NETS FOR DOVES UNLESS AT A DISTANCE OF THIRTY RIS[32] FROM INHABITED SETTLEMENTS.[33]

GEMARA. Our Rabbis taught: It is not right to breed small cattle in Eretz Yisrael but they may be bred in the woods[34] of Eretz Yisrael or in Syria even in inhabited settlements, and needless to say also outside Eretz Yisrael. Another [Baraitha] taught: 'It is not right to breed small cattle in Eretz Yisrael. They may, however, be bred in the deserts of Judah and in the desert at the border of Acco.[35] Still though the Sages said: 'It is not right to breed small cattle' it is nevertheless quite proper to breed large cattle, for we should not impose a restriction upon the community unless the majority of the community will be able to stand it. Small cattle could be imported from outside Eretz Yisrael, whereas large cattle could not be imported from outside Eretz Yisrael.[36] Again, though they said: 'It is not right to breed small cattle', one may nevertheless keep them before a festival for thirty days and similarly before the wedding festivity of his son for thirty days. He should, however, not retain the animal last bought for thirty days [if these expire after the festival]. So[37] that if the festival had already gone, though since from the time he bought the animal until that time thirty days had not yet elapsed we do not say that a period of thirty days is permitted for keeping the animal, but [we are to say that] as soon as the festival has gone he should not retain it any longer.

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(1) Are they not acquired solely by the medium of pulling as stated in Kid. ibid.?

(2) The theft never became complete.

(3) For a robber has to restore only the article taken by him or its value.

(4) Who is liable to fine.
(5) II Sam. XXIII, 21.
(6) Jud. IX, 25.
(7) But not out of any fear.
(8) That he has to pay double payment for the theft and four-fold and five-fold payments for the subsequent slaughter or sale of the stolen sheep and ox respectively in accordance with Ex. XXI, 37.
(9) Who has to pay only the thing misappropriated by him or its value, in accordance with Lev. V, 23.
(10) I.e., the robber by committing the crime publicly.
(11) I.e., human society.
(12) I.e., the Creator.
(13) I.e., the thief by committing his crime by stealth.
(14) Euphemism for 'Heaven'; cf. Ab. II. 1.
(15) Isa. XXIX. 15.
(16) Ps. XCIV. 7.
(17) Ezek. IX, 9.
(18) [Rashal deletes 'It was taught', as this is the continuation of the preceding passage in Tosef. B.K. VII.]
(19) So also in the case of the thief and the robber the former equals the former and the latter the latter; cf. however B.B. 88b.
(20) For an ox usually labours in the field; cf. Deut. V, 14; Isa. XXX, 24 and Prov. XIV, 4.
(21) As it is in any case not fit for work.
(22) While the thief misappropriates it.
(23) Mek. on Ex. XXII, 6.
(24) As these usually spoil the crops of the field. Cf. supra p. 118.
(25) Where the produce of the fields was of public concern.
(26) As these usually peck in dunghills and expose impurities.
(27) Which are eaten there and might easily be defiled by some impurity brought by the chickens.
(28) Consisting mainly of terumah (v. Glos.).
(29) In accordance with Lev. XXII. 6-7.
(30) Cf. Gemara.
(31) As by barking it might frighten pregnant women and cause miscarriages.
(32) I.e., four miles, cf. Glos.
(33) So that doves belonging to private owners in the settlement should not be enticed into the nets.
(34) Which were considered common property.
(35) [MS.M.: Kefar Amiko, N. of Acco, v. Klein, NB.p.9.]
(36) And cattle could not be dispensed with in an agricultural country where they are vital for field work.
(37) [Following MS.M., which omits 'For you might think' occurring in cur. edd., the whole passage appears to be a copyist's gloss on the cited Baraitha; v. D.S. a.l.]

Talmud - Mas. Baba Kama 80a

'A cattle dealer may, however, buy and slaughter, or buy and [even] keep for the market. He may, however, not retain the animal he bought last for thirty days.'

R. Gamaliel was asked by his disciples whether it is permissible to breed [small cattle]. He said to them: 'It is permissible.' But did we not learn: 'IT IS NOT RIGHT TO BREED'? — What they asked him was really this: 'What about retaining [it]?'[1] He said to them: 'It is permissible, provided it does not go out and pasture with the herd, but is fastened to the legs of the bed.'

Our Rabbis taught:[2] There was once a certain pious person[3] who suffered with his heart, and the doctors on being consulted said that there was no remedy for him unless he sucked warm milk every morning. A goat was therefore brought to him and fastened to the legs of the bed, and he sucked from it every morning. After some days his colleagues came to visit him, but as soon as they noticed

the goat fastened to the legs of the bed they turned back and said: 'An armed robber[4] is in the house of this man, how can we come in to [see] him?' They thereupon sat down and inquired into his conduct, but they did not find any fault in him except this sin about the goat. He also at the time of his death proclaimed: 'I know that no sin can be imputed to me save that of the goat, when I transgressed against the words of my colleagues.'

R. Ishmael[5] said: My father's family belonged to the property owners in Upper Galilee. Why then were they ruined? Because they used to pasture their flocks in forests, and to try money cases without a colleague.[6] The forests were very near to their estates, but there was also a little field near by [belonging to others], and the cattle were led by way of this.

Our Rabbis taught: If a shepherd[7] desires to repent,[8] it would not be right to order him to sell immediately [the small cattle with him], but he may sell by degrees. So also in the case of a proselyte to whom dogs and pigs fall as an inheritance,[9] it would not be right to order him to sell immediately, but he may sell by degrees. So also if one vows to buy a house, or to marry a woman in Eretz Yisrael,[10] it would not be right to order him to enter into a contract immediately, until he finds a house or a woman to suit him. Once a woman being annoyed by her son jumped up [in anger] and swore: 'Whoever will come forward and offer to marry me, I will not refuse him', and as unsuitable persons offered themselves to her, the matter was brought to the Sages, who thereupon said: Surely this woman did not intend her vow to apply save to a suitable person. Just as the Sages said that it is not right to breed small cattle, so also have they said that it is not right to breed small beasts. R. Ishmael said: It is however allowed to breed village dogs,[11] cats, apes, huldoth sena'im [porcupines], as these help to keep the house clean.[12] What are 'huldoth sena'im'? — Rab Judah replied: A certain creeping animal of the harza [species]. Some say, of the harza [species][13] with thin legs which pastures among rose-bushes, and the reason why it is called 'creeping' is because its legs are [short and] underneath it.

Rab Judah said in the name of Rab: We put ourselves in Babylon with reference to the law of breeding small cattle on the same footing as if we were in Eretz Yisrael. R. Adda b. Ahabah said to R. Huna:[14] What about your small cattle? He answered him: Ours are guarded by Hoba.[15] He, however, said to him: Is Hoba prepared to neglect her son so much as to bury him?[16] In point of fact, during the lifetime of R. Adda b. Ahabah, no children born of Hoba survived to R . Huna. Some report : R. Huna said: From the time Rab arrived in Babylon,[17] We put ourselves in Babylon with reference to breeding small cattle on the same footing as if we were in Eretz Yisrael.

Rab and Samuel and R. Assi once met at a circumcision of a boy,[18] or as some say, at the party for the redemption of a son.[19] Rab would not enter before Samuel,[20]

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(1) For a festival; cf. Tosaf. a.l.

(2) Tem. 15b.

(3) [R. Jehudah b. Baba, Tosef. B.K. VIII, 4; cf. however, Tem. 15b and Buchler, Gal. 'Am-ha'ar. p. 191.]

(4) As a goat is prone to pasture anywhere and thus spoil the crops of the public.

(5) [Var. lec., 'R. Simeon Shezuri'.]

(6) Cf. Aboth. IV. 10 and Sanh. I, 1.

(7) Possessing cattle of his own; cf. B.M. 5b.

(8) By taking upon himself not to breed small cattle.

(9) From his heathen relatives; cf. Kid. 17b.

(10) [Tosef. B.K. VIII omits ' Eretz Yisrael'.]

(11) Which are small and harmless.

(12) Tosef. B.K. VIII.

(13) [Harza probably denotes 'digger', and harza 'stinging', v. Lewysohn, Zoologie. p. 94.]

(14) Cf. Naz. 57b.

(15) Who was the wife of R. Huna.

(16) Surely since she has to mind her children she cannot conscientiously guard the cattle. (Tosaf.)

(17) [In 219 C.E. V. Funk, Die Juden in Babylonian, I, note III.]

(18) Lit 'the week of the son', as the circumcision is performed on the eighth day; cf. Lev. XII, 3. [On the term, 'week of the son' v. B.B. (Sonc. ed.) p. 246. n. 8.]

(19) I.e., in the case of a first-born who has to be redeemed on the 31st day; cf. Num. XVIII, 16.

(20) For the reason to be stated.

Talmud - Mas. Baba Kama 80b

nor Samuel before R. Assi,[1] nor R. Assi before Rab.[2] They therefore argued who should go in last, [and it was decided that] Samuel should go in last, and that Rab and R. Assi should go in [together]. But why should not either Rab or R. Assi have been last? — Rab [at first] was merely paying a compliment to Samuel,[3] to make up for the [regrettable] occasion when a curse against him[4] , escaped his lips;[5] for that reason Rab offered him precedence.[6] Meanwhile a cat had come along and bitten off the hand of the child. Rab thereupon went out and declared in his discourse: 'It is permissible to kill a cat, and it is in fact a sin to keep it,[7] and the law of robbery[8] does not apply to it, nor that of returning a lost object to its owner.'[9] Since you have stated that it is permissible to kill it, why again state that it is a sin to keep it? — You might perhaps think that though it is permissible to kill it, there is still no sin committed in keeping it; we are therefore told [that this is not so]. I could still ask: Since you have said that the law of robbery[8] does not apply to it, why again state that the law of returning a lost object to its owner does not apply to it?[10] — Said Rabina: This refers to the skin[10] of the cat [where it was found dead]. An objection was raised [from the following]: R. Simeon b. Eleazar says: It is permissible to breed village dogs, cats, apes and porcupines, as these help to keep the house clean. [Does this not prove that it is permissible to breed cats?] — There is, however, no contradiction, as the latter teaching refers to black cats, whereas the former deals with white ones.[11] But was not the mischief in the case of Rab done by a black cat? — In that case it was indeed a black cat, but it was the offspring of a white one. But is not this the very case about which Rabina raised a question? For Rabina asked: What should be the law in the case of a black cat which is the offspring of a white one? — The problem raised by Rabina was where the black was the offspring of a white one which was in its turn a descendant of a black cat, whereas the accident in the case of Rab occurred through a black cat which was the offspring of a white one that was similarly the offspring of a white cat.

(Mnemonic: Habad Bih Bahan).[12]

R. Aha b. Papa said in the name of R. Abba b. Papa who said it in the name of R. Adda b. Papa, or, as others read, R. Abba b. Papa said in the name of R. Hiyya b. Papa who said it in the name of R. Aha b. Papa, or as others read it still differently, R. Abba b. Papa said in the name of R. Aha b. papa who said it in the name of R. Hanina b. Papa: 'It is permissible to raise an alarm [at public services][13] even on the Sabbath day for the purpose of relieving the epidemic of itching; if the door to prosperity has been shut to an individual it will not speedily be opened; and when one buys a house in Eretz Yisrael, the deed may be written even on the Sabbath day. An objection was raised [from the following:] 'Regarding any other misfortune[14] that might burst forth upon the community, as e.g. itching. locusts, flies, hornets, mosquitoes, a plague of serpents and scorpions, no alarm was raised by [public service, on the Sabbath] but a cry was raised [by privately reciting prayers]?[15] [Does this not prove that no public prayers are to be held on this score on Sabbath?] — There is no contradiction, as the latter case refers to [the period when the plague is in] the moist stage whereas the former deals with dry itching,[16] as R. Joshua b. Levi said:[17] 'The boils brought upon the Egyptians by the Holy One, blessed be He,[18] were moist within but dry without, as it says 'And it became a boil breaking forth with blains upon man and upon beast.'[18]

What is the meaning of the words, 'if the door to prosperity has been shut to an individual it will not speedily be opened'? — Mar Zutra said: It refers to ordination.[19] R. Ashi said: One who is in disfavour is not readily taken into favour.[20] R. Aha of Difti said: He will never be taken into favour. This, however, is not so; for R. Aha of Difti stated this as a matter of personal experience.[21] 'In the case of him who buys a house in Eretz Yisrael the deed may be written even on the Sabbath day.'[22] You mean to say, on the Sabbath?[23] — It must therefore mean as stated by Raba in the case mentioned there,[24] that a Gentile is asked to do it; so also here a Gentile is asked to do it. For though to ask a Gentile to do some work on the Sabbath is Shebuth,[25] the Rabbis did not maintain this prohibition in this case on account of the welfare of Eretz Yisrael.[26] R. Samuel b. Nahmani said in the name of R. Jonathan: He who purchases a town in Eretz Yisrael can be compelled to purchase with it also the roads leading to it from all four sides[27] on account of the welfare of Eretz Yisrael.

Our Rabbis taught:[28] Joshua [on his entry into Eretz Yisrael] laid down ten stipulations:

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(1) On account of seniority.
(2) Whose disciple he was.
(3) Who was the youngest of them.
(4) I.e., Samuel.
(5) For which cf. Shab. 108b.
(6) [But not because he considered Samuel his superior, with the result that, were they to go in together, they would be faced with the dilemma as to which of the two was to enter first; v. Shittah Mekubezeth a.l.]
(7) Cf. Sanh. 15b and supra p. 67.
(8) Lev. XIX. 13.
(9) As required in Deut. XXII,1-3.
(10) That it need not be returned.
(11) Which constitute a danger.
(12) An aid to recollect order of names of the sons of R. Papa that follow in pairs.
(13) On the lines described in Ta'an. 1, 6 and III, 1 etc.
(14) I.e., other than those enumerated in Ta'an. III, 1-8.
(15) Ta'an. 14a.
(16) Which is more dangerous.
(17) Bk. 41a.
(18) Ex. IX, 10.
(19) [Once a man fails in his attempt to secure ordination he cannot obtain it so easily any more.]
(20) Cf. B.B. 12b.
(21) And it should therefore not necessarily be made a general rule.
(22) Cf. Git. 8b.
(23) When it would be a capital offence; cf. Shab. VII. 2.
(24) Shab. 129a and Bez. 22a.
(25) Lit., 'abstention', but which came to denote a matter of mere Rabbinic prohibition on Sabbath and festivals; v. Bez. V, 2.
(26) As they similarly dispensed with Shebuth in the case of Temple service; cf. Pes. 65a.
(27) As transport affects vitally the progress and prosperity of a country.
(28) Cf. 'Er. 17a.

Talmud - Mas. Baba Kama 81a

That cattle be permitted to pasture in woods;[1] that wood may be gathered [by all] in private fields;[1] that grasses may similarly be gathered [by all] in all places, with the exception, however, of a field where fenugrec is growing;[1] that shoots be permitted to be cut off [by all] in all places. with the exception, however, of stumps of olive trees;[1] that a spring emerging [even] for the first time may be used by the townspeople; that it be permitted to fish with an angle in the Sea of Tiberias, provided no

sail is spread as this would detain boats [and thus interfere with navigation]; that it be permitted to ease one's self at the back of a fence even in a field full of saffron; that it be permitted [to the public] to use the paths in private fields until the time when the second rain is expected;[2] that it be permitted to turn aside to [private] sidewalks in order to avoid the road-pegs; that one who has lost himself in the vineyards be permitted to cut his way through when going up and cut his way through when coming down;[3] and that a dead body, which anyone finds has to bury should acquire [the right to be buried on] the spot [where found].

'That cattle be permitted to pasture in woods.' R. Papa said: This applies only to small cattle pasturing in big woods[4] for in the case of small cattle pasturing in small woods or big cattle in big forests it would not be permitted,[5] still less big cattle pasturing in small woods.[5]

'That wood may be gathered [by all] in private fields: 'This applies only to [prickly shrubs such as] Spina regia and hollow.[6] For in the case of other kinds of wood it would not be so. Moreover, even regarding Spina Regia and hollow, permission was not given except where they were still attached to the ground, but after they had been already broken off [by the owner] it would not be so.[7] Again, even in the case of shrubs still attached to the soil, permission was not given except while they were still in a wet state, but once they had become dry it would not be so.[7] But in any case it is not permitted to uproot [them].

'That grasses may similarly be gathered [by all] in all places, with the exception, however, of a field where fenugrec is growing.' Does this mean to say that fenugrec derives some benefit from grasses?[8] If so, a contradiction could be pointed out [from the following:] 'If fenugrec is mixed up with other kinds of grasses, the owner need not be compelled to tear it out[9] [for he will do it in any case on account of the fact that the grasses spoil the fenugrec'.[10] Now, does this not prove that grasses are disadvantageous to fenugrec?] — Said R. Jeremiah: There is no contradiction, for while the latter statement refers to the seeds,[11] the former deals with the pods.[12] It is only to the seeds that grasses are disadvantageous as they make them lean, whereas to the pods[13] they are advantageous, for when placed between grasses they get softer. Or if you like I can say that while one statement refers to fenugrec sown for the use of man, the other refers to fenugrec sown for animals, for since it was sown for animals grasses are also required for it. How can we tell [for what it was sown]?[13] — R. Papa said: If made in beds it is sown for man, but if not in beds it is for animals.

'That shoots be permitted to be cut off [by all] in all places, with the exception, however, of stumps of olive trees.' R. Tanhum and R. Barias explained in the name of a certain old man that in the case of an olive tree the size of the length of an egg has to be left over at the bottom; in the case of reeds and vines [it is only] from the knot and upwards[14] [that it is permitted to cut off shoots]; in the case of all other trees [it is permitted only] from the thick parts of the tree but not from the central part of the tree, and only from a new bough that has not yet yielded fruit but not from an old bough which is yielding fruit; again, only from such spots [on the tree] as do not face the sun

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(1) The reason is given below.

(2) I.e., the seventeenth of Marcheshvan; cf. Ta'an. 6b and Ned VIII,5.

(3) Though damage be done thereby to the vineyard.

(4) Where the trees would thereby not be damaged.

(5) On account of the damage which could be done to the trees.

(6) Or other kinds of thorns and thistles.

(7) As they would then be the exclusive property of the owner.

(8) Which have thus to be preserved.

(9) So as not to transgress Lev. XI. 19: 'thou shalt not sow thy field with mingled seed'; cf. also Shek. I, 1-2.

(10) Kil. II,5.

(11) Which will be used for sowing purposes.

(12) Which are used as food.
(13) So that the stipulation of Joshua should have practical application where it was sown for the use of man.
(14) Cf. B.B. 80b.

Talmud - Mas. Baba Kama 81b

but not from a spot which does face the sun,[1] for so it says 'And for the precious things of the fruits of the sun'.[2]

'That a spring emerging [even] for the first time may be used by the townspeople.' Rabbah son of R. Huna said that the owner[3] is [still] entitled to be paid for its value. The law, however, is not in accordance with this view.

'That it be permitted to fish with an angle in the Sea of Tiberias provided that no sail is spread, as this would detain boats.' It is, however, permitted to fish by means of nets and traps. Our Rabbis taught: 'The tribes stipulated with one another at the very outset that nobody should spread a sail and thus detain boats. It is, however, permitted to fish by means of nets and traps.'[4]

Our Rabbis taught: The Sea of Tiberias was included in the portion of Naphtali. In addition, he received a rope's length of dry land on the southern side to keep nets on, in fulfilment of the verse, Possess thou the sea and the South.[5]

It was taught: R. Simeon b. Eleazar said: Anything found on the mountains detached from the soil was considered as belonging to all the tribes,[6] but if still attached [to the ground] as belonging to the particular tribe [in whose territory it was found]. There was, however, no tribe in Israel which had not land[7] both on the hills and in the vale, in the South and in the valley. as stated: Turn you and take your journey and go to the hill — country of the Amorites, and unto all the places nigh thereunto, in the plain, in the hills and in the vale, and in the South, and by the sea side[8] etc., for you can similarly find the same regarding the Canaanites, perizites and Ammonites who were before them, as stated: 'and unto all nigh thereunto',[8] proving that the same applied to those who were nigh thereunto.

'That it be permitted to ease one's self at the back of a fence even though in a field full of saffron.' R. Aha b. Jacob said: This permission was required only for the taking of a pebble from the fence.[9] R. Hisda said: This may be done even on the Sabbath.[10] Mar Zutra the Pious used to take a pebble from a fence and put it back there and tell his servant[11] to go and make it good again.

'That it be permitted to use the paths in private fields until the time when the second rain is expected.' R. papa said that regarding our land [here in Babylon], even after the fall of [mere] dew this would be harmful.

'That it be permitted to turn aside to [private] sidewalks in order to avoid road pegs.' As Samuel and Rab Judah were once walking on the road, Samuel turned aside to the private sidewalk. Rab Judah thereupon said to him: Do the stipulations laid down by Joshua hold good even in Babylon? — He answered him: I say that it applies even outside Eretz Yisrael. As Rabbi and R. Hiyya were once walking on the road they turned aside to the private sidewalks, while R. Judah b. Kenosa went striding[12] along the main road in front of them. Rabbi thereupon said to R. Hiyya. 'Who is that man who wants to show off[13] in front of us?' R. Hiyya answered him: 'He might perhaps be R. Judah b. Kenosa who is my disciple and who does all his deeds out of pure piety.'[14] When they drew near to him they saw him and R. Hiyya said to him: 'Had you not been Judah b. Kenosa, I would have sawed your joints with an iron saw.'[15]

'That one who lost himself in the vineyards should be permitted to cut his way through when

going up and cut his way through when coming down.' Our Rabbis taught: He who sees his fellow wandering in the vineyards is permitted to cut his way through when going up and to cut his way through when coming down until he brings him into the town or on to the road; so also one who is lost in the vineyards may cut his way through when going up and cut his way through when coming down until he reaches the town or the road.[16] What is the meaning of 'so also'? [Is the latter case not obvious?][17] — You might think that it is only in the case of a fellow-man wandering, in which case he[18] knows where he is going to, that he may cut his way through, whereas in the case of being lost himself, when he does not know where he is going to, he should not be permitted to cut his way through but should have to walk round about the boundaries. We are therefore told that this is not so — Cannot this permission be derived from the Pentateuch? For it was taught: 'Whence can it be derived that it is obligatory to restore the body of a fellow-man?[19] Because it is said: And thou shalt restore it to him[20] [implying him himself, i.e., his person.'[21] Why then was it necessary for Joshua to stipulate this?][22] — As far as the Pentateuch goes, he[23] would have to remain standing between the boundaries [and walk round about]; it was therefore necessary for Joshua to come and ordain that he be permitted to cut his way through when going up and cut his way through when coming down.

'That a dead body, which anyone finding has to bury, should acquire the [right to be buried on the] spot [where found].' A contradiction could be pointed out [from the following:] If one finds a dead person lying on the road, he may remove him to the right side of the road or to the left side of the road. If on the one side of the road there is an uncultivated field and on the other a fallow field, he should remove him to the uncultivated field;[24] so also where on the one side there is a fallow field but on the other a field with seeds he should remove him to the fallow field.[25] But if both of them are uncultivated, or both of them fallow, or both of them sown he may remove him to any place he likes.[26] [Does this not contradict your statement that a dead person acquires the right to be buried on the spot where he was found?] — Said R. Bibi: The dead person [in the latter case] was lying broadways across the boundary so that since permission had to be given to remove him from that spot[27] he may be removed to any place he prefers.

I would here ask: Are these stipulations[28] only ten [in number?] Are they not eleven? — [The permission] to use the paths in private fields is [implied in] a statement made by Solomon, as taught: If a man's produce has already been removed entirely from the field, and nevertheless he does not allow persons to enter his field, what would people say of him if not, 'What [real] benefit has that owner from his field, for in what way would people do him any harm?' It was regarding such a person that the verse says: While you can be good do not call yourself bad.[29] But is it [anywhere] written:[30] 'While you can be good do not call yourself bad'? — Yes, it is written to a similar effect: Withhold not good from him to whom it is due, when it is in the power of thy hand to do it.[31]

But were there no more stipulations?[32] Was there not the one mentioned by R. Judah? For it was taught: 'When it is the season of removing dung, everybody is entitled to remove his dung into the public ground and heap it up there for the whole period of thirty days so that it may be trodden upon by the feet of men and by the feet of animals; for upon this condition did Joshua transfer the land to Israel as an inheritance.[33] Again, was there not also the one referred to by R. Ishmael the son of R. Johanan b. Beroka? For it was taught: R. Ishmael the son of R. Johanan b. Beroka said: It is a stipulation of the Court of Law that the owner of the bees[34] be entitled to go down into his fellow's field and cut off his fellow's bough [upon which his bees have settled] in order to rescue the swarm of his bees while paying only the value of his fellow's bough; it is [similarly] a stipulation of the Court of Law that the owner of wine should pour out his wine [from the flask] so as to save in it the honey of his fellow[35] and recover the value of his wine out of the honey of his fellow; it is [again] a stipulation of the Court of Law that [the owner of a bundle of wood] should remove the wood [from his ass] and load [on his ass] the flax of his fellow [from the back of the ass that fell dead][36] and recover the value of his wood out of the flax of his fellow; for it was upon this stipulation that Joshua transferred the land to Israel for an inheritance.'[37] [Why then were these stipulations not included?]

— Views of individual authorities were not stated [among the stipulations that have unanimous recognition].

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(1) Such as from the sides of the tree.
(2) Deut. XXXIII, 14.
(3) Of the ground where the spring emerged.
(4) Tosef. B.K. VIII.
(5) Deut. XXXIII. 23.
(6) who had an equal right to the spoil.
(7) Cf. B.B. 122a.
(8) In Deut. 1, 7.
(9) Though it would thereby become impaired.
(10) Cf. Shab. 81.
(11) On a weekday.
(12) Upon the road pegs.
(13) By not taking advantage of the stipulation of Joshua and thus showing himself more scrupulous than required by strict law.
(14) Lit., 'in the name of Heaven', and not to show off.
(15) A metaphor for excommunication.
(16) Tosef. B.M. II.
(17) As it is surely covered by the ruling in the former case.
(18) I.e., the guide.
(19) When in danger, just as it is obligatory to restore him his lost chattels.
(20) Deut. XXII. 2.
(21) Cf. Sanh. 73a.
(22) Seeing that it can be derived from the Pentateuch.
(23) The one who lost his way.
(24) So as to interfere as little as possible with agriculture.
(25) V. p. 463,n.9.
(26) 'Er. 17b.
(27) So as not to cause defilement to all those who pass that way.
(28) Enumerated in the cited Baraitha supra p. 459.
(29) Cf. Ber. 30a.
(30) In Scripture.
(31) Prov. III, 27.
(32) Made by Joshua.
(33) Tosef. B.M. XI; supra 30a.
(34) Which settled upon a neighbour's tree.
(35) Carried by him in a jug which suddenly gave way, and the contents which were much more valuable than wine thus became in danger if being wasted.
(36) And which is thus in danger of being wasted if not rescued in time.
(37) Infra 114b.

Talmud - Mas. Baba Kama 82a

But did not R. Abin upon arriving [from Palestine] state on behalf of R. Johanan that the owner of a tree which overhangs a neighbour's field as well as the owner of a tree close to the boundary has to bring the first-fruits [to Jerusalem][1] and read the prescribed text[2] as it was upon this stipulation [that trees might he planted near the boundary of fields and even overhang a neighbour's field] that Joshua transferred the land to Israel[3] for an inheritance.[4] [How then could R. Johanan describe this as a stipulation of Joshua when it was not included in the authoritative text of the Baraitha cited enumerating all the stipulations of Joshua?] — It must therefore be that the Tanna[5] of [the text

enumerating] the ten stipulations laid down by Joshua was R. Joshua b. Levi.[6] R. Gebiha of Be Kathil[7] explicitly taught this in the text: 'R. Tanhum and R. Barias stated in the name of a certain sage, who was R. Joshua b. Levi, that ten stipulations were laid down by Joshua.'

The [following] ten enactments were ordained by Ezra: That the law be read [publicly] in the Minhah[8] service on Sabbath; that the law be read [publicly] on Mondays and Thursdays; that Courts be held on Mondays and Thursdays; that clothes be washed on Thursdays; that garlic be eaten on Fridays; that the housewife rise early to bake bread; that a woman must wear a sinnar;[9] that a woman must comb her hair before performing immersion;[10] that pedlars [selling spicery] be allowed to travel about in the towns,[11] He[12] also decreed[13] immersion to be required[10] by those to whom pollution has happened.[14]

'That the law be read [publicly] in the Minhah service on Sabbath:' on account of shopkeepers [who during the weekdays have no time to hear the reading of the Law].

'That the law be read [publicly] on Mondays and Thursdays.' But was this ordained by Ezra? Was this not ordained even before him? For it was taught: 'And they went three days in the wilderness and found no water,[15] upon which those who expound verses metaphorically[16] said: water means nothing but Torah,[17] as it says: Ho, everyone that thirsteth come ye for water.[18] It thus means that as they went three days without Torah they immediately became exhausted. The prophets among them thereupon rose and enacted that they should publicly read the law on Sabbath, make a break on Sunday, read again on Monday, make a break again on Tuesday and Wednesday, read again on Thursday and then make a break on Friday so that they should not be kept for three days without Torah.'[19] — Originally it was ordained that one man should read three verses or that three men should together read three verses, corresponding to priests, Levites and Israelites.[20] Then Ezra came and ordained that three men should be called up to read, and that ten verses should be read, corresponding to ten batlanim.[21]

'That Courts be held on Mondays and Thursdays' — when people are about, as they come to read the Scroll of the Law. 'That clothes be washed on Thursdays' — that the Sabbath[22] may be duly honoured.

'That garlic be eaten on Fridays' — because of the 'Onah.'[23] as it is written: 'That bringeth forth its fruit in its season'[24] and Rab Judah, or as others say R. Nahman, or as still others say R. Kahana, or again as others say R. Johanan, stated that this refers to him who performs his marital duty every Friday night.[25]

Our Rabbis taught: Five things were said of garlic: It satiates, it keeps the body warm, it brightens up the face, it increases semen, and it kills parasites in the bowels. Some say that it fosters love and removes jealousy.

'That a housewife rise early to bake bread'[26] — so that there should be bread for the poor.[27]

'That a woman must wear a sinnar — out of modesty.

'That a woman comb her hair before performing the immersion.' But this is derived from the pentateuch! For it was taught:[28] 'And he shall bathe [eth besaro] his flesh in water[29] [implying] that there should be nothing intervening between the body and the water; "[eth besaro] his flesh", "eth" [including] whatever is attached to his flesh,[30] i.e. the hair.' [Why then had this to be ordained by Ezra?] — It may, however, be said that as far as the Pentateuch goes it would only have to be necessary to see that the hair should not he knotted or that nothing dirty should be there which might intervene,

(1) Cf. Ex. XXIII. 19.
(2) I.e. Deut. XXVI, 5-10, which could he recited only by one who was the sole legitimate owner of both the fruits and the tree and the ground.
(3) And no misappropriation could thus he traced in the produce of such trees.
(4) How then could R. Johanan, who was an Amora, differ from Tannaitie views?
(5) [MSS omit rightly, 'the Tanna.']
(6) [Who was himself an Amoraic sage from whom R. Johanan might have differed in this case as he did on many other occasions, cf. e.g., Ber. 3b and Meg. 27a.]
(7) [Kathil on the Tigris, N. of Bagdad, Obermeycr, op. cit. p 143.]
(8) I.e., afternoon; cf. Ber. IV, 1.
(9) A sort of garment, breeches (Rashi), or belt. The word is of doubtful origin.
(10) In a ritual plunge bath called Mikweh.
(11) Even against the wishes of the townspeople; cf. B.B. 22a.
(12) I.e., Ezra.
(13) Cf. Ber. 22b.
(14) Cf. Lev. XV, 16; Deut. XXIII, 11-12. [For a discussion of the ten enactments of Ezra, v. Hoffmann, Magazin, 1883 , 48ff.]
(15) Ex. XV. 22.
(16) Doreshe Reshumoth; v. Sanh. (Sonc. ed.) p. 712. n. 12.
(17) Cf. supra p. 76.
(18) Isa. LV, 1.
(19) [Why then was it necessary for Ezra to enact this?]
(20) In which groups the people were classed.
(21) The ten persons released from all obligations and thus having leisure to attend to public duties, and to form the necessary quorum for synagogue services; cf. Meg. 1, 3; v. also Meg. 21b.
(22) Cf. Isa. LVIII. 13 and Shab. 119a.
(23) I.e., the duty of marriage; cf. Ex. XXI, 10 and Keth. V, 6.
(24) Ps. I, 3.
(25) Cf. Keth. 62b.
(26) [J. Meg. IV adds 'on Fridays'.]
(27) Cf. Keth. 67b.
(28) 'Er. 4b.
(29) Lev. XIV, 9.
(30) For a similarity v. supra p. 235.

Talmud - Mas. Baba Kama 82b

whereas Ezra came and ordained actual combing.[1]

'That pedlars selling spicery be allowed to travel about in the towns' — for the purpose of providing toilet articles for the women so that they should not be repulsive in the eyes of their husbands.

'He also decreed that immersion was required for those to whom pollution had happened.' Is not this in the pentateuch, as it is written: And if the flow of seed go out front him, then he shall bathe all his flesh in water?[2] — The pentateuchal requirement referred to terumah and sacrifices and he came and decreed that even for [the study of] the words of the Torah [immersion is needed].

Ten special regulations were applied to Jerusalem:[3] That a house sold there should not be liable to become irredeemable;[4] that it should never bring a heifer whose neck is broken;[5] that it could never be made a condemned city;[6] that its houses would not become defiled through leprosy;[7] that neither

beams nor balconies should be allowed to project there; that no dunghills should be made there; that no kilns should be kept there; that neither gardens nor orchards should be cultivated there, with the exception, however, of the garden of roses[8] which existed from the days of the former prophets;[9] that no fowls should be reared there, and that no dead person should be kept there over night.[10]

'That a house sold there should not be liable to become irredeemable' — for it is written: Then the house that is in the walled city shall be made sure in perpetuity to him that bought it throughout his generations[11] and as it is maintained[12] that Jerusalem was not divided among the tribes.[13]

'That it should never bring a heifer whose neck is broken' — as it is written: If one be found slain in the land which the Lord thy God giveth thee to possess it,[14] and Jerusalem [could not be included as it] was not divided among the tribes.[13]

'That it could never be made a condemned city' — for it is written, [One of] thy cities,[15] and Jerusalem was not divided among the tribes. 'That its houses could not become defiled through leprosy' — for it is written, And I put the plague of leprosy in the house of the land of your possession,[16] and Jerusalem was not divided among the tribes.[13]

'That neither beams nor balconies should be allowed to project' — in order not to form a tent spreading defilement,[17] and not to cause harm to the pilgrims for the festivals.[18]

'That no dunghills be made there' — on account of reptiles.[19]

'That no kilns be kept there' — on account of the smoke.[20]

'That neither gardens nor orchards be cultivated there' — on account of the bad odour [of withered grasses].

'That no fowls be bred there' on account of the sacrifices.

'That no dead person be kept there overnight' — this is known by tradition.

IT IS NOT RIGHT TO BREED PIGS IN ANY PLACE WHATEVER. Our Rabbis taught: When the members of the Hasmonean house were contending with one another, Hyrcanus was within and Aristobulus without [the city wall].[21] [Those who were within] used to let down to the other party every day a basket of denarii, and [in return] cattle were sent up for the regular sacrifices.[22] There was, however, an old man[23] [among the besiegers] who had some knowledge in Grecian Wisdom[24] and who said to them: 'So long as the other party [are allowed to] continue to perform the service of the sacrifices they will not be delivered into your hands.' On the next day when the basket of denarii was let down, a swine was sent up. When the swine reached the centre of the wall it stuck its claws into the wall, and Eretz Yisrael quaked over a distance of four hundred parasangs[25] by four hundred parasangs. It was proclaimed on that occasion: Cursed be the man who would breed swine and cursed be the man who would teach his son Grecian Wisdom. It was concerning this time that we have learnt[26] that the 'Omer[27] was once brought from the gardens of Zarifin and the two loaves[28] from the Valley of En Soker.[29]

But was Grecian Wisdom proscribed? Was it not taught that Rabbi stated: 'Why use the Syriac language in Eretz Yisrael

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(1) For the sake of absolute certainty.

(2) V. Lev. XV. 16.

(3) V. Yoma 23a; 'Ar. 32b and Tosef. Neg. VI, 2. [According to Krauss, REJ. LIII, 29 ff., some of these regulations

relate only to the Temple Mount.]
(4) As should be the case with dwelling houses of a walled city (cf. Lev. XXV, 29-30); but is on the other hand considered as a house of a village which has no wall round about it; (ibid. 31.).
(5) As required in Deut. XXI, 3-4 in the case of a person found slain and it be not known who hath slain him.
(6) Which would he subject to Deut. XIII, 13-18.
(7) Cf. Lev. XIV, 34-53.
(8) Where the Jordan resin grew; cf. Ker. 6a.
(9) [Cf. II Kings XXV, 4; Jer. XXXI, 4; Neh. III, 15. V. Krauss, loc. cit. p. 33.]
(10) Cf. Hag. 26a; v. infra, p. 469.
(11) Lev. XXV. 29-30.
(12) Cf. Yoma 12a.
(13) But was kept in trust for all Israel and could therefore not be subject to a law where absolute private ownership is referred to.
(14) Deut. XXI, 1.
(15) Ibid. XIII, 13.
(16) Lev. XIV, 34.
(17) Cf. Num. XIX, 14.
(18) By the spread of defilement.
(19) Which thrive in dunghills, and as soon as they die they become a source of defilement.
(20) Which would blacken the buildings of the town; cf. B.B. 23a.
(21) [In the parallel passage the roles are reversed, Aristobulus being besieged and Hyrcanus laying the siege; v. Graetz, Geschichte III, p. 710 ff. Cf. Josephus, Ant. XIV, 2,2.]
(22) Cf. Num. XXVIII, 2-4.
(23) [Identified with Antipater, an ally of Hyrcanus, v. Graetz, op. cit. 711.]
(24) [‘Sophistry’. v. Graetz, loc. cit.]
(25) V. Glos.
(26) Men. 64b. [The places are identified respectively with Sarafand near Lydda and Assakar near Nablus.]
(27) Lit., ‘a sheaf’, denoting the public sacrifice of the first-fruits of the harvest described in Lev. XXIII, 10-14.
(28) Cf. ibid. 17.
(29) Sot. 49b and Men. 64b.

Talmud - Mas. Baba Kama 83a

[where] either the Holy Tongue or the Greek language [could be employed]?’ And R. Jose said: ‘Why use the Aramaic language in Babylon [where] the Holy Tongue or the Persian language [could be used]?’ — It may, however, be said that the Greek language is one thing and Grecian Wisdom is another. But was Grecian Wisdom proscribed? Did not Rab Judah say that Samuel stated in the name of R. Simeon b. Gamaliel: ‘[The words] Mine eye affected my soul because of all the daughters of my city[1] [could very well be applied to the] thousand youths who were in my father's house; five hundred of them learned Torah and the other five hundred learned Grecian Wisdom, and out of all of them there remain only I here and the son of my father's brother in Asia’?[2] — It may, however, be said that the family of R. Gamaliel was an exception, as they had associations with the Government, as indeed taught: ‘He who trims the front of his hair[3] in Roman fashion is acting in the ways of the Amorites.’[4] Abtolmus b. Reuben however was permitted to cut his hair in the Gentile fashion as he was in close contact with the Government. So also the members of the family of Rabban Gamaliel were permitted to discuss Grecian Wisdom on account of their having had associations with the Government.

NO MAN SHOULD BREED A DOG UNLESS IT IS ON A CHAIN etc. Our Rabbis taught: No man should breed a dog unless it is kept on a chain. He may, however, breed it in a town adjoining the frontier where he should keep it chained during the daytime and loose it only at night. It was taught: R. Eliezer the Great says that he who breeds dogs is like him who breeds swine. What is the

practical bearing of this comparison? — That he[5] be declared cursed.[6] R. Joseph b. Manyumi said in the name of R. Nahman that Babylon was on a par with a town adjoining the frontier.[7] This, however, was interpreted to refer to Nehardea. R. Dostai of Bira[8] expounded: And when it rested, he said, Return O Lord unto the tens of thousands [and] the thousands of Israel.[9] This, [he said,] teaches that the Shechinah[10] does not rest upon Israel if they are less than two thousand plus two tens of thousands.[11] Were therefore the Israelites [to be twenty-two thousand] less one, and there was there among them a pregnant woman thus capable of completing the number, but a dog barked at her and she miscarried, the [dog] would in this case cause the Shechinah to depart from Israel. A certain woman[12] entered a neighbour's house to bake [there bread], and a dog suddenly barked at her, but the owner of the house said to her: Do not be afraid of the dog as its teeth are gone. She, however, said to him: Take thy kindness and throw it on the thorns, for the embryo has already been moved [from its place].

IT IS NOT RIGHT TO PLACE NETS FOR DOVES UNLESS AT A DISTANCE OF THIRTY RIS FROM INHABITED SETTLEMENTS. But do they proceed so far? Did we not learn that a dove-cote must be kept at a distance from the town of fifty cubits?[13] — Abaye said: They certainly fly much further than that, but they eat their fill within fifty cubits.[14] But do they fly only thirty ris and no more? Was it not taught: 'Where there is an inhabited settlement no net must be spread even for a distance of a hundred mil'? — R. Joseph said: The latter statement refers to a settlement of vineyards;[15] Rabbah said that it refers to a settlement of dove-cotes.[15] But why not lay down the prohibition to spread nets on account of the dovecotes themselves?[16] — If you like I can say that they belong to Cutheans,[17] or if you like I can say that they are ownerless, or if you again like I can say that they are his own. [

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(1) Lam. III, 51.

(2) Sot. 49b and Git. 58a. [This proves that even Grecian Wisdom was not proscribed.]

(3) [Like a fringe on the forehead and lets the curls hang down on the temples (Jast.).]

(4) Which should not be imitated.

(5) Who breeds a dog.

(6) As if he would breed swine.

(7) Cf. 'Er. 45a.

(8) [In Galilee, v. Klein, op. cit., p. 39.]

(9) Num. x, 36; E.V.: unto the many thousands of Israel.

(10) The Divine Presence.

(11) I.e. , twenty-two thousand, comprising the minimum of the plural tens of thousands which is twenty thousand and the minimum of the thousands which is two thousand, cf. also Yeb. 64a.

(12) Cf. Shab. 63a; and supra p. 271.

(13) So that the doves should not consume the produce of the town. (B.B. 11,5.]

(14) On account of which a dove-cote need not be kept away from the town for more than fifty cubits.

(15) Where the doves could thus take rest and fly on to great distances.

(16) Why then base the prohibition upon the proximity of a settlement?

(17) Who did not recognise the necessity of being scrupulous to such an extent and should therefore not be treated better than they treated others: cf. supra p. 211, n. 6. [For a full discussion of the regulations laid down in our Mishnah and developed in the Gemara, as well as their application in the practical life of the Jewish communities in Talmudic times, v. Krauss, REJ, LIII, 14-55.]

Talmud - Mas. Baba Kama 83b

CHAPTER VIII

MISHNAH. ONE WHO INJURES A FELLOW MAN BECOMES LIABLE TO HIM FOR FIVE ITEMS: FOR DEPRECIATION, FOR PAIN, FOR HEALING, FOR LOSS OF TIME AND FOR