(**8**) Gen. XX, 16.
(**9**) I.e., blindness.
(**10**) Gen. XXVII, 1.
(**11**) Among birds.
(**12**) Cf. Lev.I, 14.
(**13**) [MS.M.: 'R. Joseph b. Hama' the father of Raba.]
(**14**) Raba in the text and 'Rab' in the text of Asheri, v. Marginal Glosses in cur. edd.
(**15**) I.e., R. Assi.
(**16**) Cf. supra pp. 178-9.
(**17**) According to Rashi there is strictly speaking no difference between the case dealt with in the commencing and that of the concluding clause; as all depends upon the implied intention, the illustration being in each case taken from what is usual, for while a man will pardon damage done to his chattel, he will not do so in regard to personal pain. But that this was not so was maintained by Tosaf.
(**18**) Ex. XXII, 6.
(**19**) Where he gave him the pitcher to break it and the garment to tear it.
(**20**) In the case of the Mishnah.
(**21**) I.e., to the hand of the one who did the damage.
(**22**) In Ex.
(**23**) But was destroyed before it actually reached the hand of the bailee.
(**24**) Ibid.
(**25**) In the case of the Mishnah.
(**26**) So much per week.
(**27**) As there were in that case definite plaintiffs.

Talmud - Mas. Baba Kama 93b

CHAPTER IX

MISHNAH. IF ONE MISAPPROPRIATES PIECES OF WOOD AND MAKES UTENSILS OUT OF THEM, OR PIECES OF WOOL AND MAKES GARMENTS OUT OF THEM, HE HAS TO PAY FOR THEM IN ACCORDANCE WITH [THEIR VALUE AT] THE TIME OF THE ROBBERY.[1] IF ONE MISAPPROPRIATED A PREGNANT COW WHICH MEANWHILE GAVE BIRTH [TO A CALF], OR A SHEEP BEARING WOOL WHICH HE SHEARED, HE WOULD PAY THE VALUE OF A COW WHICH WAS ABOUT TO GIVE BIRTH [TO A CALF], AND THE VALUE OF A SHEEP WHICH WAS READY TO BE SHORN [RESPECTIVELY]. BUT IF HE MISAPPROPRIATED A COW WHICH BECAME PREGNANT WHILE WITH HIM AND THEN GAVE BIRTH, OR A SHEEP WHICH WHILE WITH HIM GREW WOOL WHICH HE SHEARED, HE WOULD PAY IN ACCORDANCE WITH [THE VALUE AT] THE TIME OF THE ROBBERY. THIS IS THE GENERAL PRINCIPLE: ALL ROBBERS HAVE TO PAY IN ACCORDANCE WITH [THE VALUE OF THE MISAPPROPRIATED ARTICLES AT] THE TIME OF THE ROBBERY.

GEMARA. Shall we say that it is only where he actually made utensils out of the pieces of wood [that the Mishnaic ruling will apply], whereas if he merely planed them this would not be so?[2] Again, it is only where he made garments out of the wool that this will be so, whereas where he merely bleached it this would not be so! But could not a contradiction be raised from the following: 'One who misappropriated pieces of wood and planed them, stones and chiselled them, wool and bleached it or flax and cleansed it, would have to pay in accordance with [the value] at the time of the robbery'?[3] — Said Abaye: The Tanna of our Mishnah stated the ruling where the change [in the article misappropriated] is only such as is recognised by the Rabbis, that is, where it can still revert [to its former condition] and of course it applies all the more where the change is such[4] as is recognised by the pentateuch:[5] [for the expression ONE WHO MISAPPROPRIATES] PIECES OF

WOOD AND MAKES OUT OF THEM UTENSILS refers to pieces of wood already planed, such as ready-made boards, in which a reversion to the previous condition is still possible, since if he likes he can easily pull the boards out [and thus have them as they were previously]; PIECES OF WOOL AND MADE GARMENTS OUT OF THEE also refers to wool which was already spun, in which [similarly] a reversion to the previous condition is possible, since if he likes he can pull out the threads and restore them to the previous condition; the same law would apply all the more in the case of a change [where the article could no more revert to the previous condition and] which would thus be recognised by the pentateuch.[5] But the Tanna of the Baraitha deals only with a change [where the article could no more revert to its previous condition and] which would thus be recognised by the pentateuch, but does not deal with a change [in which the article could revert to its previous condition and which would be] recognised only by the Rabbis. R. Ashi, however, said: The Tanna of our [Mishnah also] deals with a change which would be recognised by the pentateuch, for by PIECES OF WOOD AND MAKES UTENSILS OUT OF THEM he means clubs, which were changed by planing them; by PIECES OF WOOL AND MAKES GARMENTS OUT OF THEM he similarly means felt cloths, which involves a change that can no more revert to its previous condition.

But should bleaching be considered a change?[6] Could no contradiction be raised [from the following]: 'If the owner did not manage to give the first of the fleece to the priest until it had already been dyed, he would be exempt,[7] but if he only bleached it without having dyed it, he would still be liable'?[8] — Said Abaye: This is no difficulty, as the former statement is in accordance with R. Simeon and the latter in accordance with the Rabbis; for it was taught: 'If after the owner had shorn his sheep he span the wool or wove it, this portion would not be taken into account[9] [with the other wool which was still left in a raw state];[10] but if he only purified it, R. Simeon says: It would [still] not be taken into account, whereas the Sages say that it would be taken into account. But Raba said that both statements might be in accordance with R. Simeon, and there would still be no difficulty, as in one case[11] [the process of bleaching was] by beating the wool [where no actual change took place], whereas in the other case[12] the wool was corded with a comb. R. Hiyya b. Abin said that in one case[11] the wool was merely washed [so that no actual change took place]. whereas in the other[12] it was whitened with sulphur. But since even dyeing is according to R. Simeon not considered a change, how could bleaching be considered a change, for was it not taught: 'Where the owner had shorn one sheep after another and in the interval dyed the [respective] fleeces, [or shorn] one after another and in the interval spun the wool, [or shorn] one after another and in the interval wove the wool, this portion would not be taken into account,[9] but R. Simeon b. Judah said in the name of R. Simeon[13] that if he [only] dyed the wool it would be taken into account'?[14] — Said Abaye: There is no difficulty, as the former statement was made by the Rabbis according to R. Simeon whereas the latter[15] was made by R. Simeon b. Judah according to R. Simeon. But Raba said: You may still say that the Rabbis did not differ from R. Simeon b. Judah on this point,[16] for dyeing might be different, the reason being that since the colour could be removed by soap, [it is not considered a change], and as to the statement made there, 'If the owner did not manage to give the first of his fleece to the priest until it had already been dyed he would be exempt' which has been stated to be accepted unanimously, this deals with a case where it was dyed with indigo [which could not be removed by soap].

Abaye said: R. Simeon b. Judah, Beth Shammai, R. Eliezer b. Jacob. R. Simeon b. Eleazar and R. Ishmael all maintain that a change leaves the article in its previous status: R. Simeon b. Judah here in the text quoted by us; but what about Beth Shammai? — As it was taught:[17] 'Where he gave her as her hire wheat of which she made flour, or olives of which she made oil, or grapes of which she made wine,' one [Baraitha] taught that 'the produce is forbidden to be sacrificed upon the altar,' whereas another [Baraitha] taught 'it is permitted'. and R. Joseph said: Gorion

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(1) I.e., of the pieces of wood and wool but not of the utensils and garments respectively, as by the change which took

place he acquired title to them; cf. supra p. 384.

(2) I.e., the ownership would thereby not be transferred to the robber.

(3) The reason being that through the change which took place the ownership was transferred.

(4) I.e., where the article can no longer revert to its former condition; v. supra p. 386.

(5) To transfer ownership.

(6) In regard to which it was stated in the Baraitha that the robber will thereby acquire title to the wool.

(7) As by this change the original obligation was annulled and the owner acquired unqualified and absolute right to the wool.

(8) Hul. XI, 2; v. supra p. 382. Does not this prove that mere bleaching unlike dyeing does not constitute a change?

(9) In regard to the first fleece offering the minimum of which is according to R. Dosa b. Harkinas the weight of seven maneh and a half collected equally from not less than five sheep, but according to the Rabbis one maneh and a half collected equally from the same number of sheep would suffice; cf. Hul. XI, 2. A maneh amounts to twenty-five sela's; for Samuel's view according to the Rabbis cf ibid. 137b.

(10) On account of the change which had been made.

(11) Not considering it a change.

(12) Considering it a change.

(13) I.e., R. Simeon b. Yohai; cf. Sheb. 2b.

(14) This shows that R. Simeon b. Yohai does not consider dyeing a change, much less bleaching.

(15) v. p. 443. n. 5.

(16) As to the view of R. Simeon b. Yohai on this matter.

(17) For notes on passage following v. supra p. 380.

Talmud - Mas. Baba Kama 94a

of Aspurak taught: ‘Beth Shammai prohibit the produce to be used as sacrifices, whereas Beth Hillel permit it.’ Now, what was the reason of Beth Shammai? — Because it is written gam, to include their transformation. But Beth Hillel maintains that hem implies only them and not their transformations. Beth Shammai, however, maintains that though hem is written, what it implies is ‘them and not their offsprings’. Beth Hillel still argue that you can understand both points from it: ‘them and not their transformations, them and not their offsprings.’ But how could Beth Hillel explain the insertion of gam? Gam offers a difficulty according to the view of Beth Hillel.

What about R. Eliezer b. Jacob? — As it was taught[1] R. Eliezer b. Jacob says: If one misappropriated a se'ah[2] of wheat and kneaded it and baked it and set aside a portion of it as hallah,[3] how would he be able to pronounce the benediction?[4] He would surely not be pronouncing a blessing but pronouncing a blasphemy, as to such a one could be applied the words: The robber pronounceth a benediction [but in fact] contemneth the Lord.[5]

What about R. Simeon b. Eleazar? — As it was taught: This principle was stated by R. Simeon b. Eleazar: In respect of any improvement carried out by the robber, he would have the upper hand; if he wishes he can take the improvement, or if he wishes he may say to the plaintiff: ‘Here take your own.’ What is meant by this [last] statement?[6] — Said R. Shesheth: This is meant: Where the article has been improved, the robber may take the increased value, but where it has deteriorated he may say to him: ‘Here, take your own,’ as a change leaves the article in its previous status. But if so why should it not be the same even in the case where the article was improved? We may reply, in order to make matters easier for repentant robbers.[7]

What about R. Ishmael? — It was taught:[8] [Strictly speaking,] the precept of Pe'ah[9] requires that it should be set aside from standing crops. If, however, the owner did not set it aside from standing crops he should set it aside from the sheaves; so also if he did not set it aside from the sheaves he should set it aside from the heap [in his store] so long as he has not evened the pile. But if he had already evened the pile[10] he would have first to tithe it and then set aside the Pe'ah for the poor.

Moreover, In the name of R. Ishmael it was stated that the owner would even have to set it aside from the dough and give it to the poor.[11] Said R. papa to Abaye: Why was it necessary to repeat and bring together all these Tannaitic statements for the sole purpose of making us know that they concurred with Beth Shammai?[12] — He replied: It was for the purpose of telling us that Beth Hillel and the Beth Shammai did probably not differ at all on this matter. But Raba said: What ground have we for saying that all these Tannaim follow one view? Why not perhaps say that R. Simeon b. Judah meant his statement there[13] to apply only to the case of dyeing on account of the fact that the colour could be removed by soap, and so also did Beth Shammai mean their view there to apply only to a religious offering because it looks repulsive, or again that R. Eliezer b. Jacob meant his statement there to apply only to a benediction on the ground that it was a precept performed by the means of a transgression,[14] and so also did R. Simeon b. Eleazar mean his view there to apply only to a deterioration which can be replaced, or again R. Ishmael meant his view there to apply only to the law of Pe'ah, on account of the repeated expression. 'Thou shalt leave'?[15] If however you argue that we should derive the law[16] from the latter case,[17] [it might surely be said that] gifts to the poor are altogether different,[18] as is shown by the question of R. Jonathan. For R. Jonathan asked concerning the reason of R. Ishmael: 'Was it because he held that a change does not transfer ownership, or does he as a rule hold that a change would transfer ownership, but here it is different on account of the repeated expression, Thou shalt leave'![19]

But if you find ground for assuming that the reason of R. Ishmael was because a change does not transfer ownership, why then did the Divine Law repeat the expression 'Thou shalt leave'?[15] Again, according to the Rabbis, why did the Divine Law repeat the expression 'Thou shalt leave'? — This [additional] insertion was necessary for that which was taught:[20] If a man after renouncing the ownership of his vineyard gets up early on the following morning and cuts off the grapes, he will be subject to the laws of Peret, 'Oleloth, Forgetting and Pe'ah,[21] but will be exempt from tithes.

Rab Judah said that Samuel stated that the halachah is in accordance with R. Simeon b. Eleazar.[22] But did Samuel really say so? Did not Samuel state that assessment of the carcass is made neither in cases of theft nor of robbery, but only of damage?[23] I grant you that according to Raba who said that the statement made there by R. Simeon b. Eleazar related only to a deterioration where a recovery would still be possible, there would be no difficulty since Samuel in his statement that the halachah is in accordance with R. Simeon b. Eleazar [who holds] that a change leaves the article in its previous status, referred to the case of deterioration where a recovery would still be possible, whereas the statement made there[23] by Samuel that assessment of the carcass is made neither in the case of theft nor of robbery but only of damage would apply to deterioration where no recovery seems possible. But according to Abaye who said that the statement made by R. Simeon b. Eleazar [also] referred to deterioration where a recovery is no more possible, how can we get over the contradiction? — But Abaye might read thus: Rab Judah said that Samuel stated:

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(1) Cf. Sanh. 6b.

(2) V. Glos.

(3) I.e., the priestly portion set aside from dough. cf. Num. XV, 19-21.

(4) According to Asheri on Ber. 45a it refers to the grace over the meal.

(5) Ps. X. 3; [E.V.: And the covetous renounceth, yea, contemneth the Lord. In spite of the many changes the wheat had undergone it is still not his and not fit to have a blessing uttered over it.]

(6) For in the case of improvement it is surely not in the interests of the robber to plead, 'Here is thine before thee.'

(7) Cf. supra p. 383 and infra 547.

(8) Sanh. 68a; Mak. 16b.

(9) 'The corners of the field', cf. Lev. XIX. 9.

(10) When the grain becomes subject to the law of tithing; cf. Ber. 40b and Ma'as. I, 6.

(11) In spite of the many changes which had been made.

(12) Whose views have generally not been accepted; cf. 'Er. 13b.

(13) Regarding the dyeing of the wool which was subject to the law of the first of the fleece to be set aside for the priest.
(14) v. Ber. 47b.
(15) Lev. XIX. 10 and XXIII, 22 — implying in all circumstances.
(16) That change does not transfer ownership.
(17) I.e., from the law of Pe'ah.
(18) [Adreth. S., Hiddushim, improves the text by omitting: 'If however . . . different.']
(19) [This concludes Raba's argument. V. Adreth, loc. cit.]
(20) For notes v. supra pp. 148-9.
(21) On account of the repeated 'Thou shalt leave'.
(22) That in cases of deterioration the robber will be entitled to say. 'Here there is thine before thee.'
(23) Explained supra p. 44.

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They said that the halachah is in accordance with R. Simeon b. Eleazar though Samuel himself did not agree with this.

R. Hiyya b. Abba said that R. Johanan stated that according to the law of the Torah a misappropriated article should even after being changed be returned to the owner in its present condition, as it is said: He shall restore that which he took by robbery[1] — in all cases. And should you cite against me the Mishnaic ruling,[2] my answer is that this was merely an enactment for the purpose of making matters easier for repentant robbers.[3] But did R. Johanan really say this? Did R. Johanan not say[4] that the halachah should be in accordance with an anonymous Mishnah, and we have learnt: 'If the owner did not manage to give the first of the fleece to the priest until it had already been dyed, he is exempt'?[5] — But a certain scholar of our Rabbis whose name was R. Jacob said to them: 'This matter was explained to me by R. Johanan personally, [that his statement referred only to a case] where, e.g., there were misappropriated planed pieces of wood out of which utensils were made, as after such a change the material could still revert to its previous condition.[6]

Our Rabbis taught: 'If robbers or usurers [repent and of their own free will] are prepared to restore [the misappropriated articles], it is not right to accept [them] from them, and he who does accept [them] from them does not obtain the approval of the Sages.'[7] R. Johanan said: It was in the days of Rabbi that this teaching was enunciated, as taught: 'It once happened with a certain man who was desirous of making restitution that his wife said to him, Raca, if you are going to make restitution, even the girdle [you are wearing] would not remain yours, and he thus refrained altogether from making repentance. It was at that time that it was declared that if robbers or usurers are prepared to make restitution it is not right to accept [the misappropriated articles] from them, and he who accepts from them does not obtain the approval of the Sages.'

An objection was raised [from the following:] 'If a father left [to his children] money accumulated by usury, even if the heirs know that the money was [paid as] interest, they are not liable to restore the money [to the respective borrowers].[8] Now, does this not imply that it is only the children who have not to restore, whereas the father would be liable to restore?[9] The law might be that even the father himself would not have had to restore, and the reason why the ruling was stated with reference to the children[10] was that since it was necessary to state in the following clause 'Where the father left them a cow or a garment or anything which could [easily] be identified, they are liable to restore [it], in order to uphold the honour of the father,' the earlier clause similarly spoke of them. But why should they be liable to restore[11] in order to uphold the honour of the father? Why not apply to them [the verse] 'nor curse the role, of thy people',[12] [which is explained to mean.] 'so long as he is acting in the spirit of 'thy people'?[13] — As however, R. Phinehas [elsewhere][14] stated, that the thief might have made repentance, so also here we suppose that the father had made repentance. But if the father made repentance, why was the misappropriated article still left with him? Should he not have

restored it?[15] — But it might be that he had no time to restore it before he [suddenly] died.

Come and hear: Robbers and usurers even after they have collected the money must return it.[16] But what collection could there have been in the case of robbers. for surely if they misappropriated anything they committed robbery, and if they had not misappropriated anything they were not robbers at all? It must therefore read as follows: 'Robbers, that is to say usurers, even after they have already collected the money, must return it.'[17] — It may, however, be said that though they have to make restitution of the money it would not be accepted from them. If so why have they to make restitution? — [To make it quite evident that out of their own free will] they are prepared to fulfil their duty before Heaven.[18]

Come and hear: 'For shepherds, tax collectors and revenue farmers it is difficult to make repentance, yet they must make restitution [of the articles in question] to all those whom they know [they have robbed].[19] — It may, however, [also here] be said that though they have to make restitution, it would not be accepted from them. If so why have they to make restitution? — [To make it quite evident that out of their free will] they are prepared to fulfil their duty before Heaven. But if so why should it be difficult for them to make repentance?[20] Again, why was it said in the concluding clause that out of articles of which they do not know the owners they should make public utilities,[21] and R. Hisda said that these should be wells, ditches and caves?[22] — There is, however, no difficulty, as this teaching[23] was enunciated before the days of the enactment,[24] whereas the other statements were made after the enactment. Moreover, as R. Nahman has now stated that the enactment referred only to a case where the misappropriated article was no more intact, it may even be said that both teachings were enunciated after the days of the enactment, and yet there is no difficulty,

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(1) Lev. V. 23.
(2) That payment is made in accordance with the value at the time of robbery.
(3) v. p. 545. n. 6.
(4) Shab. 46a and supra p. 158.
(5) For notes v. supra p. 382. [This shows that change transfers ownership even where the consideration of penitents does not apply.]
(6) [In which case but for the consideration of penitent robbers, change transfers no ownership. Where the change. however, cannot be reverted, it confers unqualified ownership.]
(7) Rashi renders 'no spirit of wisdom and piety resides in him', but see also Tosaf. Yom Tob. Aboth III, 10.
(8) Tosef. B.M. V, 8.
(9) [Whereas above it is stated that the monies thus returned are not accepted.]
(10) And not to the father himself
(11) In the case dealt with in the concluding clause.
(12) Ex. XXII, 27.
(13) Excluding him who wilfully violates the laws of Israel.
(14) Hag. 26a.
(15) [I.e. not to retain it with him, despite the refusal of the owners to accept it (v. Tosaf.).]
(16) B.M. 62a.
(17) Does this not prove that the misappropriated money if restored would be accepted from them?
(18) As it is only in such a case that the restored money will not be accepted.
(19) Tosef B.M. VIII. Does this not prove that misappropriated articles if restored would be accepted?
(20) Since no actual restitution will have to be made.
(21) Cf. Az. 29a.
(22) And thus provide water to the general public among whom the aggrieved persons are to be found.
(23) Where actual restitution is implied.
(24) Which was ordained in the days of Rabbi.

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as the latter deals with a case where the misappropriated article is still intact whereas the other teaching refers to a case where the misappropriated article is no more intact. But what about the girdle [referred to above],[1] in which case the misappropriated article was still intact? — What was meant by 'girdle' was the value of the girdle. But is it really the fact that so long as the misappropriated article was intact our Rabbis did not make this enactment?[2] What then about the beam in which case the misappropriated article was still intact and we have nevertheless learnt: [R. Johanan b. Gudgada testified] that if a misappropriated beam has been built into a house, the owner will recover only its value?[3] — That matter is different altogether, for since the house would otherwise be damaged. the Rabbis regarded the beam as being no longer intact.[4]

IF ONE MISAPPROPRIATED A PREGNANT COW WHICH MEANWHILE GAVE BIRTH [TO A CALF] etc. Our Rabbis taught: 'He who misappropriates a sheep and shears it, or a cow which has meanwhile given birth [to a calf], has to pay for the animal and the wool and the calf;[5] this is the view of R. Meir. R. Judah says that the misappropriated animal will be restored intact.[6] R. Simeon says that the animal will be considered as if it had been insured with the robber for its value [at the time of the robbery].' The question was raised: What was the reason of R. Meir? Was it because he held that a change leaves the article in its existing status?[7] Or [did he hold] in general that a change would transfer ownership, but here he imposes a fine [upon the robber], the practical difference being where the animal became leaner?[8] — Come and hear: If one misappropriated an animal and it became old, or slaves and they became old, he would still have to pay according to [their value at][9] the time of the robbery, but R. Meir said that in the case of slaves[10] [the robber] would be entitled to say to the plaintiff: 'Here, take your own.'[11] It thus appears that in the case of an animal [even R. Meir held that] the payment would have to be in accordance with [the value at] the time of the robbery.[9] Now, if you assume that R. Meir was of the opinion that a change leaves the article in its previous status,[12] why even in the case of an animal [can the robber not say. 'Here, take your own']? Does this therefore not prove that even R. Meir held that a change would transfer ownership, and that [in the case of the wool and the calf] it was only a fine which R. Meir imposed on the robber? — It may, however, be said that R. Meir was arguing from the premises of the Rabbis, thus: According to my view a change does not transfer ownership, so that also in the case of an animal [the robber would be entitled to say. 'Here, take your own'], but even according to your view, that a change does transfer ownership, you must at least agree with me in the case of slaves, who are compared to real property, and, as we know, real property is not subject to the law of robbery.[13] The Rabbis, however, answered him: 'No, for slaves are on a par with movables [in this respect].'[14]

Come and hear: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black but he dyed it red, R. Meir says that he would have to pay [the owner of the wool] for the value of the wool.[15] [It thus appears that] he had to pay only for the original value of the wool but not for the combined value of the wool and the improvement [on account of the colour]. Now, if you suppose that R. Meir held that a change would not transfer ownership, why should he not have to pay for the combined value of the wool and the improvement? Does this therefore not prove that R. Meir held that a change would transfer ownership and that here [in the case of the calf] it was only a fine that R. Meir imposed [upon the robber]? — This could indeed be proved from it. Some even say that this question was never so much as raised; for since Rab transposed [the names in the Mishnah] and read thus: If one misappropriated a cow which became old, or slaves who became old, he would have to pay in accordance with [the value at] the time of the robbery;[16] this is the view of R. Meir, whereas the Sages say that in the case of slaves the robber would be entitled to say, Here, take your own',[16] it is quite certain that according to R. Meir a change would transfer ownership, and that here [in the case of a calf] it was only a fine that R. Meir imposed [upon the robber]. But if a question was raised, it was this: Was the fine imposed only in the case of wilful misappropriation whereas in the

case of inadvertent misappropriation[17] the fine was not imposed, or perhaps even for inadvertent misappropriation the fine was also imposed? — Come and hear: Five [kinds of creditors] are allowed to distrain only on the free assets [of the debtor];[18] they are as follows: [creditors for] produce,[19] for Amelioration showing profits,[20] for an undertaking to maintain the wife's son or the wife's daughter,[21] for a bond of liability without a warranty of indemnity[22] and for the kethubah of a wife where no property is made security.[22] Now, what authority have you heard lay down that the omission to make the property security[22] is not a mere scribal error[23] if not R. Meir?[24] And it is yet stated: 'Creditors for produce and Amelioration showing profits [may distrain on free assets in the hands of the debtor].' Now, who [are creditors for Amelioration showing] profits?[25] They come in, do they not, where the vendor has misappropriated a field from his fellow and sold it to another who ameliorated it and from whose hands it was subsequently taken away. [The law then is that] when the purchaser comes to distrain

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(1) Supra p. 548.

(2) And the actual article would have to be restored.

(3) Cit. V, 5; 'Ed. VII, 9' and supra p. 385.

(4) And the actual beam would not have to be restored. Its value will, however, be paid on account of the fact that the beam was actually in the house.

(5) [The payment, that is to say, will have to be made for the combined value of the calf and wool and the improvement.] Cf. B.M. 43b.

(6) [I.e., in the state it is at the time of payment. The robber will, however, have to make up in money for the difference in the value of the cow as it stood at the time of the robbery. The difference between R. Simeon and R. Judah will be explained anon.]

(7) And no ownership could thereby be transferred.

(8) Where according to the former consideration the robber would escape further liability by restoring the animal, but according to the latter he would have to pay for the difference.

(9) As the change transferred the ownership to the robber.

(10) Who are subject to the law applicable to immovables.

(11) Mishnah, infra p. 561.

(12) And no ownership could thereby be transferred.

(13) Cf. Suk. 30b and 32a.

(14) Cf. supra 12a.

(15) For by acting against the instructions of the owner he rendered himself liable to the law of robbery; Mishnah infra 100b.

(16) V. infra p. 561.

(17) As in the case of the dyer, supra p. 552.

(18) But not if the landed property is already in the hands of a third party such as a purchaser and the like.

(19) Such as where a field full of produce was taken away in the hands of a purchaser through the fault of the vendor: the amount due to the purchaser for his loss of the actual field could be recovered even from property already in the hands of (subsequent) purchasers, whereas the amount due to him for the value of the produce he lost could be recovered only from property still in the hands of the vendor; cf. Git. V, I and B.M. 14b.

(20) Such as where the purchaser spent money on improving the ground which was taken away from him through the fault of the vendor.

(21) Cf. also Keth. XII, 1.

(22) I.e., where the particular clause making the property security was omitted in the document. V. Keth. 51b.

(23) But has legal consequences.

(24) V. B.M. I, 6 and ibid. 14a.

(25) Lit., 'how is this possible?'

Talmud - Mas. Baba Kama 95b

he will do so for the principal even on [real] property that has been sold, but for the Amelioration

only on assets which are free [in the hands of the vendor]. [But this is certain,] that the owner of the field is entitled to come and take away the field together with the increment. Now, do we not deal here with a purchaser who was ignorant of the law and did not know whether real property is subject to the law of robbery or is not subject to the law of robbery?[1] And even in such a case the owner of the field will be entitled to come and take away the land together with the increment. Does not this show that even in the case of inadvertent misappropriation,[2] [R. Meir] would impose the fine? — It may however be said that this is not so, [as we are dealing here] with a purchaser who is a scholar and knows very well[3] [that real property is not subject to the law of robbery].[1]

Come and hear: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black and he dyed it red, R. Meir says that he would have to pay [the owner of the wool] for the value of the wool.[4] [It thus appears that he has to pay] only for the original value of the wool but not for the combined value of the wool and the improvement [on account of the colour]. Now, if you assume that R. Meir would impose the fine even in the case of inadvertent misappropriation why should he not have to pay for the combined value of the wool and the improvement? Does this not prove that it is only in the case of wilful misappropriation that the fine is imposed but in the case of inadvertent misappropriation the fine would not be imposed? — This could indeed be proved from it.

'R. Judah says that the misappropriated [animal] will be restored intact. R. Simeon says that the animal be considered as if it had been insured with the robber for its value [at the time of the robbery].' What is the practical difference between them?[5] — Said R. Zebid: They differ regarding the increased value [still] attaching to the misappropriated article. R. Judah maintained that this would belong to the plaintiff[6] whereas R. Simeon was of the opinion that this would belong to the robber.[7] R. papa, however, said that both might agree that an increased value [still] attaching to the misappropriated article should not solely belong to the plaintiff,[8] but where they differed was as to whether the robber should be entitled to retain a half or a third or a fourth[9] for [his attending to the welfare of the article]. R. Judah maintaining that an increased value [still] attaching to the misappropriated article would belong solely to the robber,[10] whereas R. Simeon maintained that the robber would be paid only to the extent of a half, a third or a fourth.

We have learnt: 'BUT IF HE MISAPPROPRIATED A COW WHICH BECAME PREGNANT WHILE WITH HIM AND THEN GAVE BIRTH, OR A SHEEP WHICH WHILE WITH HIM GREW WOOL WHICH HE SHEARED, HE WOULD PAY IN ACCORDANCE WITH [THE VALUE AT] THE TIME OF THE ROBBERY.' That is so only if the cow has already given birth, but if the cow has not given birth yet it would be returned as it is. This accords well with the view of R. Zebid who said that an increased value still attaching to the misappropriated article would according to R. Judah belong to the plaintiff; I [the Mishnah] would then be in accordance with R. Judah. But on the view of R. papa who said that it would belong to the robber,[10] it would be in accordance neither with R. Judah nor with R. Simeon? — R. Papa might say to you that the ruling [stated in the text] would apply even where the cow has not yet given birth, as even then he would have to pay in accordance with [the value at] the time of the robbery. For as for the mention of 'giving birth', the reason is that since the earlier clause contains the words 'giving birth', the later clause similarly mentions 'giving birth'. It was taught in accordance with R. papa: 'R. Simeon says that [the animal] is to be considered as if its pecuniary value had been insured with the robber, [who will however be paid] to the extent of a half, a third or a fourth [of the increase In value].'[11]

R. Ashi said: When we were at the School of R. Kahana, a question was raised with regard to the statement of R. Simeon that the robber will be paid to the extent of a half, a third or a fourth [of the increase in value] whether at the time of his parting with the misappropriated article he can be paid in specie, or is he perhaps entitled to receive his portion out of the body of the misappropriated animal. The answer was found in the statement made by R. Nahman in the name of Samuel: 'There are three cases where increased value will be appraised and paid in money. They are as follow's: [In

the settlement of accounts] between a firstborn and a plain son,[12] between a creditor and a purchaser.[13] and between a creditor[13] and heirs.'[14] Said Rabina to R. Ashi: Did Samuel really say that a creditor will have to pay the purchaser for increased value? Did Samuel not state[15] that a creditor distrains even on the increment?[16] — He replied: There is no difficulty, as the former ruling applies to an increment which could reach the shoulders to be carried away.[17] whereas the latter ruling deals with an increment which could not reach the shoulders to be carried away.[18] He rejoined:[19] Do not cases happen every day where Samuel distrains even on an increment which could reach the shoulders to be carried away? — He replied: There is still no difficulty,

(1) V. p. 552. n. 1.

(2) Such as was the case here with the purchaser.

(3) Also that the field has been misappropriated by the vendor (cf. Shittah Mekubezeth a.l.) and as such is guilty of wilful misappropriation.

(4) V. Mishnah infra 100b.

(5) I.e., R. Judah and R. Simeon.

(6) Since the article has to be restored intact.

(7) [Since the payment is made according to the value at the time of the robbery.]

(8) Lit., 'should belong to the robber', but which means that it will not solely belong to the plaintiff, as will soon become evident in the text.

(9) I.e., in accordance with the definite percentage in the profits fixed in a given province to be shared by a contractor for his care and attendance to the welfare of the article in question; cf. B.M. V, 4-5.

(10) As the expression 'intact' means intact as it was at the time of the robbery.

(11) V. p. 555. n. 4.

(12) As the firstborn son has two portions in the estate as it was left at the time of the death of the father, but only one portion in the increased value due to amelioration after the father's death, so that by taking two portions in the estate the firstborn would have to pay back the other sons their appropriate portions in the increased value of the additional portion taken by him; cf. B.B. 124a.

(13) I.e., a creditor distraining on a field that originally belonged to his debtor but which was subsequently disposed of or inherited by heirs and the purchaser or heirs increased its value by amelioration.

(14) V. B.M. 110b.

(15) B.M. ibid. and 14b; Bk. 42a.

(16) Without paying for it, v. B.M. ibid.

(17) As where the produce is quite ripe and could be separated from the ground in which case it is the property of the purchaser. V. B.B. (Sonc. ed.) p. 183. n. 3.

(18) I.e., which is inseparable from the ground and which is distrained on together with the field by the creditor.

(19) I.e., Rabina to R. Ashi.

Talmud - Mas. Baba Kama 96a

as this is so only where the amount of the debt owing to the creditor covers both the land and the increment,whereas the former ruling[1] applies where [the debt due to him] is only to the extent of the land. He rejoined: I grant you that on the view[2] that [even] if the purchaser possesses money he has no right to bar the creditor from land by paying in specie, your argument would be sound, but according to the view that a purchaser possessing money can bar the creditor from the field by paying him in specie, why should he not say to the creditor, 'If I had had money, I would surely have been able to bar you from the whole field [by paying you in specie]; now also therefore I am entitled to be left with a griva[3] of land corresponding to the value of my amelioration'?[4] — He replied: We are dealing here with a case where the debtor expressly made that field a security, as where he said to him: 'You shall not be paid from anything but from the field.'[5]

Raba stated: [There is no question] that where the robber improved [the misappropriated article] and then sold it, or where the robber improved [the misappropriated article] and then left it to his

heirs, he has genuinely sold or left to his heirs the increment he has created.[6] Raba [however] asked: What would be the law where [after having bought the misappropriated article from the robber] the purchaser improved it? After asking the question he himself gave the answer: That what the former sold the latter, was surely all rights[7] which might subsequently accrue to him.[6]

Raba [again] asked: What would be the law where a heathen[8] [misappropriated an article and] improved it? — Said R. Aha of Difti to Rabina: Shall we trouble ourselves to make an enactment[9] for [the benefit of] a heathen? — He said to him: No; the query might refer to the case where. e.g., he sold it to an Israelite. [But he retorted:] Be that as it may, he who comes to claim through a heathen [predecessor], could surely not expect better treatment than the heathen himself. — No: the query could still refer to the case where, e.g., an Israelite had misappropriated an article and sold it to a heathen who improved it and who subsequently sold it to another Israelite. What then should be the law? Shall we say that since an Israelite was in possession at the beginning and an Israelite was in possession at the end, our Rabbis would also here make [use of] the enactment, or perhaps since a heathen intervened our Rabbis would not make [use of] the enactment? — Let it remain undecided.

R. papa stated: If one misappropriated a palm tree from his fellow and cut it down, he would not acquire title to it even though he threw it from [the other's] field into his own land, the reason being that it was previously called palm tree and is now also called palm tree.[10] [So also] where out of the palm tree he made logs he would not acquire title to them, as even now they would still be called logs of a palm tree.[10] It is only where out of the logs he made beams that he would acquire title to them.[11] But if out of big beams he made small beams he would not acquire title to them,[12] though were he to have made them into boards he would acquire title to them.[11]

Raba said: If one misappropriated a Lulab[13] and converted it into leaves he would acquire title to them, as originally it was called Lulab whereas now they are mere leaves.[11] So also where out of the leaves he made a broom he would acquire title to it, as originally they were leaves whereas now they form a broom,[14] but where out of the broom he made a rope he would not acquire title to it since if he were to undo it, it would again become a broom.

R. papa asked: What would be the law where the central leaf[15] of the Lulab became split? — Come and hear: R. Mathon said that R. Joshua b. Levi stated that if the central leaf of the Lulab was removed the Lulab would be disqualified [for ritual purposes].

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(1) Ordering payment for the amelioration.

(2) B.M. 15b and 110b.

(3) The size of a field needed for a se'ah of seed.

(4) Why then should the creditor distrain on the whole field together with the amelioration?

(5) In which case the purchaser can in no circumstance bar the creditor from the field.

(6) So that the purchaser (or heir) will be entitled to the half or third or quarter in profits to which the robber would have been entitled, according to the view of R. Simeon.

(7) Cf. supra p.32.

(8) Who neither respects nor feels bound by Rabbinic enactments.

(9) That according to R. Simeon payment is to be made for amelioration to the extent of a half or third or quarter.

(10) [The change involved does not confer ownership enabling him to make restitution by payment in money.]

(11) V. p. 552. n. 6.

(12) V. p. 552. n. 5.

(13) I.e., a palm branch used for the festive wreath on the Feast of Tabernacles in accordance with Lev. XXIII, 40.

(14) V. p. 543, n. 6.

(15) Cf. Suk. 32a and Rashi.

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Now, would not the same law apply where it was merely split?[1] — No; the case where it was removed is different, as the leaf is then missing altogether. Some [on the other hand] read thus. Come and hear what R. Mathon said, that R. Joshua b. Levi stated that if the central leaf was split it would be considered as if it was altogether removed and the Lulab would be disqualified;[1] which would solve [R. papa's question].

R. papa [further] said: If one misappropriated sand from another and made a brick out of it, he would not acquire title to it, the reason being that it could again be made into sand, but if he converted a brick into sand he would acquire title to it. For should you object that he could perhaps make the sand again into a brick, [it may be said that] that brick would be [not the original but] another brick, as it would be a new entity which would be produced.

R. Papa [further] said: If one misappropriated bullion of silver from another and converted it into coins, he would not acquire title to them, the reason being that he could again convert them into bullion, but if out of coins he made bullion he would acquire title to it. For should you object that he can again convert it into coins, [my answer is that] it would be a new entity which would be produced. If [the coins were] blackened and he made them look new he would thereby not acquire title to them,[2] but if they were new and he made them black he would acquire title to them, for should you object that he could make them look again new, [it may be said that] their blackness will surely always be noticeable.

THIS IS THE GENERAL PRINCIPLE: ALL ROBBERS HAVE TO PAY IN ACCORDANCE WITH [THE VALUE OF THE MISAPPROPRIATED ARTICLES AT] THE TIME OF THE ROBBERY. What additional fact is the expression. THIS IS THE GENERAL PRINCIPLE intended to introduce? — It is meant to introduce that which R. Elai said: If a thief misappropriated a lamb which became a ram, or a calf which became an ox, as the animal underwent a change while in his hands he would acquire title to it, so that if he subsequently slaughtered or sold it, it was his which he slaughtered and it was his which he sold.[3]

A certain man who misappropriated a yoke of oxen from his fellow went and did some ploughing with them and also sowed with them some seeds and at last returned them to their owner. When the case came before R. Nahman he said [to the sheriffs of the court]: ‘Go forth and appraise the increment [added to the field].’ But Raba said to him: Were only the oxen instrumental in the increment, and did the land contribute nothing to the increment?[4] — He replied: Did I ever order payment of the full appraisement of the increment? I surely meant only half of it. He, however, rejoined:[5] Be that as it may, since the oxen were misappropriated they merely have to be returned intact, as we have indeed learnt: ALL ROBBERS HAVE TO PAY IN ACCORDANCE WITH [THE VALUE] AT THE TIME OF THE ROBBERY. [Why then pay for any work done with them?] — He replied: Did I not say to you that when I am sitting in judgment you should not make any suggestions to me, for Huna our colleague said with reference to me that I and ‘King’ Shapur[6] are [like] brothers in respect of civil law? That person [who misappropriated the pair of oxen] is a notorious robber, and I want to penalise him.

MISHNAH. IF ONE MISAPPROPRIATED AN ANIMAL AND IT BECAME OLD, OR SLAVES AND THEY BECAME OLD, HE WOULD HAVE TO PAY ACCORDING TO [THE VALUE AT] THE TIME OF THE ROBBERY.[7] R. MEIR, HOWEVER, SAYS THAT IN THE CASE OF SLAVES[8] HE MIGHT SAY TO THE OWNER: HERE, TAKE YOUR OWN. IF HE MISAPPROPRIATED A COIN AND IT BECAME CRACKED, FRUITS AND THEY BECAME STALE OR WINE AND IT BECAME SOUR, HE WOULD HAVE TO PAY ACCORDING TO [THE VALUE AT] THE TIME OF THE ROBBERY.[7] BUT IF THE COIN WENT OUT OF USE, THE TERUMAH[9] BECAME DEFILED,[10] THE LEAVEN FORBIDDEN [FOR ANY USE

BECAUSE] PASSOVER HAD INTERVENED,[11] OR IF THE ANIMAL [HE MISAPPROPRIATED] BECAME THE INSTRUMENT FOR THE COMMISSION OF A SIN[12] OR IT BECAME OTHERWISE DISQUALIFIED FROM BEING SACRIFICED UPON THE ALTAR,[13] OR IF IT WAS TAKEN OUT TO BE STONED,[14] HE CAN SAY TO HIM: 'HERE, TAKE YOUR OWN.'

GEMARA. R. Papa said: The expression IT BECAME OLD does not necessarily mean that it actually became old, for [the same law would apply] even where it had otherwise deteriorated. But do we not expressly learn. IT BECAME OLD?[15] — This indicates that the deterioration has to be equivalent to its becoming old, i.e., where it will no more recover health. Mar Kashisha, the son of R. Hisda, said to R. Ashi: It has been expressly stated in the name of R. Johanan that even where a thief misappropriated a lamb which became a ram, or a calf which became an ox,[16] since the animal underwent a change while in his hands he would acquire title to it, so that if he subsequently slaughtered or sold it, it was his which he slaughtered and it was his which he sold.[17] He said to him: Did I not say to you that you should not transpose the names of scholars?[18] That statement was made in the name of R. Elai.[19]

R. MEIR, HOWEVER. SAYS THAT IN THE CASE OF SLAVES HE MIGHT SAY TO THE OWNER, 'HERE TAKE YOUR OWN.' R. Hanina b. Abdimi said that Rab stated that the halachah is in accordance with R. Meir. But how could Rab abandon the view of the Rabbis[20] and act in accordance with R. Meir? — It may, however, be said that he did so because in the text of the [relevant] Baraitha the names were transposed. But again how could Rab abandon the text of the Mishnah and act in accordance with the Baraitha?[21] — Rab, even in the text of our Mishnah, had transposed the names. But still what was the reason of Rab for transposing the names in the text of the Mishnah because of that of the Baraitha? Why not, on the contrary, transpose the names in the text of the Baraitha because of that of our Mishnah? — It may be answered that Rab, in the text of our Mishnah too, was taught by his masters to have the names transposed. Or if you like I may say that [the text of a Mishnah] is not changed [in order to be harmonised with that of a Baraitha] only in the case where there is one against one, but where there is one against two,[22] it must be changed [as is indeed the case here]; for it was taught:[23] If one bartered a cow for an ass and [the cow] gave birth to a calf [approximately at the very time of the barter], so also if one sold his handmaid and she gave birth to a child [approximately at the time of the sale], and one says that the birth took place while [the cow or handmaid was] in his possession and the other one is silent [on the matter], the former will obtain [the calf or child as the case may be], but if one said 'I don't know', and the other said 'I don't know', they would have to share it. If, however, one says [that the birth took place] when he was owner and the other says [that it took place] when he was owner, the vendor would have to swear that the birth took place when he was owner [and thus retain it], for all those who have to take an oath according to the law of the Torah, by taking the oath release themselves from payment;[24] this is the view of R. Meir. But the Sages say that an oath can be imposed neither in the case of slaves nor of real property.[25] Now [since the text of our Mishnah should have been reversed,[26] why did Rab[27] state that] the halachah is in accordance with R. Meir? Should he not have said that the halachah is in accordance with the Rabbis?[27] — What he said was this: According to the text you taught with the names transposed, the halachah is in accordance with R. Meir.[27]

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(1) [Should it be disqualified, it would, if occurring whilst in the possession of the robber, be considered a change and confer ownership.]

(2) V. p. 543. n. 5.

(3) Supra 379.

(4) Why then should the whole amount of the increase due to the amelioration be paid to the plaintiff?

(5) Raba to R. Nahman.

(6) Meaning Samuel, who was a friend of the Persian King Shapur I, and who is sometimes referred to in this way; cf. B.B. 115b. [To have conferred the right of bearing the name of the ruling monarch, together with the title 'tham',

'mighty'. was deemed the highest honour among the Persians, and 'Malka', 'King'. is apparently the Aramaic counterpart of the Persian title 'Malka' (v. Funk, Die Juden in Babylonien. I, 73). On Samuel's supreme authority in Babylon in matters of civil law, v. Bek. 49b.]
(7) As the change transferred the ownership to him.
(8) Who are subject to the law applicable to immovables, where the law of robbery does not apply.
(9) V. Glos.
(10) And thus unfit as food; cf. Shab. 25a.
(11) Cf. Pes. II. 2.
(12) Such as in Lev. XVIII, 23; cf. also supra p. 229.
(13) Such as through a blemish, hardly noticeable, as where no limb was missing; cf. Zeb. 35b and 85b; v. also Git. 56a.
(14) As in the case of Ex. XXI. 28.
(15) In which a temporary deterioration could hardly be included.
(16) [Although there is an inevitable and natural change.]
(17) [And he would be exempt from the threefold and fourfold restitution.]
(18) Lit., 'people'.
(19) And not in that of R. Johanan: supra p. 379.
(20) The representatives of the anonymous view of the majority cited first in the Mishnah.
(21) In accordance with the anonymous view of the majority cited in the Baraitha.
(22) I.e., where two Baraithas are against the text of one Mishnah.
(23) B.M. 100a, q.v. for notes.
(24) Shebu. VII, 1.
(25) Cf. Shebu. VI, 5. It is thus evident that it was the majority of the Rabbis and not R. Meir who considered slaves to be subject to the law of real property.
(26) In which case it was the Rabbis who maintained that slaves are subject to the law of real property.
(27) Meaning that slaves are on the same footing as real property.

Talmud - Mas. Baba Kama 97a

But did Rab really say that slaves are on the same footing as real property? Did R. Daniel b. Kattina not say that Rab stated that if a man forcibly seizes another's slave and makes him perform some work, he would be exempt from any payment?[1] Now, if you really suppose that slaves are on the same footing as real property. why should he be exempt? Should the slave not be considered as still being in the possession of the owner?[2] — We are dealing there[3] with a case [where he took hold of the slave at a time] when [the owner] usually required no work from him, exactly as R. Abba sent to Mari b. Mar, saying. 'Ask R. Huna whether a person who stays in the premises[4] of another without his knowledge must pay him rent or not, and he sent him back reply that 'he is not liable to pay him rent'.[5] But what comparison is there? There is no difficulty [in that case][6] as if we follow the view that premises which are inhabited by tenants keep in a better condition,[5] [we must say that] the owner is well pleased that his house be inhabited. or again if we follow the view[5] that the gate is smitten unto roll,[7] [we can again say that] the owner benefited by it. But here [in this case][8] what owner could be said to be pleased that his slave became reduced [by overwork]? — It may, however, be said that here[9] also it may be beneficial to the owner that his slave should not become prone to idleness.

Some at the house of R. Joseph b. Hama used to seize slaves of people who owed them money, and make them perform some work. Raba his son said to him: Why do you, Sir, allow this to be done? — He thereupon said to him: Because R. Nahman stated that the [work of the] slave is not worth the bread he eats. He rejoined:[10] Do we not say that R. Nahman meant his statement only to apply to one like Daru his own servant who was a notorious dancer in the wine houses, whereas with all other servants who do some work [the case is not so]? — He however said to him: I hold with R. Daniel b. Kattina, for R. Daniel b. Kattina said that Rab stated that one who forcibly seizes another's slave and makes him perform some work would be exempt from any payment, thus proving that this

is beneficial to the owner, by preventing his slave from becoming idle. He replied:[10] These rulings [could apply] only where he has no money claim against the owner, but [in your case], Sir, since you have a money claim against the owner, it looks like usury, exactly as R. Joseph b. Manyumi said [namely] that R. Nahman stated that though the Rabbis decided that one who occupies another's premises without his consent is not liable to pay him rent, if he lent money to another and then occupied his premises he would have to pay him rent.[11] He thereupon said to him: [If so,] I withdraw.

It was stated: If one forcibly seizes another's ship and performs some work with it, Rab said that if the owner wishes he may demand payment for its hire, or if he wishes he may demand payment for its wear and tear. But Samuel said: He may demand only for its wear and tear. Said R. Papa: They do not differ as Rab referred to the case where the ship was made for hire and Samuel to the case where it was not made for hire. Or if you like, I can say that both statements deal with a case where it was made for hire, but whereas [Rab deals with a case] where possession was taken of it with the intention of paying the hire,[12] '[Samuel refers to one] where possession was taken of it with the intention of robbery.[13]

IF HE MISAPPROPRIATED A COIN AND IT BECAME CRACKED etc. R. Huna said: IT BECAME CRACKED means that it actually cracked, [and] IT WENT OUT OF USE means that the Government declared it obsolete. But Rab Judah said that where the Government declared the coin obsolete it would be tantamount to its being disfigured,[14] and what was meant by IT WENT OUT OF USE is that the inhabitants of a particular province rejected it while it was still in circulation in another province. R. Hisda said to R. Huna: According to your statement that IT WENT OUT OF USE meant that the Government declared it obsolete, why [in our Mishnah] in the case of fruits that became stale, or wine that became sour, which appears to be equivalent to a coin that was declared obsolete by the Government, is it stated that HE WOULD HAVE TO PAY IN ACCORDANCE WITH [THE VALUE AT] THE TIME OF THE ROBBERY?[15] — He replied: There [in the case of the fruits and the wine] the taste and the smell changed, whereas here [in the case of the coin] there was no change [in the substance]. Rabbah on the other hand said to Rab Judah: According to your statement that where the Government declared the coin obsolete it would be tantamount to its having been cracked, why in [our Mishnah in] the case of terumah that became defiled, which appears to resemble a coin that was declared obsolete by the Government[16] is it stated that he can say to him, 'HERE, TAKE YOUR OWN'? — He replied: There [in the case of the terumah] the defect[17] is not noticeable, whereas here [in the case of the coin] the defect is noticeable.[18]

It was stated: If a man lends his fellow [something] on [condition that it should be repaid in] a certain coin, and that coin became obsolete, Rab said

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(1) B.M. 64b.

(2) So that payment for work done by him would have to be enforced.

(3) Lit., 'here'.

(4) [Which the owner is not accustomed to let — a case similar to the one where the owner requires no work from the slave.]

(5) V. supra 21a for notes.

(6) Of the house.

(7) Isa. XXIV, 12.

(8) Of the slave.

(9) [Amounting as it does to the taking of interest.]

(10) I.e., Raba to his father, R. Joseph.

(11) So that it should not look like usury.

(12) In which case the hire may be claimed.

(13) In which case no more than compensation for the wear and tear could be enforced.

(14) Since it would nowhere have currency.
(15) As the change transferred the ownership.
(16) For just as the latter case was proscribed by the political realm, the former was proscribed by the spiritual realm.
(17) By becoming defiled.
(18) As the coins which are in circulation have a different appearance.

Talmud - Mas. Baba Kama 97b

that the debtor would have to pay the creditor with the coin that had currency at that time,[1] whereas Samuel said that the debtor could say to the creditor, 'Go forth and spend it in Meshan.'[2] R. Nahman said that the ruling of Samuel might reasonably be applied where the creditor had occasion to go to Meshan, but if he had no occasion [to go there] it would surely not be so. But Raba raised an objection to this view of R. Nahman [from the following]: 'Redemption [of the second tithe] cannot be made by means of money which has no currency, as for instance if one possessed koziba-coins,[3] of Jerusalem,[4] or of the earlier kings;[5] no redemption could be made [by these].'[6] Now, does this not imply that if the coins were of the later kings, even though analogous [in one respect] to coins of the earlier kings,[7] it would be possible to effect the redemption by means of them?[8] — He, however, said to him that we were dealing here with a case where the Governments of the different provinces were not antagonistic to one another. But since this implies that the statement of Samuel [as explained by R. Nahman] referred to the case where the Governments of the different provinces were antagonistic to one another, how would it be possible to bring the coins [to the province where they still have currency]?[9] — They could be brought there with some difficulty, as where no thorough search was made at the frontier though if the coins were to be discovered there would be trouble.

Come and hear: Redemption [of the second tithe] cannot be effected by means of coins which have currency here[10] but which are actually [with the owner] in Babylon;[11] so also if they have currency in Babylon but are kept here.[10] [But] where the coins have their currency in Babylon and are in Babylon redemption can be effected by means of them. Now, it is at all events stated here [is it not] that no redemption could be effected by means of coins which though having currency here[10] are actually [with the owner] in Babylon irrespective of the fact that the owner will have to go up here?[12] — We are dealing here with a case where the Governments [of the respective countries] were antagonistic to each other.[13] But if so how would coins which have currency in Babylon and are kept in Babylon be utilised as redemption money?[14] — They may be utilised for the purchase of an animal [in Babylon]. which can then be brought up to Jerusalem. But was it not taught[15] that there was an enactment that all kinds of money should be current in Jerusalem?[16] — Said R. Zera: This is no difficulty, as the latter statement refers to the time when Israel had sway [in Eretz Yisrael] over the heathen whereas the former referred to a time when the heathen governed themselves.[17]

Our Rabbis taught: What was the coin of Jerusalem?[18] [The names] David and Solomon [were inscribed] on one side and [the name of] Jerusalem on the other. What was the coin of Abraham our Patriarch? — An old man and an old woman[19] on the one side, and a young man and a young woman[20] on the other.

Raba asked R. Hisda: What would be the law where a man lent his fellow something on [condition of being repaid with] a certain coin,[21] and that coin meanwhile was made heavier?[22] — He replied: The payment will have to be with the coins that have currency at that time. Said the other: Even if the new coin be of the size of a sieve? — He replied: Yes, Said the other: Even if it be of the size of a 'tirtia'![23] — He again replied. Yes. But in such circumstances would not the products have become cheaper?[24] — R. Ashi therefore said: We have to look into the matter. If it was through the [increased weight of the] coin that prices [of products] dropped we would have to deduct [from the payment accordingly],

(1) I.e., at the time of the payment.
(2) [Mesene, a district S.E. of Babylon. It lay on the path of the trade route to the Persian Gulf. V. Obermeyer. op. cit., 89 ff.]
(3) Coins struck by Bar Cochba, the leader of the uprising in Eretz Yisrael against Hadrian. [The name Koziba has been explained either as derivation from the city Kozeba, his home, or as 'Son of Lies', a contumelious designation when his failure belied all the hopes reposed in him, v. Graetz, Geschichte, p. 136.]
(4) [Probably the old shekels. According to Rashi render: namely, Jerusalem coins.]
(5) [Either the Seleucidean Kings or former Roman Emperors.]
(6) Tosef. M. Sh. 1, 6.
(7) Such as where they were declared obsolete in a particular province.
(8) Even where one had not occasion to go there, which refutes R. Nahman's view.
(9) Even though one had occasion to go there.
(10) In Jerusalem.
(11) Where they have no currency.
(12) [Lit. 'there'. The text does not read smoothly, and is suspect. MS.M. in fact omits 'Now . . . here.']
(13) To a greater degree, so that thorough searches are made and the transport of coins would constitute a real danger.
(14) Which would have to be spent for certain commodities to be partaken of in Jerusalem.
(15) Cf. I.M. Sh. I. 2.
(16) How then were Babylonian coins not current there?
(17) A euphemism for Israel.
(18) Cf. p. 556. n. 7.
(19) I.e., Abraham and Sarah.
(20) I.e., Isaac and Rebeccah.
(21) V. p. 566, n. 4.
(22) [The question is according to the view of Rab, ibid., that payment has to be made with the coin that had currency at the time.]
(23) A quoit of certain size.
(24) A larger supply being obtained by the heavier coin, and the increase would appear as usury.

Talmud - Mas. Baba Kama 98a

but if it was through the market supplies[1] that prices dropped, we would not have to deduct anything. Still,[2] would the creditor not derive a benefit from the additional metal? — [We must] therefore [act] like R. Papa and R. Huna the son of R. Joshua who gave judgment in an action about coins, according to [the information[3] of] an Arabian agoran,[4] that the debtor should pay for ten old coins [only] eight new ones.[5]

Rabbah stated: He who throws a coin of another [even] into the ocean[6] is exempt, the reason being that he can say to him, 'Here it lies before you, if you are anxious to have it take it.' This applies, however, only where [the water was] clear so that it could be seen, but if it was so muddy that the coin could not be seen this would not be so. Again, this holds good only where the throwing was merely indirectly caused by him,[7] but if he took it in his hand he would surely have already become subject to the law of robbery[8] and as such would have been liable to make [proper] restitution.[8]

Raba raised an objection [from the following:] 'Redemption [of the second tithe] cannot be made by means of money not in one's actual possession, such as if he had money in Castra or in the King's Mountain[9] or if his purse fell into the ocean; no redemption could then be effected'.[10] — Said Rabbah: The case [of redemption] of tithe is different, as it is required there that the money should be [to all intents and purposes] actually in your hand, for the Divine Law says, And bind up the money in thy hand,[11] which is lacking in this case.[12]

Rabbah further said: One who disfigures a coin belonging to another is exempt, the reason being

that he did not do anything [to reduce the substance of the coin]. This of course applies only where he knocked on it with a hammer and so made it flat, but where he rubbed the stamp off with a file he certainly diminished its substance [and would thus be liable]. Raba raised an objection [from the following:] ‘Where [the master] struck [the slave] upon the eye and blinded him or upon the ear and deafened him the slave would on account of that go out free,[13] but [where he struck on an object which was] opposite the slave's eye and he lost his sight or [on an object which was] opposite his ear through which he lost his hearing the slave would [on account of this] not go out free’![14] — Rabbah, however, follows his own reasoning, for Rabbah stated: He who makes his father deaf is subject to be executed,[15] for it is impossible to cause deafness without first making a bruise through which a drop of blood falls into the ear.[16]

And Rabbah [further] stated: He who splits the ear of another's cow[17] is exempt, the reason being that [so far as the value of] the cow [is concerned it] remains as it was before, for he did not do anything [to reduce it], since not all oxen are meant to be sacrificed upon the altar.[18] Raba raised an objection [from the following]: If he did work with the water of Purification or with the Heifer of Purification he would be exempt according to the judgments of Man but liable according to the judgments of Heaven.[19] Now surely this is so only where mere work was done with it,[20] in which case the damage [done to it] is not noticeable, whereas in the case of splitting where the damage is noticeable there would also be liability according to the judgments of Man?[21] — It may, however, be said that the same law would apply in the case of splitting, where he would similarly be exempt [according to the judgments of Man], and that what we are told here is that even in the case of mere work where the damage is not noticeable there would still be liability according to the judgments of Heaven.

Rabbah further stated: If one destroyed by fire the bond of a creditor he would be exempt, because he can say to him, ‘It was only a mere piece of paper of yours that I have burnt.’[22] Rami b. Hania demurred: What are the circumstances?

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(1) I.e., through the supply surpassing the demand.

(2) [Even if the drop in the prices was due to the latter cause.]

(3) [That ten old coins had the weight of eight new ones.]

(4) Market commissioner.

(5) If, however, the increase in weight was less than 25%, the new coins paid would have to be equal in number to the old ones; so Rashi; Tosaf. explains differently.

(6) Lit., ‘the great sea’, the Mediterranean.

(7) [On the principle that damage caused by indirect action is not actionable.]

(8) Cf. Lev. V, 23.

(9) [Har-ha-Melek, also known as Tur Malka. There is still a good deal of uncertainty in regard to the identification of these two localities. Buchler JQR. 1904. 181 ff. maintains that the reference in both cases is to Roman fortifications, access to which was barred to the Jews, the former being simply the Roman Castra, the latter, a fortification situated somewhere in Upper Idumea. For other views, v. Schlatter, Tage Trojans, p. 28, and Neubauer, Geographie, p. 196.]

(10) M.Sh. I, 2. Now, if coins thrown into the ocean are not considered as lost to the owner, as indeed suggested by Rabbah. why should no redemption be effected?

(11) Deut. XIV, 25.

(12) On account of which no redemption could be effected.

(13) In accordance with Ex. XXI, 26-27.

(14) Supra 91a. Does this not prove that even where the substance was not reduced, such as in the case of deafening, still so long as the damage was done there is liability?

(15) As having committed the capital offence of Ex. XXI. 25, v. supra 86a.

(16) [And for the same reason the slave would be set free.]

(17) Rendering her thus disqualified as blemished for the altar; cf. Lev. XXII, 20-25.

(18) Cf. Kid. 66a.

(19) I.e., the 'red heifer' rendering it thus disqualified in accordance with Num. XIX. 2 and 9.
(20) V. supra 56a.
(21) Thus contradicting the view of Rabbah.
(22) V. supra 33b.

Talmud - Mas. Baba Kama 98b

If there are witnesses who know what were the contents of the bond why not draw up another bond which would be valid? If on the other hand such witnesses are not available, how could we know [what were the contents]?[1] — Raba said: [The case could arise] where the defendant takes the plaintiff's word [as to the contents of the bond]. R. Dimi b. Hanina said that [regarding this ruling] of Rabbah there was a difference of opinion between R. Simeon and our [other] Rabbis. According to R. Simeon who held[2] that an object whose absence would cause an outlay of money is reckoned in law as money there would be liability,[3] but according to the Rabbis who said that an object whose absence would cause an outlay of money is not reckoned in law as money there would be no liability. R. Huna the son of R. Joshua demurred: I would suggest that you have to understand R. Simeon's statement, that an object whose absence would cause an outlay of money is reckoned in law as money, to apply only to an object whose substance is its intrinsic value, exactly as [in another case made Out by] Rabbah, for Rabbah said that where leaven was misappropriated before [the arrival of] Passover and a third person came along and burnt it, if this took place during the festival he would be exempt as at that time all are enjoined to destroy it,[4] but if after Passover[5] there would be a difference of opinion between R. Simeon and our Rabbis, as according to R. Simeon who held that an object whose absence would cause an outlay of money is reckoned in law as money, he would be liable,[6] while according to our Rabbis who said that an object whose absence would cause an outlay of money is not reckoned in law as money, he would be exempt. [But whence could it be proved that even] regarding an object whose substance is not its intrinsic value R. Simeon similarly maintained the same view?

Amemar said that the authority who is prepared to adjudicate liability in an action for damage done indirectly[7] would similarly here adjudge damages to the amount recoverable on a valid bill. but the one who does not adjudicate liability in an action for damage done indirectly would here adjudge damages only to the extent of the value of the mere paper. It once happened that in such an action Rafram compelled R. Ashi[8] and damages were collected [from him] like a beam fit for decorative mouldings.[9]

BUT IF . . . THE LEAVEN [HE MISAPPROPRIATED BECAME FORBIDDEN FOR ANY USE BECAUSE] PASSOVER HAD INTERVENED . . . HE CAN SAY TO HIM: HERE, TAKE YOUR OWN. Who is the Tanna who, in regard to things forbidden for any use, allows [the offender] to say, 'Here, take your own'? — R. Hisda said: He is R. Jacob, as indeed taught: If an ox killed [a person], and before its judgment was concluded its owner disposed of it, the sale would hold good; if he pronounced it sacred, it would be sacred; if it was slaughtered its flesh would be permitted [for food]; if a bailee returned it to [the house of] its owner, it would be a legal restoration. But if after its sentence had already been pronounced, the owner disposed of it, the sale would not be valid; if he consecrated it, it would not be sacred; if it was slaughtered its flesh would be forbidden [for any use]; if a bailee returned it to [the house of] its owner, it would not be a legal restoration. R. Jacob, however, says: Even if after the sentence had already been pronounced the bailee returned it to its owner, it would be a legal restoration.[10] Now, is not the point at issue between them[11] that R. Jacob, in the case of things forbidden for any use, allows the offender to say. 'Here, take your own', whereas the Rabbis disallow this in the case of things forbidden for any use?[12] Rabbah said to him:[13] No; all may agree that even regarding things forbidden for any use the offender is allowed [in certain circumstances] to say, 'Here, take your own', for if otherwise. why did they[11] not differ in the case of leaven during Passover?[14] Rabbah therefore said: Here [in the case before us] the point at issue

must be whether [or not] sentence may be pronounced over an ox in its absence. The Rabbis hold that sentence cannot be pronounced over an ox in its absence so that the owner may plead against the bailee thus: ‘if you had returned it to me [before the passing of the sentence], I would have driven it away to the pastures,[15] whereas now you have surrendered my ox into the hands of those against whom I am unable to bring any action.’[16] R. Jacob, however, holds that sentence can be pronounced over the ox even in its absence, so that the bailee may retort to the owner thus: In any case the sentence would have been passed on the ox, even in its absence.

R. Hisda came across Rabbah b. Samuel and said to him: Have you been taught anything regarding things forbidden for any use?[17] — He replied: Yes, I was taught [the following]: ‘He shall restore the misappropriated object.[18] What is the point of the additional words, which he violently took away? [It is that] so long as it was intact he may restore it.[19] Hence did the Rabbis declare that if one misappropriated a coin and it went out of use, fruits and they became stale, wine and it became sour,[20] terumah[21] and it became defiled,[22] leaven and [it became forbidden for any use because] Passover intervened,[23] an animal and it became the instrument for the commission of a sin,[24] or an ox and [it subsequently became subject to be stoned,[25] but] its judgment was not yet concluded, he can say to the owner, ‘Here, take your own.’ Now, which authority can you suppose to apply this ruling only where the judgment was not yet concluded, but not where the judgment was already concluded, if not the Rabbis, and it is at [the same time] stated that [if he misappropriated] leaven and [it became forbidden for any use because] Passover intervened[26] he can say to him, ‘Here, take your own’?[27] — He replied:[28] If you happen to meet them[29] [please] do not tell them anything [of this teaching].[30]

[‘If one misappropriated] fruits and they became stale . . . he can say to him: "Here, take your own."’ But did we not learn:[31] [IF HE MISAPPROPRIATED] FRUITS AND THEY BECAME STALE . . . HE WOULD [CERTAINLY] HAVE TO PAY ACCORDING TO [THE VALUE AT] THE TIME OF THE ROBBERY? — Said R. Papa: The latter ruling[32] refers to where the whole of them became stale,[33] the former to where only parts of them became stale.

MISHNAH. IF AN OWNER GAVE CRAFTSMEN [SOME ARTICLES] TO SET IN ORDER AND THEY SPOILT THEM, THEY WOULD BE LIABLE TO PAY. WHERE HE GAVE A JOINER A CHEST, A BOX OR A CUPBOARD[34] SET IN ORDER AND HE SPOILT IT, HE WOULD BE LIABLE TO PAY. IF A BUILDER UNDERTOOK TO PULL DOWN A WALL AND BROKE THE STONES OR DAMAGED THEM, HE WOULD BE LIABLE TO PAY, BUT IF WHILE HE WAS PULLING DOWN THE WALL ON ONE SIDE ANOTHER PART FELL ON ANOTHER SIDE, HE WOULD BE EXEMPT, THOUGH, IF IT WAS CAUSED THROUGH THE KNOCKING, HE WOULD BE LIABLE.

GEMARA. R. Assi said: The Mishnaic ruling could not be regarded as applying except where he gave a joiner a box, a chest, or a cupboard to knock a nail in and while he was knocking in the nail he broke them. But if he gave the joiner timber to make a chest, a box or a cupboard and after he had made the box, the chest or the cupboard they were broken by him, he would be exempt,[35] the reason being that a craftsman acquires title to the increase in [value caused by the construction of] the article.[36] But we have learnt: IF AN OWNER GAVE CRAFTSMEN SOME ARTICLES TO SET IN ORDER AND THEY SPOILT THEM THEY WOULD BE LIABLE TO PAY. Does this not mean that he gave them timber to make utensils?[37] — No, [he gave them] a chest, a box or a cupboard.[38] But since the concluding clause in the text mentions ‘chest, box or cupboard’ is it not implied that the opening clause refers to timber? — It may, however, be said that [the later clause] only means to expand the earlier [as follows]: ‘In the case where an owner gave craftsmen some articles to set in order and they spoiled them, how would they be liable to pay? As, e.g., where he gave a joiner a chest, a box, or a cupboard.’ There is also good reason for supposing that the text [of the latter clause] was merely giving an example. For should you assume that the opening clause refers to

timber, after we have been [first] told that [even] in the case of timber they would be liable to pay and that we should not say that the craftsman acquires title to the increase in [value caused by the construction of] the article, what necessity would there be to mention afterwards chest, box and portable turret?[39] — If only on account of this, your point could hardly be regarded as proved, for the later clause might have been inserted to reveal the true meaning of the earlier clause, so that you should not think that the earlier clause refers to [the case where he gave the joiner a] chest, box and cupboard, whereas [where he gave him] timber the law would not be so; hence the concluding clause specifically mentions chest, box and cupboard[38] to indicate that the opening clause refers to timber, and that even in that case the craftsman would be liable to pay.[37] May we say that he[40] can be supported [from the following]: If wool was given to a dyer

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(1) [To know what liability to impose on him.]

(2) Supra 71b.

(3) Since the creditor has through the destruction of his bond suffered an actual loss of money.

(4) Cf. Pes. II. 2.

(5) When though forbidden to be used for any purpose it is still not under an injunction to be destroyed; cf. Pes. II. 2.

(6) To the robber, since the robber would have been able to restore the leaven to the owner and say. 'Here there is thine before thee', whereas after the leaven was destroyed he would have to pay the full original value if the leaven.

(7) I.e., R. Meir; cf. infra 100a.

(8) [Who in his childhood had destroyed a bond of a creditor.]

(9) A metaphorical expression for 'straight and exact and out of the best of the estate', as supra p. 16; v. Rashi and Sh.M. a.l.

(10) v. supra 45a for notes.

(11) R. Jacob and the Rabbis.

(12) Our Mishnah thus represents the view of R. Jacob.

(13) I.e., to R. Hisda.

(14) Whether a robber would be entitled to restore it and plead 'Here there is thine before thee'.

(15) And no sentence would have been passed on it.

(16) [I.e., the court. This plea would, however, not apply to leaven where the incidence of the prohibition is not due to an act of the robber but to the intervention of the Passover (Rashi).]

(17) [Whether the plea 'Here, take your own' is admissible in their case.]

(18) Lev. V, 23.

(19) Though it meanwhile became valueless.

(20) [MS.M. rightly omits 'wine and it became sour' as in this case payment is according to value at time of robbery; Var. lec. and he poured from it a libation (to an idol).]

(21) V. Glos.

(22) V. p. 561, n. 4.

(23) V. ibid., n. 5.

(24) V. ibid., n. 6.

(25) V. ibid., n. 8.

(26) V. p. 561, n. 5.

(27) Thus confirming the view of Rabbah as against that of R. Hisda.

(28) I.e., R. Hisda to Rabbah b. Samuel.

(29) My colleagues.

(30) For a similar attitude cf. 'Er. 11b where R. Shesheth said so to the same Rabbah b. Samuel, and ibid. 39b where the same R. Shesheth said so to Raba(== Rabbah) b. Samuel.

(31) In our Mishnah.

(32) Where payment must be made.

(33) And the change was definite.

(34) Lit., 'a turret', a cupboard in the form of a turret.

(35) So far as the increase in value caused by the construction of the article is concerned, [for when he parts with it he effects a sale of the improvement of the article and the stipulated sum paid to him is but the purchase money for the

same.]
(36) Cf. B.M. 112a.
(37) And their liability would thus extend to the whole value of the utensils made by them.
(38) For some repair, in the performance of which they were broken.
(39) In which case the law is quite evident.
(40) I.e., R. Assi.

Talmud - Mas. Baba Kama 99a

and it was burnt by the dye, he would have to pay the owner the value of his wool.[1] Now, it is only the value of the wool that he has to pay, but not the combined value of the wool and the increase in price.[2] Does this not apply even where it was burnt after the dye was put in,[3] in which case there has already been an increase in value, which would thus show[4] that the craftsman acquires title to the improvement carried out by him on any article? — Said Samuel: We are dealing here with a case where, e.g., it was burnt at the time when the dye was put in,[5] so that there has not yet been any increase in value. But what would it be if it were burnt after it was put in?[6] Would he really have to pay the combined value of the wool and the increase? Must we not therefore say that Samuel did not hold the view of R. Assi?[7] — Samuel might say to you that we are dealing here with a case where e.g., both the wool and the dye belonged to the owner, so that the dyer had to be paid only for the labour of his hands.[8] But if so, should it not have been stated that the dyer would have to pay the owner for the value of both his wool and his dye? — Samuel was only trying to point out that a refutation[9] would be possible.[10] Come and hear:[11] If he gave his garment to a craftsman and the latter finished it and informed him of the fact, even if from that time ten days elapsed [without his paying him] he would through that not be transgressing the injunction thou shalt not keep all night.[12] But if [the craftsman] delivered the garment to him in the middle of the day, as soon as the sun set [without payment having been made] the owner would through that transgress the injunction. Thou shalt not keep all night.[13] Now, if you assume that a craftsman acquires title to the improvement [carried out by him] on any article,[14] why should the owner be transgressing[15] the injunction. Thou shalt not keep all night? — Said R. Mari the son of R. Kahana: [The work required in this case was] to remove the woolly surface of a thick cloth where there was no accretion.[16] But be it as it may, since he gave it to him for the purpose of making it softer, as soon as he made it softer was there not already an improvement? — No; the ruling is necessary [for meeting the case] where he hired him to stamp upon it [and undertook to pay him] for every act of stamping one ma'ah,[17] which is but the hire [for labour].

But according to what we assumed previously that he was not hired for stamping,[18] [this ruling] would have been a support to [the view of] R. Shesheth, for when it was asked of R. Shesheth[19] whether in a case of contracting the owner would transgress[20] the injunction, Thou shalt not keep all night, or would not transgress, he answered that he would transgress! But are we [at the same time] to say that R. Shesheth differed from R. Assi?[21] — Samuel b. Aha said: [R. Shesheth was speaking] of a messenger sent to deliver a letter.[22]

Shall we say [that the same difference is found between] the following Tannaim? [For it was taught: If a woman says,] ‘Make for me bracelets, earrings and rings,[23] and I will become betrothed unto thee,’[24] as soon as he makes them she becomes betrothed [unto him];[25] this is the view of R. Meir. But the Sages say that she would not become betrothed until something of actual value has come into her possession.[26] Now, what is meant by actual value? We can hardly say that it refers to this particular value,[27] for this would imply that according to R. Meir [it was] not [necessary for her to come into possession] even of that value. If so, what would be the instrument to effect the betrothal?[25] It therefore appears evident that what was meant by ‘actual value’ was some other value.[28] Now again, it was presumed [by the students] that according to all authorities there is continuous [growth of liability for] hire from the very commencement of the work until the end of

it,[29] and also that according to all authorities if one betroths [a woman] through [foregoing] a debt [owing to him from her], she would not be betrothed.[30] Would it therefore not appear that they[31] differed on the question whether a craftsman acquires title to the improvement carried out by him upon an article, R. Meir maintaining that a craftsman acquires title to the improvement carried out by him upon an article,[32] while the Rabbis maintained that the craftsman does not acquire title to the improvement carried out by him upon an article?[33] — No; all may agree that the craftsman does not acquire title to the improvement carried out by him upon an article, and here they differ as to whether there is progressive [liability for] hire from the very commencement of the work until the very end, R. Meir maintaining that there is no liability for hire except at the very end,[34] whereas the Rabbis maintained that there is progressive [liability for] hire[35] from the commencement until the very end.[36] Or if you wish I may say that in the opinion of all there is progressive [liability for] hire[35] from the very commencement to the end,[36] but here they[37] differ [in regard to the law] regarding one who betroths [a woman] by [forgoing] a debt [due from her], R. Meir maintaining that one who betroths [a woman] by [forgoing] a debt [due from her] would thereby effect a legal betrothal, whereas the [other] Rabbis maintained that he who betroths [a woman] by [forgoing] a debt [due from her] would thereby not effect a valid betrothal.[38]

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(1) Infra 100b.

(2) Caused by the process of dyeing.

(3) Lit., 'after falling in'. i.e. after the dye had already exercised its effect on the wool which thereby increased in value.

(4) Since he has to pay only for the wool and nor for its increase in value.

(5) Lit., 'at the time of falling in', i.e., before the dye has yet exercised any effect on the wool.

(6) V. supra n. 3.

(7) According to whom even then only the original value of the wool would have to be paid for. [Which means that R. Assi's view cannot stand since in civil law we follow the ruling of Samuel?]

(8) In which case the craftsman acquires no title to the increase in value, since the dye which imparts to the wool the increased value is not his.

(9) Of the proof advanced in support of R. Assi.

(10) Without, however, intending to oppose R. Assi.

(11) Cf. B.M. 112a.

(12) Lev. XIX, 13.

(13) V. p. 576, n. 11.

(14) So that when he parts with it he effects a sale of the improvement of the article and the stipulated sum paid to him is but the purchase money for the same.

(15) For surely by not paying purchase money in time a purchaser would not render himself liable to this transgression.

(16) To which the worker should acquire title.

(17) v. Glos.

(18) But for the completion of a certain undertaking, [in which case he would be a contractor and in a sense a vendor and yet the injunction of not delaying the payment of the hire applies.]

(19) V. B.M. 112a.

(20) By not paying the stipulated sum in time.

(21) Who maintained that a craftsman (i.e., a contractor) becomes the owner of the improvement carried out by him upon the article and when parting with it is but a vendor to whom purchase money has to be paid, and to whom the injunction does not apply.

(22) Where there is no tangible accretion to which a title of ownership could be acquired, and to which consequently there applies the injunction.

(23) The woman giving the man the material.

(24) This was spoken by an unmarried woman to her prospective husband.

(25) In accordance with Kid. I,1.

(26) Kid. 48a.

(27) I.e., the bracelets.

(28) I.e., irrespective of the bracelets, earrings and rings made by him. Whereas according to R. Meir these alone suffice.

(29) I.e., that strictly speaking each perutah of the hire becomes due as soon as work for a perutah is completed; a perutah is the minimum value of liability; v. Glos.
(30) As this is not reckoned in law sufficient consideration; cf. Kid. 6b and 47a.
(31) I.e., R. Meir and the Rabbis.
(32) So that when he makes her bracelets, earrings and rings out of her material, the improvement becomes his and could therefore constitute a valid consideration.
(33) But since the improvement was never his he only had an outstanding debt for the hire upon the other party who was in this case his prospective wife, and as the forfeiture of a debt is not sufficient consideration some 'actual value' must be added to make the consideration valid.
(34) I.e., when he restores her the manufactured bracelets etc., in which case the hire had previously never become a debt.
(35) Which thus becomes a debt rising from perutah to perutah (and as such could not constitute valid consideration).
(36) V. p. 578, n. 7.
(37) R. Meir and the Rabbis.
(38) V. p. 578, n. 8.

Talmud - Mas. Baba Kama 99b

Raba, however, said that all might have been agreed that there is progressive [liability for] hire from the very commencement until the end, and also that one who betroths [a woman] by [forgoing] a debt [due from her] would not thereby effect a valid betrothal, and it was again unanimously held that a craftsman does not acquire title to the improvement carried out by him upon an article,[1] and here we are dealing with a case where, e.g., he added a particle out of his own [funds[2] to the raw material supplied by her], R. Meir holding that where the [instrument of betrothal] is both [the foregoing of] a debt and [the giving of] a perutah,[3] the woman thinks more[4] of the perutah,[2] whereas the Rabbis held that where the [instrument of betrothal] is both [the foregoing of] a debt and [the giving of] a perutah, she thinks more of the debt [which she is excused].

This was also the difference between the following Tannaim, as taught: [If a man says,] 'In consideration of the hire for the work I have already done for you[5] [be betrothed to me],'[6] she would not become betrothed,[7] but [if he says], 'In consideration of the hire for work which I will do for you [be betrothed to me]', she would become betrothed. R. Nathan said that if he said, 'In consideration of the hire for work I will do for you,' she would thereby not become betrothed; and all the more so in this case where he said, 'In consideration of the hire for work I have already done for you.' R. Judah the Prince, however, says: It was truly stated that whether he said, 'In consideration of the hire for the work I have already done for you,'[6] or, 'In consideration of the hire for work I will do for you,' she would not thereby become betrothed, but if he added a particle out of his own funds[8] [to the raw material supplied by her], she would thereby become betrothed.[9] Now, the difference between the first Tanna and R. Nathan is on the question of the liability for hire [whether or not it is progressive from the very commencement],[10] while the difference between R. Nathan and R. Judah the Prince is on the question [what is her attitude when the betrothal is made both by the foregoing of] a debt [and the giving of] a perutah.[11]

Samuel said: An expert slaughterer who did not carry out the slaughter properly[12] would be liable to pay, as he was a damage-doer, [and] he was careless, and this would be considered as if the owner asked him to slaughter for him from one side[13] and he slaughtered for him from the other. But why was it necessary for him to say both 'he was a damage-doer [and] he was careless'? — If he had said only he was a damage-doer,I might have said that this ruling should apply only where he was working for a hire,[14] whereas where he was working gratuitously this would not be so; we are therefore told, [that there is no distinction as] he was careless. R. Hama b. Guria raised an objection to this view of Samuel [from the following]: If an animal was given to a slaughterer and he caused it to become nebelah,[15] if he was an expert he would be exempt, but if an amateur[16] he would be liable.

If, however, he was engaged for hire, whether he was an amateur or expert he would be liable. [Is this not in contradiction to the view of Samuel?] — He replied:[17] Is your brain disordered? Then another one of our Rabbis came along and raised the same objection to his view. He said to him:[18] 'You surely deserve to be given the same as your fellow.[19] I was stating to you the view of R. Meir and you tell me the view of the Rabbis! Why did you not examine my words carefully wherein I said: "For he was a damage-doer [and] he was careless, and this should be considered as if the owner asked him to slaughter for him from one side[20] and he slaughtered for him from the other." For surely who reasons in this way if not R. Meir, who said that a human being has to take greater heed to himself?' But what [statement of] R. Meir [is referred to]? We can hardly say the one of R. Meir which we learned: (Mnemonic: KLN)[21] 'If the owner fastened his ox [to the wall inside the stable] with a cord or shut the door in front of it properly but the ox [nevertheless] got out and did damage, whether it had been Tam or already Mu'ad he would be liable; this is the opinion of R. Meir,'[22] for surely, in that case, there they differed as to the interpretation of Scriptural Verses![23] — It therefore seems to be the one of R. Meir which we learned: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black and he dyed it red, R. Meir says that he would have to pay [the owner] for the value of the wool.[24] But did he not there spoil it[25] with his own hands?[26] — The reference therefore must be to the one of R. Meir which was taught: 'If a pitcher is broken and [the potsherds] are not removed, or a camel falls down and is not raised, R. Meir orders payment for any damage resulting therefrom, whereas the [other] Sages say that no action can be instituted in civil courts though there is liability according to divine justice,'[27] and we came to the conclusion[28] that they differed as to whether or not stumbling implies negligence.

Rabbah b. Bar Hanah said that R. Johanan stated that an expert slaughterer who did not carry out the slaughter properly[29] would be liable to pay, even if he was as skilled as the slaughterer of Sepphoris. But did R. Johanan really say so? Did Rabbah b. Bar Hanah not say that such a case came before R. Johanan in the synagogue of Maon[30] and he said to the slaughterer. 'Go and bring evidence that you are skilled to slaughter hens, and I will declare you exempt'? — There is, however, no difficulty, as the latter ruling was [in a case where the slaughterer was working] gratuitously whereas the former ruling applies [where the slaughterer works] for hire,[31] exactly as R. Zera said: If one wants the slaughterer to become liable to him,[32] he shall give him a dinarius beforehand.[31]

An objection was raised: If wheat was brought to be ground and the miller omitted to moisten it and he made it into branflour or coarse bran, or if flour [was given] to a baker and he made out of it bread which crumbled, or an animal to a slaughterer and he rendered it nebelah,[33] he would be liable, as he is on the same footing as a worker who receives hire.[34] [Does this not imply that he was working gratuitously? — No.] read: 'Because he is a worker receiving hire.'[31]

A case of magrumeta[35] was brought before Rab, who declared it trefa and nevertheless released the slaughterer from any payment. When R. Kahana and R. Assi met that man[36] they said to him: 'Rab did two things with you.' What was meant by these two things? If you say it meant two things to his[36] disadvantage, one that Rab should have declared it kasher in accordance with R. Jose b. Judah,[37] whereas he declared it trefa in accordance with the Rabbis,[37] and again that since he acted in accordance with the Rabbis,[37] he should at any rate have declared the slaughterer liable, is it permitted to say a thing like that? Was it not taught:[38] When [a judge] leaves [the court] he should not say, 'I wanted to declare you innocent, but as my colleagues insisted on declaring you liable I was unable to do anything since my colleagues formed a majority against me,' for to such behaviour is applied the verse, A tale-bearer revealeth secrets?[39] — It must therefore be said that the two things were to his[36] advantage, first that he did not let you eat a thing which was possibly forbidden, secondly that he restrained you from receiving payment which might possibly have been a misappropriation.

It was stated: If a denar was shown to a money changer [and he recommended it as good] but it

was subsequently found to be bad, in one Baraitha it was taught that if he was an expert he would be exempt but if an amateur he would be liable, whereas in another Baraitha it was taught that whether he was an expert or an amateur he would be liable. R. Papa stated: The ruling that in the case of an expert he would be exempt refers to such, e.g., as Dankcho and Issur[40] who needed no [further] instruction whatever, but who made[41] a mistake regarding a new stamp at the time when the coin had just [for the first time] come from the mint.

There was a certain woman who showed a denar to R. Hiyya and he told her that it was good. Later she again came to him and said to him, 'I afterwards showed it [to others] and they said to me that it was bad, and in fact I could not pass it.' He therefore said to Rab: Go forth and change it for a good one and write down in my register that this was a bad business. But why [should he be different from] Dankcho and Issur[42] who would be exempt because they needed no instruction? Surely R. Hiyya also needed no instruction? — R. Hiyya acted within the 'margin of the judgment,'[43] on the principle learnt by R. Joseph: 'And shalt show them[44] means

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(1) V. p. 578, n. 11.

(2) Which could constitute valid consideration.

(3) I.e., a coin which constitutes the minimum of value in legal matters.

(4) V. Sanh. 19b.

(5) The article having been already returned to her.

(6) This was spoken to a prospective wife.

(7) V. p. 578. n. 8.

(8) V. p. 579, n. 7.

(9) Kid. 48b.

(10) [R. Nathan holding that it is, whereas the first Tanna holds that there is no liability except at the very end.]

(11) [R. Nathan maintains that the woman thinks primarily of the debt, while, according to R. Judah the Prince she thinks more of the perutah.]

(12) As required by the ritual, and has thus rendered the animal unfit for consumption according to the dietary laws.

(13) Of the throat.

(14) Where he could be made liable even in the absence of carelessness.

(15) I.e., unfit for consumption through a flaw in the slaughter; v. Glos.

(16) As he had no right to slaughter.

(17) I.e., Samuel to R. Hama.

(18) I.e., Samuel to the other Rabbi.

(19) R. Hama.

(20) V. p. 580, n. 9.

(21) Keyword consisting of the Hebrew initial words of the three teachings that follow.

(22) Supra 45b.

(23) [V. loc. cit. This case cannot accordingly be appealed to as precedent.]

(24) Infra 100b.

(25) Lit., 'burn it'.

(26) Since he intended to dye it in that colour in which he actually dyed it, whereas in the case of the slaughterer, the damage looks more like an accident.

(27) Supra 28b-29a.

(28) [R. Meir holding that a human being must take greater heed to himself.]

(29) V. p. 580, n. 8.

(30) [In Judah, I Sam. XXIII, 24.]

(31) V. p. 580, n. 10.

(32) Were the slaughter not carried out effectively.

(33) V. p. 581, n. 1.

(34) Tosef. B.K. X, 4 and B.B. 93b.

(35) I.e., where the slaughter was started in the appropriate part of the throat but was finished higher up, in which matter

there is a difference of opinion between R. Jose b. Judah and the Rabbis in Hul. 1, 3.

(36) I.e., the owner of the animal.

(37) Hul. ibid.

(38) Sanh. 29a.

(39) Prov. XI, 13.

(40) Two renowned money changers in those days.

(41) Lit., 'But where was their mistake; they made, etc.

(42) V. p. 583. n. 8.

(43) For the sake of equity and mere ethical considerations. [On this principle termed lifenim mi-shurath ha-din according to which man is exhorted not to insist on his legal rights. v. Herford, Talmud and Apocrypha, pp. 140, 280. That there was nothing Essenic in that attitude, but that it is a recognised principle in Rabbinic ethics has already been shown by Buchler, Types, p. 37.]

(44) Ex. XVIII, 20; the verse continues, the way wherein they must walk and the work.

Talmud - Mas. Baba Kama 100a

the source of their livelihood;[1] the way means deeds of lovingkindness; they must walk means the visitation of the sick; wherein means burial, and the work means the law; which they must do means within the margin of the judgment.'[2] Resh Lakish showed a denar to R. Eleazar who told him that it was good. He said to him: You see that I rely upon you. He replied: Suppose you do rely on me, what of it? Do you think that if it is found bad I would have to exchange it [for a good one]? Did not you yourself state that it was [only] R. Meir who adjudicates liability in an action for damage done indirectly,[3] which apparently means that it was only R. Meir who maintained so whereas we did not hold in accordance with his view? — But he said to him: No; R. Meir maintained so and we hold with him. But to what [statement of] R. Meir [was the reference]? It could hardly be the one of R. Meir which we learned: If a judge in giving judgment [in a certain case] has declared innocent the person who was really liable or made liable a person who was really innocent, declared defiled a thing which was levitically clean, or declared clean a thing which was really defiled,[4] his decision would stand, but he would have to make reparation out of his own estate,[5] for was it not taught in connection with this that R. Elai said that Rab stated[6] that [this would be so] only where he personally executed the judgment by his own hand?[7] The reference therefore appears to be the one of R. Meir which we learned: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black and he dyed it red, R. Meir says that he would have to pay [the owner] for the value of his wool.[8] But did he not in that case also spoil it with his own hands?[9] The reference must therefore be to the one of R. Meir which we learned: He who with [the branches of] his vine covers the crops of his fellow renders them proscribed[10] and will be liable for damages.[11] But there also did he not do the mischief with his own hands? The reference must therefore be to the one of R. Meir which was taught: 'If the fence of a vineyard [near a field of crops] is broken through,

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(1) Either the means of an honest livelihood, as explained by Rashi on B.M. 30b or the study of the living law, as interpreted by Rashi a.l.

(2) B.M. 30b.

(3) Supra 98b.

(4) And it so happened that that thing was consequently mixed with clean things and this spoiled them all; v. Sanh. (Sonc. ed.) p. 210, nn. 6-8.

(5) Bk. IV, 4.

(6) Bek. 28b.

(7) I.e., where he acted both as judge and executive officer, in which case the damage was directly committed by him personally.

(8) V. next Mishnah.

(9) By dyeing it the wrong colour.

(10) In accordance with Deut. XXII, 9.

(**11**) Kil. VII, 4.

Talmud - Mas. Baba Kama 100b

[the owner of the crops] may request [the owner of the vineyard] to repair it;[1] so also if it is broken through again he may similarly request him to repair it. But if the owner of the vineyard abandons it altogether and does not repair it he would render the produce proscribed and would incur full responsibility.[2]

MISHNAH. IF WOOL WAS GIVEN TO A DYER AND THE DYE[3] BURNT IT, HE WOULD HAVE TO PAY THE OWNER THE VALUE OF HIS WOOL. BUT IF HE DYED IT KA'UR,[4] THEN IF THE INCREASE IN VALUE[5] IS GREATER THAN HIS OUTLAY THE OWNER WOULD GIVE HIM ONLY THE OUTLAY, WHEREAS IF THE OUTLAY[6] WAS GREATER THAN THE INCREASE IN VALUE HE WOULD HAVE TO PAY HIM THE AMOUNT OF THE INCREASE, [WHERE WOOL WAS HANDED TO A DYER] TO DYE RED AND HE DYED IT BLACK, OR TO DYE BLACK AND HE DYED IT RED, R. MEIR SAYS THAT HE WOULD HAVE TO PAY [THE OWNER] FOR THE VALUE OF HIS WOOL. R. JUDAH, HOWEVER, SAYS: IF THE INCREASE IN VALUE[7] IS GREATER THAN THE OUTLAY, THE OWNER WOULD PAY THE DYER HIS OUTLAY, WHEREAS IF THE OUTLAY EXCEEDED THE INCREASE IN VALUE HE WOULD HAVE TO PAY HIM NO MORE THAN THE INCREASE.[8]

GEMARA. What does KA'UR mean? — R. Nahman said that Rabbah b. Bar Hanah stated: It means that the 'copper'[9] dyed it. What is meant by saying that the 'copper' dyed it? — Said Rabbah b. Samuel:

(**1**) For otherwise he would have to remove his vines four cubits from the border; cf. B.B. 26a.

(**2**) V. B.B. (Sonc. ed.) p. 2 and notes.

(**3**) Lit., 'The cauldron', 'the dyer's kettle'.

(**4**) Explained in the Gemara.

(**5**) Resulting from the work done by him.

(**6**) Incurred by the dyer.

(**7**) V. p. 585, n. 11.

(**8**) V. supra 95a-b.

(**9**) **

Talmud - Mas. Baba Kama 101a

He dyed it with the sediments of the kettles.

Our Rabbis taught: If pieces of wood were given to a joiner to make a chair and he made a bench out of them, or to make a bench and he made a chair out of them R. Meir says that he will have to refund to the owner the value of his wood, whereas R. Judah says that if the increase in value exceeds his outlay the owner would pay the joiner his outlay, whereas if the outlay exceeds the increase in value he would have to pay him no more than the increase. R. Meir, however, agrees that where pieces of wood were given to a joiner to make a handsome chair out of and he made an ugly chair out of them, or to make a handsome bench and he made an ugly one if the increased value would exceed the outlay the owner would pay the joiner the amount of his outlay, whereas if the outlay exceeded the increase in value he would have to pay him no more than the amount of the increase.

It was asked: Is the improvement effected by colours a [separate] item independent of the wool, or is the improvement effected by colours not a [separate] item independent of the wool? How can such

a question arise in practice? The case can hardly be one where a man misappropriated pigments and after having crushed and dissolved them he dyed wool with them,for would he not have acquired title to them through the change which they underwent?[1] — No; the query could have application only where he misappropriated pigments already dissolved and used them for dyeing, so that if the improvement effected by colours is a [separate] item independent of the wool the plaintiff might plead: 'Give me back the dyes which you have taken from me',[2] but if on the other hand the improvement effected by colours is not a [separate] item independent of the wool the defendant might say to him: 'I have nothing of yours with me.' But I would here say: [Even] if the improvement effected by colours is not a [separate] item independent of the wool, why should the defendant be able to say to him: 'I have nothing of yours with me', seeing that the plaintiff can say to him: 'Give me back the pigments of which you have deprived me'?[3] — We must therefore take the other alternative: Are we to say that the improvement effected by colours is not a [separate] item independent of the wool and the defendant would have to pay him,[4] or is the improvement effected by colours a [separate] item independent of the wool and the defendant can say to him: 'Here are your dyes before you and you can take them away.'[5] But how can he take them away? By means of soap? But soap would surely remove them without making any restitution![6] — We must therefore be dealing here [in the query] with a case were e.g., a robber misappropriated dyes and wool of one and the same owner, and dyed that wool with those dyes and was returning to him that wool. Now, if the improvement effected by colours is a [separate] item independent of the wool, the robber would thus be returning both the dyes and the wool, but if the improvement effected by colours is not a [separate] item independent of the wool, it was only the wool which he was returning, whereas the dyes he was not returning.[7] But I would still say: Why should it not be sufficient [for the robber to do this] seeing that he caused the wool to increase in value?[8] — No: the query might have application where coloured wool had meanwhile depreciated in price.[9] Or if you wish I may say that it refers to where e.g., he painted with them an ape[10] [in which case there was thereby no increase in value]. Rabina said: We were dealing here [in the query] with a case where e.g., the wool belonged to one person and the dyes to another,[11] and as an ape[12] came along and dyed that wool of the one with those dyes of the other; now, is the improvement effected by the colours a [separate] item independent of the wool so that the owner of the dyes is entitled to say to the owner of the wool: 'Give me my dyes which are with you',[13] or is the improvement effected by colours not a [separate] item apart from the wool, so that he might retort to him: 'I have nothing belonging to you'? — Come and hear: A garment which was dyed with the shells of the fruits of 'Orlah[14] has to be destroyed by fire.[15] This proves that appearance is a distinct item [in valuation]![16] — Said Raba: [It is different in this case where] any benefit visible to the eye[17] was forbidden by the Torah as taught Uncircumcised: it shall not be eaten of;[18] this gives me only its prohibition as food. Whence do I learn that no other benefit should be derived from it, that it should not be used for dyeing with, that a candle should not be lit with it? It was therefore stated further, Ye shall count the fruit thereof as uncircumcised: . . . . uncircumcised, it shall not be eaten of, for the purpose of including all of these.[19]

Come and hear: A garment which was dyed with the shells [of the fruits] of the sabbatical year has to be destroyed by fire![20] — It is different there, as Scripture stated: 'It shall be'[21] implying that it must always be as it was.[22]

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(1) And the whole liability upon him would be to pay the original value of the dyes as supra p. 541.

(2) Since his dyes form now an integral part of the defendant's wool.

(3) And with reference to which you have accordingly become subject to the law of robbery.

(4) For the dyes.

(5) I.e., remove them from the wool.

(6) To which a robber is subject; cf. Lev. V, 23.

(7) And would therefore still have to pay for the dyes.

(8) By having dyed it with the dyes misappropriated from the same plaintiff.

(9) And the increase through the process of dyeing is below the price of the dyes, [in which case the plaintiff can say that he would have sold the pigments before the depreciation].
(10) Or as interpreted by others 'a basket of willows' which he misappropriated from the same plaintiff.
(11) And it was not a case of misappropriation at all.
(12) Belonging to no particular owner who could be made liable.
(13) V. p. 587. n. 2.
(14) I.e., the fruit in the first three years of the plantation of the tree; cf. Glos.
(15) 'Orl. III, 1. 'Orlah is proscribed from any use; cf. Lev. XIX, 23.
(16) To render the garment itself proscribed.
(17) Cf. Me'il. 20a.
(18) Lev. XIX, 23.
(19) Pes. 22b. Kid. 56b. 'Orlah thus affords no precedent.
(20) Now, could it not be proved from this that mere colour is a distinct item!
(21) Lev. XXV, 7.
(22) Even after it has been changed and altered by various processes.

Talmud - Mas. Baba Kama 101b

Raba pointed out a contradiction. We have learnt: 'A garment which was dyed with the shells [of the fruits] of 'Orlah has to be destroyed by fire,' thus proving that colour is a distinct item; but a contradiction could be pointed out: 'If a quarter [of a log][1] of [the] blood [of a dead person] has been absorbed in the floor of a house, [all in] the house[2] would become defiled,[3] or as others say, '[all in] the house would not be defiled'; these two statements, however, do not differ, as the former refers to utensils which were there at the beginning,[4] whereas the latter refers to the utensils which were brought there subsequently [after the blood was already absorbed 'in the ground].[5] 'If the blood was absorbed in a garment, we have to see: if on the garment being washed a quarter [of a log] of blood would come out of it,[6] it would cause defilement,[7] but if not, it would not cause defilement'![8] — Said R. Kahana: The ruling stated in this Mishnah is one of concessions made in respect of quarters [of a log], applicable in the case of blood of one weltering in his blood who defiles by [mere] Rabbinic enactment.[9]

Raba again pointed out a contradiction: We have learnt: '[Among] the species of dyes, the aftergrowths of woad and madder are subject to the law of the sabbatical year,[10] and so also is any value received for them subject to the law of the sabbatical year; they are subject to the law of removal[11] and any value received for them is similarly subject to the law of removal,'[12] thus proving that wood is subject to the sanctity of the sabbatical year; but a contradiction could be pointed out: 'leaves of reeds and leaves of vines which have been heaped up for the purpose of making them into a hiding place upon a field, if they were gathered to be eaten would be subject to the sanctity of the sabbatical year but if they were gathered for firewood they would not be subject to the sanctity of the sabbatical year'![13] — But he himself answered: Scripture stated: 'for food',[14] implying that the law applies only to produce from which a benefit is derived at the time of its consumption,[15] so that the wood for fuel is excluded as the benefit derived from it[16] is after its consumption. But is there not the wood of the pine tree [used for torches] from which a benefit is derived at the time of its consumption? — Raba said:

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(1) A liquid measure; cf. Glos.
(2) Subject to defilement.
(3) As a quarter of a log of blood of a dead person is equal in law to the corpse itself and is subject to Num. XIX, 14.
(4) I.e., before the blood was absorbed in the ground when it caused defilement.
(5) And could no more cause defilement.
(6) As to the way of calculation, v. Rashi and Tosaf. a.l.
(7) As the blood is in stich a case still considered present and existing in the garment.

(8) Because the blood could no more be considered present in the garment. Oh. III, 2. This proves that a mere colour is not a distinct item.
(9) Since it was doubtful whether the quarter of the log of blood oozed out while the person was still alive and clean or afterwards and unclean; cf. Nid. 71a.
(10) Lev. XXV. 2-7.
(11) From the house into the field as soon as similar crops are no more to be found in the field; cf. Sheb. IX. 2-3.
(12) Sheb. VII, 1.
(13) Suk. 40a. Now, does this not prove that wood is not subject to the law of the sabbatical year?
(14) Lev. XXV, 6.
(15) Such as is the case with fruits as food.
(16) For heating purposes.

Talmud - Mas. Baba Kama 102a

Wood as a rule is meant for heating.[1]

R. Kahana said: Whether [or not] we say in regard to the Sabbatical Year that wood is meant as a rule for heating was a matter of difference between the following Tannaim, as taught: The produce of the Sabbatical Year should be handed over neither for the purpose of steeping nor for the purpose of washing with them. R. Jose, however, says that the products of the Sabbatical Year may be put into steep and into the wash.[2] Now, what was the reason of the Rabbis?[3] Because Scripture said, ‘for food’ implying not for the purpose of steeping, ‘for food’ and not for the purpose of washing. But R. Jose said that Scripture stated ‘for you’,[4] implying, for all your needs. But also according to the Rabbis was it not stated: ‘for you’? — ‘for you’[5] should be analogous to ‘for food’, referring thus to any uses by which a benefit is derived from the products at the very time of their consumption, excluding thus the purposes of steeping and washing where the benefit is derived from the products after their consumption.[6] But what does R. Jose make of ‘for food’?[7] — He might say to you that that was solely necessary for the ruling [of the Baraitha], as taught: ‘for food’, but not for a plaster. You say ‘for food’, but not for a plaster; why perhaps not otherwise, ‘for food’ but not for the purpose of washing? When it says ‘for you’[8] the purpose of washing is indicated; what then do I make of ‘for food’ [if not] ‘for food’, but not for a plaster. But what reason had you for including the purpose of washing and excluding the purpose of a plaster? — I include the purpose of washing as this is a requirement shared alike by all people,[9] but exclude the purpose of plaster which is a requirement not shared alike by all people.[10] Now, whose view would be followed in that statement which was taught: "’for food" but not for a plaster. "for food" but not for perfume, "for food" but not to make it into an emetic’? — It must be in accordance with R. Jose, for if in accordance with the Rabbis, the purpose of washing and steeping [should also be excluded].

R. JUDAH, HOWEVER, SAYS: IF THE INCREASE IN VALUE etc. (Mnemonic: Saban)[11] R. Joseph was once sitting behind R. Abba in the presence of R. Huna, who was sitting and stating that the halachah was in accordance with R. Joshua b. Karhah and again that the halachah was in accordance with R. Judah. R. Joseph thereupon turned his face towards him[12] and said: I understand his mentioning R. Joshua b. Karhah, as it was necessary to state that the halachah is in accordance with him, since you might have been inclined to think that the principle that where an individual differs from the majority the halachah is in accordance with the majority[13] [applies also] here; it was therefore made known to us that [in this] case the halachah is in accordance with the individual. (What statement of R. Joshua b. Karhah is referred to? — That which was taught: ‘R. Joshua b. Karhah says that a debt [recorded] in an instrument should not be collected from them,[14] whereas debts [contracted by mere word] of mouth may be collected from them because this is no more than rescuing one's money from the hands of the debtors.’)[15] But why was it necessary to state that the halachah was in accordance with R. Judah? For his view was in the first instance stated as a point at issue [between the authorities] and subsequently as an anonymous ruling; and it is an established rule

that if a view is first dealt with as a point at issue and then stated anonymously, the halachah is in accordance with the anonymous statement![16] The point at issue in this case was in Baba Kamma [IF WOOL WAS HANDED OVER TO A DYER] TO DYE IT RED BUT HE DYED IT BLACK, OR TO DYE IT BLACK BUT HE DYED IT RED, R. MEIR SAYS THAT HE WOULD HAVE TO PAY [THE OWNER] FOR THE VALUE OF HIS WOOL. BUT R. JUDAH SAYS: IF THE INCREASE IN VALUE EXCEEDS THE OUTLAY, THE OWNER WOULD REPAY TO THE DYER HIS OUTLAY, WHILE IF THE OUTLAY EXCEEDED THE INCREASE IN VALUE HE WOULD HAVE TO PAY HIM NO MORE THAN THE AMOUNT OF THE INCREASE, whereas the anonymous statement was made in Baba Mezi'a where we have learnt: ‘Whichever party departs from the terms of the agreement is at a disadvantage, so also whichever party retracts from the agreement has the inferior claim’![17] — R. Huna considered that it was necessary for him to state so, since otherwise you might have thought that there was no precise order for [the teaching of] the Mishnah[18] so that this [ruling of R. Judah] might perhaps have been in the first instance anonymous but subsequently a point at issue.[19] [What does] R. Joseph [say to this]? — [He says] that if so, wherever a ruling is first a point at issue and then stated anonymously,[20] it might be questioned that as no precise order may have been kept in [the teaching of] the Mishnah it might have been anonymous in the first instance and a point at issue later on![19] To this R. Huna would answer that we never say that there was no precise order in [the teaching of] the Mishnah in one and the same tractate, whereas in the case of two tractates we might indeed say so. R. Joseph however considered the whole of Nezikin[21] to form only one tractate. If you like, again, I may say that it is because this ruling was stated among fixed laws: ‘Whichever party departs from the terms of the agreement is at a disadvantage, and so also whichever party retracts from the argument has an inferior claim.’[22]

Our Rabbis taught: ‘Where money was given to an agent

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(1) In which case the benefit is derived after the wood has already been burnt.

(2) Suk. 40a.

(3) The first Tanna.

(4) Lev. XXV. 6: And the sabbath-produce of the land shall be for food for you.

(5) Implying, for all your needs.

(6) As when flax or a garment is put into wine the latter is spoilt before the former becomes thereby improved. According to the interpretation of Rashi a.l., R. Jose would maintain that we do not say that wood as a rule is destined for the purpose of heating, even as we do not say that fruits are meant only for eating and not for steeping or washing, whereas the Rabbis maintained otherwise; cf. however Tosaf. a.l., Rashi and Tosaf. on Suk. 40a.

(7) Thus most probably excluding washing and steeping.

(8) V. p. 590. n. 10.

(9) Cf. Keth. 7a.

(10) As it is used only by people afflicted with wounds.

(11) Standing for the names of the three Rabbis that follow: Joseph, ABba, Huna.

(12) Suk. 11a.

(13) Ber. 9a.

(14) I.e., from idolaters during the three days immediately before their religious festivals, as this might be a cause of special rejoicing to them and for offering additional thanksgiving to their idols, v. A.Z. 6b.

(15) Since no documentary proof against them is available.

(16) Yeb. 42b.

(17) B.M. VI, 2. Why then was it necessary for R. Huna to state explicitly that the halachah is in accordance with the view of R. Judah?

(18) Though its compilation was according to a definite plan and system; cf. Tosaf. a.l.

(19) In which case the anonymous statement does not constitute the accepted halachah.

(20) Where the anonymous statement is considered to be the accepted halachah.

(21) According to R. Sherira Gaon, Maim. and others this refers only to B.K., B.M. and B.B. which constitute three gates of one tractate but not to Sanhedrin and the other tractates of this Order. A different view is taken by Ritba and

others; cf. Yad Malachi 338, and Tosaf. Yom Tob in his introduction to Nezikin.
(22) B.M. VI. 2. So that there was no need for R. Huna to state that the halachah rested with R. Judah.

Talmud - Mas. Baba Kama 102b

to buy wheats and he bought with it barley, or barley and he bought with it wheat,[1] it was taught in one Baraitha that 'if there was a loss, the loss would be sustained by him,[2] and so also if there was a profit, the profit would be enjoyed by him,'[2] but in another Baraitha it was taught that 'if there was a loss, he would sustain the loss, but if there was a profit, the profit would be divided between them.'[3] [Why this difference of opinion?] — Said R. Johanan: There is no difficulty, as one[4] was in accordance with R. Meir and the other with R. Judah; the former was in accordance with R. Meir who said[5] that a change transfers ownership,[6] whereas the latter was in accordance with R. Judah who said[5] that a change does not transfer ownership.[7] R. Eleazar demurred: Whence [can you know this]? May it not be perhaps that R. Meir meant his view to apply only to a matter which was intended to be used by the owner personally,[8] but in regard to matters of merchandise[9] he would not say so?[10] — R. Eleazar therefore said that one as well as the other [Baraitha] might be in accordance with R. Meir, and there would still be no difficulty as the former dealt with a case where the grain was bought for domestic food,[11] whereas in the latter[12] it was bought for merchandise.[13] Moreover, in the West they were even amused[14] at the statement of R. Johanan regarding the view of R. Judah.[7] for [they said] who was it that informed the vendor of the wheat so that he might transfer the ownership of the wheat to the owner of the money?[15] R. Samuel b. Sasarti demurred: If so, why not also say the same even in the case where wheat [was wanted by the principal] and wheat [was bought by the agent]?[16] — R. Abbahu however said: The case where wheat [was wanted] and wheat [was bought] is different, as in this case the agent was acting for the principal upon the terms of his mandate and it is the same [in law] as if the principal himself had done it.[17] This could even be proved from what we have learnt: Neither in the case of one who has declared his possessions consecrated nor in the case of one who has dedicated the valuation of himself[18] can the Temple treasurer claim either the garments of the wife or the garments of the children[19] or the articles which were dyed for them or the new foot-wear bought for them.[20] Now, why not ask here also: Who informed the dyer that he was transferring the ownership of his dye to the wife?[21] But must we not then answer that since the husband was acting on behalf of his wife it is considered as if this was done by the actual hand of the wife? [If so,] also there as the agent was acting upon a mandate[22] it is considered as if the purchase of the wheat had been done by the actual hand of the principal. R. Abba, however, said: No; it was because when a man declares his possessions sacred, he has no intention to include the garments of his wife and children.[19] R. Zera demurred: Could it be said that in such circumstances a man would include in his mind even his Tefillin,[23] and we have nevertheless learnt that 'in the case of one who declares his possessions sacred, even his Tefillin would have to be included in the estimate'?[24] — Abaye, however, said to him: Yes, it is quite possible that a man may in his mind include even his Tefillin, as he who declares his possessions consecrated surely thinks that he is performing a commandment,[25] but no man would in his mind include the garments of his wife and children as this would create ill feeling.[26] R. Oshaia demurred: Was this not stated here as applying also to liabilities for vows of value, regarding which case we have learnt that those who have incurred liabilities for vows of value can be forced to give a pledge,[27] though it could hardly be said that it was in the mind of a man that the giving of a pledge should be enforced upon himself? — R. Abba therefore said: One who declares his possessions consecrated is regarded as having from the very beginning transferred the ownership of the garments of his wife and children to them.

Our Rabbis taught: If one man buys a field in the name of another, he cannot compel the latter to sell it to him; but if he explicitly made this stipulation with the vendor he could force him to sell. What does this mean? Said R. Shesheth: What is meant is this: If one man buys a field from another in the name of the Exilarch,[28] he cannot subsequently force the Exilarch to sell it to him[29] , but if [when buying it] he explicitly made this stipulation[30] he could compel the Exilarch to sell it.[29]

The Master stated: 'If one buys a field in the name of the Exilarch, he cannot subsequently force the Exilarch to sell it', thus implying that he[31] would surely acquire title to it.[32] Shall we say that this differs from the view of the scholars of the West[33] who stated: Who indeed informed the vendor of the wheat so that he may transfer the ownership of the wheat to the owner of the money? — As far as that goes there would be no difficulty, as this could hold good where e.g.,the vendee made this known to the owner of the field and also informed the witnesses [who signed the deed] about it. Read, however, the concluding clause: '[But if when buying it he explicitly made] this stipulation[30] he cold compel the Exilarch to sell it.'[29] But why should it be so? Why should the Exilarch not be entitled to say: 'I want neither your compliments[34] nor your insults.'[35] Abaye therefore said: what was meant was this: If one buys a field in the name of another

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(1) With the understanding that the Profit if any will be shared equally by principal and agent.

(2) I.e., the agent.

(3) I.e., between principal and agent in accordance with the original arrangement.

(4) I.e., the former Baraitha.

(5) In the case of wool given to a dyer to dye red and he dyed it black, as supra p. 586.

(6) From which it would follow that on account of the change in the object purchased the ownership of it passed over to the agent who would thus enjoy the whole of any profit derived.

(7) So that the principal is thus entitled to share any profit that may result from the transaction, though in the case of a loss he can back out and put it completely on the agent as he acted not in accordance with his mandate.

(8) Such as wool to be used for his own garment, and a chair for his own use, as supra p. 586.

(9) As was the case here with the wheat or barley.

(10) For in such a case where the principal was merely out for profit he surely did not intend to distinguish between the objects of the purchase.

(11) Which is on a par with the case of wool and where a change transfers ownership; v. n. 2.

(12) Stating that the profit would be divided between principal and agent.

(13) V. supra n. 6.

(14) V. Sanh. 17b.

(15) Why then should the wheat not altogether be the property of the agent since he acted ultra vires and thus set aside the mandate.

(16) . Since the vendor had no knowledge of the existence of the contract of agency between the purchaser and the principal.

(17) Whereas in the case before us where the agent acted against the instructions, the mandate has thereby been set aside and the purchase could no more be ascribed to the principal.

(18) Lev. XXVII, 1 ff.

(19) Cf. supra p. 46.

(20) 'Ar. VI, 5.

(21) But if the ownership of the dye was transferred to the husband and not to his wife, why then should the Temple treasurer have no claim on it.

(22) And not ultra vires.

(23) I.e., Phylacteries; cf. Deut. VI. 8.

(24) 'Ar. 23b. V. B.B. (Sonc. ed.) p. 652, n. 11.

(25) Which in his view outweighs that of Deut. VI, 8.

(26) And thus counteract the very purpose and function of sanctity and Sanctuary; Isa. LXI, 8 and Mal. I, 13; Mak. 11a.

(27) 'Ar. 21a, supra 40a.

(28) He asked him to draw up the deed in the name of the Exilarch for the purpose of frightening away possible disputants.

(29) I.e., to draw up a new deed in the name of the actual purchaser.

(30) To the vendor.

(31) I.e., the actual purchaser.

(32) Though the deed was drawn up in the name of the Exilarch.

(**33**) V. supra p. 594.
(**34**) In drawing up the deed in my name.
(**35**) In making me appear as a dealer in land.

Talmud - Mas. Baba Kama 103a

[such as] the Exilarch[1] he cannot compel the vendor to sell it to him again. But if when buying it he explicitly made this stipulation he could compel the vendor to sell it to him again.[2] The Master stated: 'If one man buys a field in the name of another [such as] the Exilarch, he cannot compel the vendor to sell it to him again'. But is this not quite obvious? — You might, however, have said that the vendee could argue: 'You very well knew that I was taking the field for myself, and that [in buying it in the name of the other person] I merely wanted protection, and as I was surely not prepared to throw away money for nothing I undoubtedly made the purchase on the understanding that a new deed should be drawn up for me [by you].' It is therefore made known to us that the vendor can retort to him: 'It is for you to make arrangements with the person in whose name you bought the field that he should draw up for you a new title deed.'

'But if when buying it he explicitly made this stipulation he could compel the vendor to sell it to him again.' But is this not obvious? — No, it is required to meet the case where the vendee said to the witnesses in the presence of the vendor: 'You see that I want another deed.' You might in this case think that the vendor could say to him: 'I thought that you referred to a deed to be drawn up by the one in whose name you bought the field'; it is therefore made known to us that the vendee can reply to him: 'It was for that purpose that I took the trouble and stated to the witnesses in your own presence, [to show] that it was from you that I wanted the other deed.'

R. Kahana transmitted some money for the purchase of flax. But as flax subsequently went up in price, the owners of the flax sold it [on his behalf]. He thereupon came before Rab and said to him: What shall I do? May I go and accept the purchase money?[3] — He replied to him: If when they sold it they stated that it was Kahana's flax, you may go and receive the money,[4] but if not you may not accept it.[5] But was this ruling made in accordance with the view of the Western scholars who asked: 'Who was it that informed the vendor of the wheat so that he might transfer the ownership of his wheat to the owner of the money?[6] [But what comparison is there?] Had R. Kahana given four to receive eight [so that it were usury]? Was it not his flax[7] which had by itself gone up in price and which was definitely misappropriated [by the vendors],[8] and regarding this we have learnt that 'All kinds of robbers have to pay in accordance with the value at the time of the robbery'?[9] — It may, however, be said that there it was a case of advance payment.[10] and R. Kahana had never pulled the flax [to acquire title to it],[11] and Rab was following his own reasoning, for Rab [elsewhere] stated: Advance payment[10] [at present prices] may be made for [the future delivery of] products,[12] but no advance payment [at present prices] may be made [if the value of the products will subsequently be paid] in actual money[13] [in lieu of them].

MISHNAH. IF ONE MAN ROBBED ANOTHER TO THE EXTENT OF A PERUTAH[14] AND TOOK [NEVERTHELESS] AN OATH[15] [THAT HE DID NOT DO SO], HE WOULD HAVE TO CONVEY IT PERSONALLY TO HIM[16] [EVEN AS FAR AS] TO MEDIA.[17] HE MAY GIVE IT NEITHER TO HIS SON NOR TO HIS AGENT, THOUGH HE MAY GIVE IT TO THE SHERIFF OF THE COURT OF LAW. IF THE PLAINTIFF DIED, THE ROBBER WOULD HAVE TO RESTORE IT TO THE HEIRS. IF HE REFUNDED TO HIM THE PRINCIPAL BUT DID NOT PAY HIM THE [ADDITIONAL] FIFTH,[18] OR IF THE OTHER EXCUSED HIM THE PRINCIPAL THOUGH NOT THE FIFTH, OR EXCUSED HIM BOTH ONE AND THE OTHER, WITH THE EXCEPTION, HOWEVER, OF LESS THAN THE VALUE OF A PERUTAH ON ACCOUNT OF THE PRINCIPAL, HE WOULD NOT HAVE TO GO AFTER HIM.[19] IF, HOWEVER, HE PAID HIM THE FIFTH BUT DID NOT REFUND THE PRINCIPAL, OR

WHERE THE OTHER EXCUSED HIM THE FIFTH BUT NOT THE PRINCIPAL, OR EVEN WHERE HE REMITTED HIM BOTH ONE AND THE OTHER, WITH THE EXCEPTION, HOWEVER, OF THE VALUE OF A PERUTAH ON ACCOUNT OF THE PRINCIPAL, HE WOULD HAVE TO CONVEY IT PERSONALLY TO HIM.[20] IF HE REFUNDED TO HIM THE PRINCIPAL AND TOOK AN OATH[21] REGARDING THE FIFTH,[18]

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(1) [MS.M. omits 'the Exilarch'; in curr. edd. it is bracketed.]

(2) V. p. 596, n. 2.

(3) For which the flax was sold to the subsequent purchasers; would the acceptance of this increase not be a violation of the laws of usury; v. Lev. XXV, 36-37. Cf. also B.M. V, 1.

(4) For in this case they acted on your behalf and the purchase money received was given to become yours.

(5) For it would appear that for a smaller amount of money received from you, you were subsequently given a bigger sum, and this is against the spirit of the law of usury.

(6) V. supra p 594. So that in this case too the purchase money received from the subsequent vendees was not automatically transferred to R. Kahana when his name was not mentioned at the time of the sale.

(7) After it had legally been transferred to him.

(8) Who sold it in his absence.

(9) Supra 93b. And the value of the flax at the time of robbery in this case was exactly the amount of the purchase money received for it at the second sale.

(10) I.e., when the vendors received the money from R. Kahana they were not yet in possession of flax at all, but acted in accordance with B.M. 72b.

(11) In accordance with Kid. I, 5 and B.M. IV, 2.

(12) I.e., where the very products stipulated for are to be delivered.

(13) As this case would amount to the handing over of a smaller sum of money to be paid by a bigger amount and would thus appear to act against the spirit of the prohibition of usury.

(14) A small coin (v. Glos.); this being the minimum amount of pecuniary value in the eyes of the law.

(15) Falsely.

(16) In accordance with Lev. V. 24.

(17) Even where silver and gold are not of great importance; cf. Isa. XIII, 17. also Kid. 12a.

(18) Lev. V, 24.

(19) As the payment of the Fifth is not an essential condition in the process of atonement.

(20) V. p. 598, n. 12.

(21) v. p. 598. n. 11.

Talmud - Mas. Baba Kama 103b

HE WOULD HAVE TO PAY HIM A FIFTH ON TOP OF THE FIFTH AND SO ON UNTIL THE PRINCIPAL BECOMES REDUCED TO LESS THAN THE VALUE OF A PERUTAH. SO ALSO IS THE CASE REGARDING A DEPOSIT, AS IT IS STATED: IN THAT WHICH WAS DELIVERED HIM TO KEEP, OR IN FELLOWSHIP, OR IN A THING TAKEN AWAY BY VIOLENCE, OR HATH DECEIVED HIS NEIGHBOUR, OR HATH FOUND THAT WHICH WAS LOST AND LIETH CONCERNING IT AND SWEARETH FALSELY,[1] HE HAS TO PAY THE PRINCIPAL AND THE FIFTH AND BRING A TRESPASS OFFERING.[2]

GEMARA. This is so [apparently] only where the robber had taken an oath against him, but if he had not yet taken an oath this would not be so. But would this be not in agreement either with R. Tarfon or with R. Akiba? For we have learnt: If a man robbed one out of five persons without knowing which one he robbed, and each one claims that he was robbed, he may set down the misappropriated article between them and depart. This is the view of R. Tarfon. R. Akiba, however, said that this is not the way to liberate him from sin; for this purpose he must restore the misappropriated article to each of them.[3] Now, in accordance with whose view is the ruling of our Mishnah? If in accordance with R. Tarfon, did he not say that even after he had sworn he may set

down the misappropriated article among them and depart?[4] If again in accordance with R. Akiba, did he not say that even where no oath was taken he would have to restore the [value of the] misappropriated article to each of them? — It might still be in accordance with R. Akiba; for the statement of R. Akiba that he would have to pay for the misappropriated article to each of them was made only where an oath was taken, the reason being that Scripture stated: And give it unto him to whom it appertaineth in the day of his being guilty.[5] R. Tarfon, however, held that though an oath was taken, our Rabbis have still made an enactment to facilitate repentance, as indeed taught: R. Eleazar b. Zadok says: A general[6] enactment was laid down to the effect that where the expense of personally conveying the misappropriated article would be more than actual principal, he should be able to pay the principal and the Fifth to the Court of Law and thereupon bring his guilt offering and so obtain atonement. And R. Akiba?[7] — He argues that the Rabbis made the enactment only where he knew whom he robbed, in which case the amount misappropriated would ultimately be restored to the owner,[8] whereas where he robbed one of five persons and does not know whom he robbed, in which case the amount misappropriated could not be restored to its true owner, our Rabbis did surely not make the enactment.

R. Huna b. Judah raised an objection [from the following]: R. Simeon b. Eleazar said that R. Tarfon and R. Akiba did not differ in regard to one who bought [an article] from one out of five without knowing from whom he bought it, both holding that he may put down the purchase money among them and depart.[9] Where they differed was regarding one who robbed one out of five persons without knowing whom he robbed, R. Tarfon maintaining that he may leave the value of the misappropriated article among them and depart, whereas R. Akiba says that there could be no remedy for him unless he pays for the misappropriated article to each of them.[10] Now, if you assume that an oath was taken here, what difference is there between purchasing and misappropriating?[11]

Raba further objected [from the following]: It once happened that a certain pious man bought an article from two persons without knowing from whom he had bought it, and when he consulted R. Tarfon, the latter said to him: ‘Leave the purchase money among them and depart’, but when he came to R. Akiba he said to him: ‘There is no remedy for you unless you pay each of them.’ Now, if you assume that a [false] oath was taken here, would a pious man swear falsely?[12] Nor can you say that he first took an oath and subsequently became a pious man, since wherever we say that ‘it once happened with a certain pious man,’ he was either R. Judah b. Baba or R. Judah b. Il'ai,[13] and, as is well known, R. Judah b. Baba and R. Judah b. Il'ai were pious men from the very beginning![14] — [The ruling of the Mishnah] must therefore be in accordance with R. Tarfon, for R. Tarfon would agree where a false oath was taken,[15] the reason being that Scripture stated, And give it unto him to whom it appertaineth in the day of his trespass offering.[16] but R. Akiba maintained that even where no oath was taken, a fine has to be imposed.

Now, according to R. Tarfon, let us see. Where he took an oath he would surely not be subject [to the law][17] unless he admitted his guilt.[18] Why then only in the case where HE TOOK AN OATH? Would not the same hold good even where no oath was taken, as indeed taught: ‘R. Tarfon agrees that if a man says to two persons, I have robbed one of you and do not know whom, he would have to pay each of them a maneh[19]

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(1) Lev. V, 21-22.

(2) Ibid. 25.

(3) B.M. 37a. Yeb. 118b.

(4) Why then is the robber enjoined by the ruling in our Mishnah here to convey it to the plaintiff personally even so far as to Media?

(5) V. Lev. V, 24.

(6) Lit., ‘great’.

(7) What of the enactment?

(8) Through the Court of Law.
(9) As in this case no crime was committed by him.
(10) Yeb. 118b.
(11) Since in both cases the crime of perjury was committed.
(12) I.e. could a person who committed perjury be called pious?
(13) Tem. 15b; v. supra p. 454, n. 5.
(14) It is therefore pretty certain that in the case of the pious man no false oath was taken and that R. Akiba maintained his view even in such circumstances, and if so how could our Mishnah here have confined its ruling to cases of perjury?
(15) That proper restoration has to be made.
(16) Lev. V. 24.
(17) Laid down in our Mishnah.
(18) On the analogy of Num. V, 7.
(19) I.e., a hundred zuz; v. Glos.

Talmud - Mas. Baba Kama 104a

since he made a voluntary admission'?[1] — Raba therefore said: The case of our Mishnah is different altogether, for since he knows whom he robbed and in fact has admitted it, so that it is possible to restore the misappropriated value to the owner, it is considered as if the plaintiff had said to him: Let it [for time being] be in your possession. It is therefore only in the case where an oath was taken that though [it is considered as if] he said to him: Let it [for time being] be in your possession, yet since the robber is in need of atonement,[2] this is not sufficient until it actually comes into the plaintiff's hands, whereas where no oath was taken, the misappropriated article is considered as a deposit with him until the owner comes and takes it.[3]

HE MAY GIVE IT NEITHER TO HIS SON NOR TO HIS AGENT. It was taught: Where an agent was appointed in the presence of witnesses [to receive some payment of money] R. Hisda said that he would be a [properly accredited] agent,[4] but Rabbah said that he is still not an agent [to release the payer of responsibility]. R. Hisda said that he would be a [properly accredited] agent, for it was for this purpose that he took the trouble to appoint him in the presence of witnesses, so that he should stand in his place.[4] But Rabbah said that he is still not an agent [to release the payer of responsibility], for he meant merely to state that this man is honest and if you are prepared to rely upon him you may rely, and if you are prepared to send the payment through him you may send it through him.[5]

We have learnt: If one [agreed to] borrow a cow and the lender sent it by the hand of his son or by the hand of his slave or by the hand of his agent, or even by the hand of the son or by the hand of the slave or by the hand of the agent of the borrower, and it so happened that it died on the way, he would be exempt.[6] Now, how are we to picture this agent?[7] If he was not appointed[8] in the presence of witnesses, whence could we know that he was an agent at all? Must it therefore not be that he appointed him in the presence of witnesses and it is nevertheless stated that the [would-be] borrower is exempt, in contradiction to the view of R. Hisda? — It is as R. Hisda [elsewhere][9] said, that he was a hireling or a lodger of his;[10] so also here he was a hireling or a lodger of his.[10]

We have learnt: HE MAY GIVE IT NEITHER TO HIS SON NOR TO HIS AGENT.[11] How are we to picture this agent? If he did not appoint him in the presence of witnesses, whence could we know that he was appointed an agent at all? Does it therefore not mean that he appointed him in the presence of witnesses?[12] — R. Hisda however interpreted it as referring to a hireling or a lodger.[10] But what would be the law where the agent was appointed in the presence of witnesses? Would he indeed have to be considered a [properly accredited] agent?[13] Why then state in the concluding clause, HE MAY GIVE IT TO THE SHERIFF OF THE COURT OF LAW, and not make the distinction in the same case by saying that these statements refer only to an agent who was not

appointed in the presence of witnesses, whereas if the agent was appointed in the presence of witnesses he would indeed be considered a [properly accredited] agent?[14] — It may, however, be said that on this point [the Tanna] could not state it absolutely. Regarding the sheriff of the Court, no matter whether the plaintiff authorised him or whether the robber authorised him, he could state it absolutely that he is considered a [properly accredited] agent, whereas regarding an agent appointed in the presence of witnesses who if he were appointed by the plaintiff would be considered an agent, but if appointed by the robber would certainly not be a valid agent, he could not State it so absolutely.[15] This would indeed be contrary to the view of the following Tanna, as taught: R. Simeon b. Eleazar says: If the sheriff of the Court of Law was authorised by the plaintiff [to receive payment] though not appointed by the robber [to act on his behalf], or if he was appointed by the robber [to act on his behalf] and the plaintiff sent and received the payment out of his hands, there would be no liability in the case of accident.[16]

R. Johanan and R. Eleazar both said that an agent appointed in the presence of witnesses would be a [properly accredited] agent;[14] for if you raise an objection from the ruling in our Mishnah,[17] [it might be answered] that the agent there was [not appointed but] placed at his[18] disposal, as where he said to him,[19] 'There is some money owing to me from a certain person who does not forward it to me. It may therefore be advisable for you to be seen by him, since perhaps he has found no one with whom to forward it,'[20] or as explained by R. Hisda, that he was a hireling or a lodger of his.[21]

Rab Judah said that Samuel stated that

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(1) Tosaf. Yeb. XIV, 3; B.M. 37b.

(2) Cf. Lev. V, 24-25.

(3) The Mishnah may thus be in agreement with either R. Akiba or R. Tarfon.

(4) And if some accident should happen with the money whilst still in his hands the payer would not be responsible

(5) But the money will still be in the charge of the payer.

(6) B.M. VIII, 3.

(7) Of the would-be borrower.

(8) By the would-be borrower.

(9) V. the discussion which follows.

(10) But not a duly accredited agent by law; cf. Shebu. 46b.

(11) Supra 103a.

(12) [And yet the robber is not released, by handing it over to him, from responsibility, which contradicts R. Hisda.]

(13) Even to the extent of having handed over to him by the robber the misappropriated article.

(14) V. previous note.

(15) Lit., 'it was not decided with him.'

(16) Cf. Tosef. X, 5. Proving that where it was the robber who appointed the sheriff, so long as the payment did not reach the plaintiff, the robber is not yet released from responsibility, as against the interpretation of the Mishnah releasing the robber in such a case.

(17) V. p. 603. n. 7.

(18) I.e., the robber's.

(19) I.e., to the agent.

(20) Such a request is by no means sufficient to render him an agent.

(21) Supra ibid.

Talmud - Mas. Baba Kama 104b

it is not right to forward [trust] money through a person whose power of attorney is authenticated by a mere figure,[1] even if witnesses are signed on it [to identify the authentication]. R. Johanan, however, said: If witnesses are signed on it [to identify the authentication] it may be forwarded. But I would fain say: In accordance with the view of Samuel what remedy is available?[2] — The same as in

the case of R. Abba,[3] to whom money was owing from R. Joseph b. Hama,[4] and who therefore said to R. Safra:[5] 'When you go there, bring it to me,' and it so happened that when the latter came there, Raba the son [of the debtor] said to him, 'Did the creditor give you a written statement that by your accepting the money he will be deemed to have received it,?'[6] and as he said to him, 'No,' he rejoined, 'If so, go back first and let him give you a written statement that by your acceptance he will be deemed to have received the money.'[6] But ultimately he said to him, 'Even if he were to write that by your acceptance he will be deemed to have received the money,[6] it would be of no avail, for before you come back R. Abba might perhaps [in the meantime] have died,[7] and as the money would then already have been transferred to the heirs the receipt executed by R. Abba would be of no avail.'[8] 'What then,' he asked, 'can be the remedy?' — 'Go back and let him transfer to you the ownership of the money by dint of land,[9] and when you come back you will give us a written acknowledgment that you have received the money.'[10] as in the case of R. Papa[11] to whom twelve thousand zuz were owing from men of Be-Huzae[12] and who transferred the ownership of them to Samuel b. Abba[13] by dint of the threshold of his house,[9] and when the latter came back the former [was so pleased that he] went out to meet him as far as Tauak.[14]

IF HE REFUNDED HIM THE PRINCIPAL BUT DID NOT PAY HIM THE FIFTH . . . HE WOULD NOT HAVE TO GO AFTER HIM [FOR THAT]. This surely proves that the Fifth is a civil liability,[15] so that were the robber to die[16] the heirs would have to pay it. We have also learnt: IF HE REFUNDED TO HIM FOR THE PRINCIPAL AND TOOK AN OATH REGARDING THE FIFTH, HE WOULD HAVE TO PAY HIM A FIFTH ON TOP OF THE FIFTH, similarly proving that the Fifth is a civil liability. It was moreover taught to the same effect: If one man robbed another but took an oath [that he did not do so] and [after admitting his guilt he] died, the heirs would have to pay the principal and the Fifth, though they would be exempt from the trespass offering. Now, since heirs are subject to pay the Fifth which their father would have had to pay, [it surely proves that the Fifth is a civil liability which has to be met by heirs]. But a contradiction could be raised [from the following]: 'I would still say that the case where an heir has not to pay the Fifth for a robbery committed by his father is only where neither he nor his father took an oath.[17] Whence could it be proved that [the same holds good] where he though not his father, took an oath or his father but not he took an oath or even where both he and his father took oaths? From the significant words, That which he took by robbery or the thing which he hath gotten by oppression[18] whereas in this case he[19] has neither taken violently away nor deceived anybody.'[20] — Said R. Nahman: There is no contradiction, as in one case the father admitted his guilt [before he died],[21] whereas in the other he[22] never admitted it. But if no admission was made, why should the heirs have to pay even the principal? If, however, you argue that this will indeed be so [that they will not have to pay it].[23] since the whole discussion revolves here[23] around the Fifth, does it not show that the principal will have to be paid? It was moreover taught explicitly: 'I would still say that the case where an heir has to pay the principal for a robbery committed by his father was only where both he and his father took oaths or where his father though not he, or he though not his father took an oath, but whence could it be proved that [the same holds good] where neither he nor his father took an oath? From the significant words: The misappropriated article and the deceitfully gotten article, the lost article and the deposit[24] as [Yesh Talmud==] this is certainly a definite teaching.'[25] And when R. Huna was sitting and repeating this teaching, his son Rabbah[26] said to him: Did the Master mean to say Yesh Talmud [i.e. there is a definite teaching on this subject] or did the Master mean to say Yishtallemu [i.e., it stands to reason that the heirs should have to pay]? He replied to him: I said Yesh Talmud [i.e. there is a definite teaching on the subject] as I maintain that this could be amplified from the [added] Scriptural expressions.[27] — It must therefore be said that what was meant by the statement 'he made no admission' was that the father made no admission though the son did. But why should the son not become liable to pay even a Fifth for his own oath?[28] — It may, however, be said that the misappropriated article was no longer extant in this case.[29] But if the misappropriated article was no longer extant, why should he pay even the principal?[30] — No; it might have application where real possessions were left.[31] (But were even real possessions to be left, of what avail would it be since the

liability is but an oral liability, and, as known,[32] a liability by mere word of mouth can be enforced neither on heirs nor on purchasers?[33] — It may however be said

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(1) Except at the sender's risk. If the figure was of people of great renown it would suffice; (Tosaf. a.l.)
(2) In the case of power of attorney that the payer be released from further responsibility.
(3) Who settled in the Land of Israel, for which cf. Ber. 24b.
(4) Who lived in Mehoza in Babylon. cf. Git. 14a.
(5) Who travelled extensively, cf. infra 116a.
(6) And thus released my father from further responsibility.
(7) On account of old age.
(8) For the contract of agency as any other executory contract would by the death of the principal become null and void, just as he then instantly becomes deprived of the ownership of all his possessions.
(9) In accordance with Kid. 26a, and supra p 49.
(10) As in that case your receipt will suffice, you being the legal owner of the sum claimed.
(11) Who was engaged in commerce in a large way; v. Ber. 44b.
(12) [Modern Khuzistan, S.W. Persia; Obermeyer. p. 204 ff.]
(13) Cf. B.B. 77b and 150b, where 'b. Aha' is in the text as is also in MS.M. and who is mentioned together with R. Papa in Naz. 51b and Men. 34a.
(14) [S. of Naresh, the home of R. Papa.]
(15) As it differs from the Principal only regarding the ruling stated in the Mishnah.
(16) Before having paid the Fifth.
(17) Falsely.
(18) Lev. V, 23.
(19) I.e., the heir.
(20) This ruling contradicts the conclusion arrived at above that the Fifth is a civil liability and that heirs would have to pay it! V. Supra on Lev. V, 23.
(21) In which case he has already become liable for the Fifth and the heirs would have to pay it.
(22) I.e., neither the father nor the son, but cf. the discussion that follows.
(23) In the latter case.
(24) Cf. Lev. V, 23.
(25) Sifra on Lev. V, 23.
(26) Who did not catch the correct pronunciation of the last phrase in the original and was therefore doubtful as to whether it constituted two words or one word.
(27) From the objects of payment enumerated in detail in Lev. V, 23. But if no admission whatever was made why should even the principal be paid?
(28) When he took it falsely.
(29) And as according to the Mishnaic ruling infra 111b the son could in such a case not be made responsible for the misappropriated article, by committing perjury he rendered himself subject to Lev. V, 4, but not to the Fifth etc. ibid. 24-25.
(30) Since the Mishnaic ruling, infra loc. cit. is to apply.
(31) In which case the heirs are liable, v. loc. cit.
(32) V. B.B. 42a, 157a and 175a.
(33) As a liability which is not supported by a legally valid document or judicial decision is only personal with the debtor.

Talmud - Mas. Baba Kama 105a

that [before the father died] he had already appeared in court[1] [and liability was established against him].[2] But if he had already appeared in court[1] [and liability had been established on the denial of which the son took a false oath])[3] why then should the son not pay even the Fifth?[4] — Said R. Huna the son of R. Joshua: Because a Fifth is not paid for the denial of a liability which is secured upon real estate.[5] But Raba said [that the misappropriated article was still extant in this case as the reason

that the son need not pay a Fifth for his own false oath is because] we were dealing here with a case where [the misappropriated article was kept in] his father's bag[6] that was deposited with others.[7] The principal therefore must be paid since it was subsequently discovered to be in existence, whereas the Fifth has not to be paid since when the son took the oath he meant to swear truly, as at that time he did not know [that there was a misappropriated article in the estate].

WITH THE EXCEPTION, HOWEVER, OF LESS THAN THE VALUE OF A PERUTAH [DUE] ON ACCOUNT OF THE PRINCIPAL HE WOULD NOT HAVE TO GO AFTER HIM. R. Papa said: This Mishnaic ruling can apply only where the misappropriated article was no more in existence, for where the misappropriated article was still in existence the robber would still have to go after him, as there is a possibility that it may have risen in value.[8] Others, however, said that R. Papa stated that there was no difference whether the misappropriated article was in existence or not in existence, as in all cases he would not have to go after him, since we disregard the possibility that it may rise in price.[8]

Raba said: If one misappropriated three bundles [of goods altogether] worth three perutahs, but which subsequently fell in price and become worth only two, and it so happened that he restored two bundles, he would still have to restore the third: this could also be proved from the [following] teaching of the Tanna:[9] If one misappropriated leaven and Passover meanwhile came and went,[10] he may say to the plaintiff, Here there is thine before thee.[11] The reason evidently is that the misappropriated article is intact, whereas if it were not intact, even though it has at present no pecuniary value, he would have to pay on account of the fact that it originally[12] had some pecuniary value. So also in this case,[13] though the bundle is now not of the value of a perutah, since originally it was of the value of a perutah he must pay for it.

Raba raised the question: What would be the law where he misappropriated two bundles amounting in value to a perutah and returned the plaintiff one? Do we lay stress on the fact that there is not now with him a misappropriated object of the value of a perutah,[14] or do we say that since he did not restore the robbery[15] which was with him he did not discharge his duty?[16] Raba himself on second thoughts solved it thus: There is neither a robbery here[17] nor is there the performance of restoration here.[18] But if there is no robbery here,[17] is it not surely because there was restoration here? — What he meant was this: Though there remained no robbery here,[19] the performance of the injunction of restoration[20] was similarly not performed here.[21]

Raba said: It has been definitely stated[22] that a Nazirite who performed the duty of shaving[23] but left two hairs unshaved performed nothing at all [of the injunction]. Raba asked: What would be the law where he [subsequently] shaved one of the two and the other fell out of its own accord? — Said R. Aha of Difti[24] to Rabina: How could it have been doubtful to Raba whether a Nazirite would have performed his duty by shaving one hair after another?[25] — He replied:[26] No; the query has application where, e.g., one of the two hairs fell out of itself[27] and the other was shaved by him: Shall we say that [since] now there is no minimum of hair left unshaved [the duty of shaving has been performed], or was there perhaps no performance of shaving since originally he had left two hairs [unshaved] and when he [made up his mind to] shave them now, there were not two hairs to be shaved? On second thoughts Raba himself solved it thus: There is neither any hair here, nor is there the performance of shaving here. But if there is no hair [left] here, was not the duty of shaving surely performed here? — What he meant was this: Though there remained no hair, yet the performance of the injunction of shaving was not performed here.[28]

Raba also said: It has been stated that if an earthenware barrel[29] had a hole which was filled up with lees, they would render it safe [and secure[30] while in a tent where a corpse of a human being was kept, as the barrel would be considered to have a covering tightly fastened upon it].[31] Raba thereupon asked: What would be the law where only half of the hole was blocked up?[32] Said R.

Yemar to R. Ashi: Is this not covered by our Mishnah? For we have learnt: 'If an earthenware barrel[33] had a hole which was filled up with lees, they would render it safe [and secure[34] while in a tent where a corpse of a human being was kept]. If it was corked up with vine shoots[35] it would not do unless it was smeared with mortar.[36] If there were two vine shoots corking it up they would have to be smeared on all sides as well as between one shoot and another.'[37] Now the reason why this is so is because it was smeared, so that if it would not have been smeared this would not have been so. But why should this not be like a case where half of the hole was blocked up?[38] — It might, however, be said that there is no comparison at all: for in that case if he did not smear it the blocking would not hold at all,[39] whereas here[40] half of the hole was blocked up with such a material as would hold.

Raba further said: It was stated: If one misappropriated leaven and Passover came and went, he may say to him. Here there is thine before thee.[41] Raba thereupon asked:

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(1) Where he was summoned on the instigation of witnesses after he had already denied the claim with a false oath; in which case there is no liability of a Fifth, v. Mishnah l08b. Tosaf. a.l.

(2) On the strength of impartial evidence.

(3) The text contained in parenthesis, i.e. 'But . . . oath' is stated by Rashi a.l. to have been an unwarranted insertion on the part of unauthorised scribes, since according to the Mishnah infra 121a, the children are liable to make restitution where real possessions were left to them by their father; v. however Tosaf. a.I.

(4) For the oath he himself took falsely.

(5) As for the denial of such a liability no oath could be imposed; v. Shebu. VI, 5 and 37b.

(6) Cf. **, bisaccium.

(7) So that while the son took the oath that the article was not with him, he meant to swear truly and could therefore not be made liable for perjury; cf. Shebu. 36b.

(8) Cf. Kid. 12a.

(9) Since at the time of the robbery its value was not less than a perutah.

(10) And thus rendered the leaven unfit for any use.

(11) Since no tangible change took place in the misappropriated article, v. supra 96b.

(12) I.e., at the time of the robbery.

(13) Regarding the bundles.

(14) And should accordingly not have to pay for it.

(15) I.e., the whole of it.

(16) In accordance with Lev. V, 23.

(17) In the hands of the defendant.

(18) Since the whole restoration was of an article worth less than a perutah.

(19) V. p. 609, n. 10.

(20) V. p. 609,n. 9.

(21) V. p. 609. n. 11.

(22) V. Naz. 42a.

(23) In accordance with Num. VI, 9 and 18.

(24) V. supra 73a.

(25) Is this not generally so in all cases of shaving? The injunction has surely been performed, since at the beginning of shaving the minimum number of hairs was not lacking.

(26) I.e., Rabina to R. Aha.

(27) Before he started to shave the two hairs.

(28) [I.e., he has not fulfilled the relevant precept (Tosaf.).]

(29) That was covered on all sides.

(30) From becoming defiled.

(31) And thus not be subject to Num. XIX, 15.

(32) [Reducing it to less than the prescribed minimum to act as outlet (v. Kel. IX, 8).]

(33) V. p.610, n. 11.

(34) V.p. 610, n. 12.
(35) But not with lees.
(36) For the purpose of blocking up the hole well.
(37) Kel. X, 6.
(38) Hence the query of Raba should be answered in the negative.
(39) Hence the smearing is essential.
(40) I.e., in the query of Raba.
(41) Supra 96b.

Talmud - Mas. Baba Kama 105b

What would be the law where [instead of availing himself of this plea] the robber took a [false] oath[1] [that he never misappropriated the leaven]? Shall we say that since if the leaven were to be stolen from him he would have to pay for it, there was therefore here a denial of money,[2] or perhaps since the leaven was still intact and was [in the eyes of the law] but mere ashes, there was no denial here of an intrinsic pecuniary value?[3] [It appears that] this matter on which Raba was doubtful was pretty certain to Rabbah, for Rabbah stated: [If one man says to another] 'You have stolen my ox'. and the other says. 'I did not steal it at all,' and when the first asks, 'What then is the reason of its being with you?' the other replies, 'I am a gratuitous bailee regarding it,' [and after affirming this defence by an oath he admitted his guilt], he would be liable,[4] for by this [false] defence he would have been able to release himself from liability in the case of theft or loss;[5] so also where the [false] defence was 'I am a paid bailee regarding it,' he would similarly be liable,[4] as he would thereby have released himself from liability in the case where the animal became maimed or died;[5] again, even where the false defence was that 'I am a borrower regarding it,' he would be liable,[4] for he would thereby have released himself from any liability were the animal to have died merely because of the usual work performed with it.[6] Now, this surely proves that though the animal now stands intact, since if it were to be stolen[7] the statement would amount to a denial of money, it is even now considered to be a denial of money.[4] So also here in this case though the leaven at present is considered [in the eyes of the law] to be equivalent to mere ashes, yet since if it were to be stolen he would have to pay him with proper value, even now there is a denial there of actual money.[4]

Rabbah[8] was once sitting and repeating this teaching when R. Amram pointed out to Rabbah a difficulty [from the following]: And lieth concerning it[9] [has the effect of] excepting a case where there is admission of the substance of the claim, as [where in answer to the plea] 'You have stolen my ox,' the accused says. 'I did not steal it,' but when the plaintiff retorts, 'What then is the reason of its being with you?' the defendant states, 'You sold it to me, you gave it to me as a gift, your father sold it to me, your father gave it to me as a gift, or the ox was running after my cow, or it came of its own accord to me, or I found it straying on the road, or I am a gratuitous bailee regarding it, or I am a paid bailee regarding it, or I am a borrower regarding it,' and after confirming [such a false defence] by an oath he admitted his guilt. But as you might say that he would be liable here, it is therefore stated further: And lieth concerning it,[9] to except a case like this where there is an admission of the substance of the claim'![10] — He replied:[11] This argument is confused, for the teaching there dealt with a case where the defendant tendered him immediate delivery[12] whereas the statement I made refers to a case where the animal was at that time kept on the meadow.[13] But what admission in the substance of the claim could there be in the defence 'You have sold it to me?' — It might have application where the defendant said to him, 'As I have not yet paid you its value, take your ox back and go.' But still what admission in the substance of the claim is there in the defence, 'You gave it to me as a gift or your father gave it to me as a gift'? — It might be [admission] where the defendant said to him, '[As the gift was made] on the condition that I should do you some favour and since I did not do anything for you, you are entitled to take your ox back and go.' But again, where the defence was, 'I found it straying on the road,' why should the plaintiff not plead, 'You surely have had to return it to me'? — But the father of Samuel[14] said: The defendant was alleging,

and confirming it by an oath: 'I found it as a lost article and was not aware that it was yours to return it to you.'

It was taught: Ben 'Azzai said: [The following] three [false] oaths [taken by a single witness[15] are subject to one law]:[16] Where he had cognizance of the lost animal but not of the person who found it, of the person who found it but not of the lost animal, neither of the lost animal nor its finder.[17] But if he had cognizance neither of the lost animal nor of its finder, was he not swearing truly?[18] — Say therefore: '[He had cognizance] both of the lost animal and of its finder.[19] To what decision does this statement[20] point? — R. Ammi said on behalf of R. Hanina: To exemption; but Samuel said: To liability. They are divided on the point at issue between the [following] Tannaim, as taught: 'Where a single witness was adjured[21] [and the oath was subsequently admitted by him to have been false], he would be exempt, but R. Eleazar son of R. Simeon makes him liable.'[22] In what fundamental principle do they differ? — The [latter] Master[23] maintained that a matter which might merely cause some pecuniary liability[24] is regarded in law as directly touching upon money.[25] whereas the [other] Master maintained that it is not regarded as directly touching upon money.[26]

R. Shesheth said: He who [falsely] denies a deposit is [instantly] considered as if he had misappropriated it, and will therefore become liable for all accidents;[27] this is also supported by the [following] Tannaitic teaching:[28] [From the verse] And he lieth concerning it[29] we could derive the penalty,[30] but whence could the warning be derived? From the significant words: Neither shall ye deal falsely.[31] Now, does this not refer to the 'penalty' for merely having denied the money?[32] — No, it refers to the 'penalty' for the [false] oath.[33] But since the concluding clause refers to a case where an oath was taken, it surely follows that the commencing clause deals with a case where no oath was taken, for it was stated in the concluding clause:[28] [From the text] 'And sweareth falsely'[29] we can derive the penalty;[34] but whence can the warning be derived? From the injunction, 'Nor lie.'[35] Now, since the concluding clause deals with a case where an oath was taken, must not the commencing clause deal with a case where no oath was taken?[36] — It may, however, be said that the one clause as well as the other deals with a case where an oath was taken. But while in the case of the concluding clause the defendant admitted [his perjury], in that of the commencing clause witnesses appeared and proved it. Where witnesses appeared and proved the perjury,[37] the defendant would become liable for all accidents [from the very moment he took the false oath], whereas where he himself admitted his perjury he would be liable for the Principal and the Fifth and the trespass offering.[38] Rami b. Hama raised an objection [from the following]:[39] 'Where the other party was suspected regarding the oath.[40] How so? [Where he took falsely] either an oath regarding evidence[41] or an oath regarding a deposit[42] or an oath in vain.'[43] But if there is legal force in your statement,[44] would not that party have become disqualified from the very moment of the denial?[45] — It might, however, be said that we are dealing here with a case where the deposited animal was at that time placed on the meadow, so that the denial could not be considered a genuine one, since he might have thought to himself, 'I will get rid of the plaintiff for the time being [so that he should no more press me for it] and later I will go and deliver up to him the deposited animal.'[46] This view could even be proved [from the following statement]:[47] R. Idi b. Abin said that he who [falsely] denies a loan[48] is not yet disqualified from giving evidence,[49]

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(1) After Passover.

(2) For which he should be subject to Lev. V, 21-25.

(3) And if this is the case the perjurer should be subject only to Lev. V, 4-10.

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

(5) For which a thief is liable but not a bailee.

(6) Which is a valid defence in the case of a borrower but not in that of a thief.

(7) In the case he swore he was an unpaid bailee.

(8) So in MS.M. [This is to be given preference to the reading 'Raba' of cur. edd. as Raba was doubtful on the matter under discussion.]

(9) Lev. V, 22.
(10) Why then has Rabbah made a statement to the contrary effect?
(11) I.e., Rabbah to R. Amram.
(12) Lit., 'said to him, here is thine.' In which case there is no denial of money.
(13) And there is therefore a potential denial of money.
(14) I.e., Abba b. Abba.
(15) So interpreted by Rashi, but v. Malbim on Lev. V, 22, n. 374.
(16) Referring to Lev. V, 1. On the question whether it refers to the law of liability or exemption v. the discussion that follows.
(17) Cf. Sifra on Lev. V, 22.
(18) And no perjury at all was committed.
(19) And took nevertheless an oath to the contrary.
(20) I.e., whether to that of liability or to that of exemption.
(21) To deliver evidence on a pecuniary matter and he falsely denied any knowledge of it.
(22) Shebu. 32a.
(23) I.e. R. Eleazar b. Simeon who follows the view of his father, cf. supra 71b.
(24) I.e., such as where the evidence in question would not directly have any bearing upon a pecuniary matter but might indirectly at a subsequent stage bring about a pecuniary liability; this is so in the case of one witness whose evidence is not sufficient to establish pecuniary liabilities as stated in Deut. XIX, 15, but whose testimony is accepted for the purpose of imposing an oath upon a defendant who, if unprepared to swear, would have to make full payment; v. Shebu. 40a and 41a.
(25) And the law of Lev. V, 1 has to apply.
(26) The law of Lev. V, 1 could therefore not apply in the case of one witness.
(27) In accordance with the law applicable to robbers.
(28) Sifra on Lev. XIX, 11.
(29) Lev. V, 22.
(30) The restitution he is obliged to make, ibid. 23.
(31) Ibid. XIX, 11.
(32) I.e., even before having committed perjury; the fine thus being his becoming liable for all accidents.
(33) In accordance with Lev. V, 21-24.
(34) The Fifth and Guilt offering.
(35) Lev. XIX, 11.
(36) The penalty thus being his becoming liable for all accidents.
(37) In which case Lev. V, 21-24 does not apply as gathered from Num. V, 7; v. infra 108b.
(38) V. p. 614, n. 13.
(39) Shebu. VII, 4.
(40) The plaintiff will take the oath.
(41) Dealt with in Lev. V, 2 and Shebu. IV.
(42) Cf. Lev. V, 21-23.
(43) Cf. ibid. V, 4.
(44) That by mere denial of a deposit the depositor becomes subject to the law of robbery.
(45) Even before having taken the false oath.
(46) For the ruling of R. Shesheth applies only to a case where it was definitely proved that at the time of the denial the deposit was actually in the hands of the depositor.
(47) B.M. 4a, 5b and Shebu. 40b.
(48) Without, however, having taken an oath.
(49) For since the denial was not confirmed by an oath it might have been made merely for the time being. i.e., to get rid of the plaintiff who pressed for immediate payment.

Talmud - Mas. Baba Kama 106a

whereas [if this was done] in the case of a deposit he would thereby become disqualified from giving

evidence.[1] But did Ilfa not say that an oath transfers possession,[2] which appears to prove that it is only the oath which would transfer responsibility, whereas mere denial would not transfer responsibility?[3] But here also we are dealing with a case where the deposited article was at that time situated on the meadow.[4] Or if you wish I may say that what was meant to be conveyed by the statement that an oath transfers possession was as in the case of R. Huna, for R. Huna said that Rab stated: [Where one said to another,] 'You have a maneh[5] of mine' and the other retorted, 'I have nothing of yours'[6] and confirmed it by an oath[7] and then witnesses came forward [and proved the defendant to have perjured himself] he would be exempt[8] as it is stated: And the owner thereof shall accept it and he shall not make restitution,[9] implying that wherever the plaintiff accepted an oath, the defendant could no more be made liable to pay money.

To return to a previous theme: 'R. Huna said that Rab stated [that where one said to another]. "You have a maneh of mine" and the other rejoined. "I have nothing of yours" and confirmed it by an oath and subsequently witnesses came forward [and proved the defendant to have perjured himself] he would be exempt as it is stated: And the owner thereof shall accept it and he shall not make restitution, implying that wherever the plaintiff accepted an oath, the defendant could no more be made liable to pay money.' Raba thereupon said: We should naturally suppose that the statement of Rab is meant to apply to the case of a loan where the money was given to be spent,[10] but not to a deposit which always remains in the possession of the owner.[11] But [I affirm] by God that Rab made his statement even with reference to a deposit, as it was regarding a deposit that the text [of the verse quoted][12] was written. R. Nahman was sitting and repeating this teaching.[13] when R. Aha b. Manyumi pointed out to R. Nahman a contradiction [from the following: If a man says to another] 'Where is my deposit?' and the other replies. 'It is lost,' and the depositor then says. 'Will you take an oath,' and the bailee replies. 'Amen!'[14] then if witnesses testify against him that he himself had consumed it, he has to pay only the Principal,[15] whereas if he admits [this] on his own accord, he has to pay the Principal together with a Fifth and bring a trespass offering?[16] — R. Nahman said to him: We are dealing here with a case where the oath was taken outside the Court of Law.[17] He rejoined:[18] If so read the concluding clause: [But if on being asked] 'Where is my deposit?', the bailee replied: 'It was stolen!', [and when the depositor retorted] 'Will you take an oath?', the bailee said, 'Amen!' if witnesses testify against him that he himself had stolen it, he has to repay double, whereas if he admits this on his own accord, he has to pay the Principal together with a Fifth and a trespass offering. Now, if you assume that the oath was taken outside the Court of Law, how could there be liability for double payment?[19] — He replied: I might indeed answer you that [though in the case of] the commencing clause [the oath was taken] outside the Court of Law, [in that of] the concluding clause [it was taken] in the Court of Law. But as I am not going to give you a forced answer I will therefore say that though in the one case as well as in the other the oath was taken in the Court of Law,[20] there is still no difficulty, as in the first case we suppose that the claimant anticipated the Court[21] [in administering the oath] and in the other case[22] he did not do so.[23] But Rami b. Hama said to R. Nahman: Since you do not personally accept this view of Rab, why are you pledging yourself to defend this statement of Rab? — He replied: I did it [merely] to interpret the view of Rab, presuming that Rab might have thus explained this Mishnaic text. But did not Rab quote a verse[24] to support his view?[25] — It might be said that the verse intends only to indicate that those who have to be adjured by [the law of] the Torah are only they who by taking the oath release themselves from payment,[26] [as it is stated: 'And the owner thereof shall accept it and he shall not make restitution,'[24] [implying that it is] the one who [otherwise] would be under obligation to make it good that has to take the oath.

R. Hamnuna raised an objection [from the following]: 'Where an oath was imposed upon a defendant five times [regarding the same defence], whether in the presence of the Court of Law or not in the presence of the Court of Law, and he denied the claim [on every occasion], he would have to be liable[27] for each occasion. And R. Simeon said: The reason is that [on each occasion] it was open to him to retract and admit the claim.'[28] Now in this case you can hardly say that the action of

the Court was anticipated, for it is stated: 'Where an oath was imposed upon a defendant' [which naturally would mean, by the sanction of the Court]; you can similarly not say that it was done outside the Court of Law, for it is stated 'in the presence of the Court of Law.'[29] As he[30] raised this difficulty so he also solved it, by pointing out that the text should be interpreted disjunctively: 'Where an oath was imposed upon him [by the Court, but taken] outside the Court of law ,[31] or where it was administered in the presence of the Court of Law' but in anticipation of its action.[31] Raba raised an objection [from the following:] If a bailee[32] advanced a plea of theft regarding a deposit and confirmed it by an oath but subsequently admitted [his perjury], and witnesses came forward [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; but if he confessed after the appearance of the witnesses he has to repay double and bring a trespass offering.[33] Now, here it could not be said that it was outside the Court of Law, or that it was done in anticipation [of the action of the Court], since the liability of double payment[34] is mentioned here![35] — Raba therefore said: To all cases of confession,[36] no matter whether he pleaded in defence loss or theft, Rab did not mean his statement to apply, for it is definitely written: Then they shall confess,[37] implying [that in all cases] the perjurer would have to pay the Principal and the Fifth, [and so also in the case] where he pleaded theft[38] and witnesses came forward [and proved otherwise], Rab similarly did not mean his statement to apply, for [it is in this case that] the liability for double payment [is laid down in Scripture];[39] the statement made by Rab applies only to the case where, e.g., he pleaded in defence loss[40] and after confirming it by an oath he did not admit his perjury but witnesses appeared [and proved it].[41] R. Gamda went and repeated this explanation[42] in the presence of R. Ashi who said to him: Seeing that R. Hamnuna was a disciple of Rab[43] and surely knew very well that Rab meant his statement to apply also to the case of confession,[44] since otherwise he would not have raised an objection from a case of confession, how then can you say that Rab did not mean his statement to apply to a case of confession?[44] — Said R. Aha the Elder to R. Ashi: R. Hamnuna's difficulty may have been this:

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(1) V. p. 614, n. 7.

(2) As a deposit (falsely) denied by a bailee committing perjury will no less than in the case of conversion no longer remain in the possession of the depositor but is transferred to the responsibility of the bailee who has become subject to the law of robbery.

(3) And not render the bailee a robber, contrary to the view expressed by R. Shesheth.

(4) V. p. 615, n. 16.

(5) V. Glos.

(6) In which case there is strictly speaking neither a biblical nor a Mishnaic oath, but the 'Heseth' oath which is of later Rabbinic origin, for which v. Shebu. 40b.

(7) Even though in the days of Rab an oath in such circumstances was by no means obligatory; v. also Tur. H.M. 87,8.

(8) From having to pay the maneh, for the oath he took with the consent of the plaintiff had the effect of preventing any possible revival of the claim; the meaning that an oath transfers possession would therefore be that it conclusively bars any further action in the matter.

(9) Ex. XXII. 10.

(10) And no special act to transfer ownership and possession is necessary.

(11) Even while in the hands of the bailee, in which case an act of conveyance is necessary, which could hardly he done by an oath.

(12) Ex. XXII, 10.

(13) Which R. Huna stated in the name of Rab.

(14) 'So be it.' Which in these circumstances amounts to an oath to all intents and purposes; v. Shebu. 29b.

(15) But not double payment as his defence was not theft, and no Fifth as he 'did not confess perjury.

(16) In accordance with Lev. V, 22-25. Sheb. 49a. Supra 63b and infra 108b. Now, the commencing clause is in glaring contradiction to the view of Rab. The case of confession, however, dealt with in the concluding clause would present no difficulty as Rab's ruling could never apply in that case, as it would have been against Lev. V, 22-23 interpreted on the analogy to Num. V, 7; so Rashi but v. also Tosaf. a.l.

(17) Being thus a mere private matter it could not bar the judicial reopening of the case, whereas the ruling of Rab applies to an oath taken at the sitting of the Court of Law.
(18) I.e., R. Aha to R. Nahman.
(19) Which could be imposed upon the bailee only if his defence of theft was confirmed by him by an oath administered to him by the Court of Law.
(20) I.e., in one and the same place.
(21) Lit., 'jumped in'.
(22) The latter clause as well as Rab's statement.
(23) There would therefore still be a difference between the oath in the commencing clause and the oath in the concluding clause, but only in the manner of adjuration and not in the place where it was administered.
(24) Ex. XXII, 10.
(25) How then could anyone depart from it?
(26) I.e., the defendants; v. Shebu. 45a.
(27) In accordance with Lev. V, 21-24.
(28) Shebu. 36b.
(29) This Mishnaic text, from which it could be gathered that, though an oath has already been imposed and taken, the case could still be reopened, will thus be in contradiction to the view of Rab!
(30) I.e., R. Hamnuna.
(31) [In which case it still remains a private matter and does not bar the judicial re-opening of the case.]
(32) Lit., 'the owner of a house'; v. Ex. XXII, 7.
(33) Shebu. 37b; supra 65a.
(34) V. p. 618, n. 1.
(35) Is this not in contradiction to the view of Rab?
(36) Of perjury regarding a claim of pecuniary value.
(37) Num. V, 7.
(38) Confirming it by a false oath.
(39) Ex. XXII, 6-8 as interpreted supra p. 368.
(40) In which case the bailee could never become liable for double payment.
(41) It was in such a case that Rab laid down the ruling that once the oath had been administered the claim could no more be put forward again.
(42) Of Raba.
(43) Cf. Sanh. 17b; v. also supra 74a, n. 10.
(44) Of perjury.

Talmud - Mas. Baba Kama 106b

I could quite understand that if you were to say that if witnesses appeared after he took the oath [thus proving him to be a perjurer] he would have to pay, as it would be on account of this that we should make him liable to bring sacrificial atonement[1] for the oath on the last occasion, since it was always open to him to retract and admit the claim. But if you maintain that should witnesses appear after he took the oath he would be exempt, is it possible that whereas if witnesses were to have come and testified against him he would have been exempt,[2] we should rise and declare him liable to sacrificial atonement[1] for an oath on the mere ground that he could have been able to retract and confess [his perjury]? For the time being at any rate he has not made such a confession!

R. Hiyya b. Abba said that R. Johanan stated: 'He who [falsely] advances a plea of theft with reference to a deposit in his possession may have to repay double;[3] so also if he slaughtered or sold it, he may have to repay fourfold or fivefold.[4] For since a thief repays double[5] and a bailee pleading the defence of theft has to repay double, just as a thief who has to repay double, is liable to repay fourfold or fivefold in the case of slaughter or sale, so also a bailee who, when pleading the defence of theft regarding a deposit has similarly to repay double, should likewise have to repay fourfold or fivefold in the case of slaughter or sale.'[6] But how can you argue from a thief who has to repay

double even in the absence of perjury to a bailee pleading the defence of theft where no double payment has to be made unless where a false oath was taken? — It might, however, be said that a thief and a bailee alleging theft are made analagous [in Scripture],[7] and no refutation could be made against an analogy [in Scripture].[8] This may be granted if we accept the view[9] that one verse deals with a thief and the other with a bailee [falsely] advancing the plea of theft, but if we adopt the view that both [the verses] 'If the thief be found . . . 'and 'If the thief be not found' deal with a bailee falsely advancing a plea of theft, what could be said?[10] — It may still be argued [that they were made analagous by means of the definite article[11] as instead of] 'thief' [it was written] 'the thief'. R. Hiyya b. Abba pointed out to R. Johanan an objection [from the following]: [If a depositor says.] 'Where is my ox?' [and the bailee pleads:] 'It was stolen,' [and upon the plaintiff's saying,] 'I want you to take an oath,' the defendant says 'Amen,'[12] and then witnesses testify against him that he consumed it, he would have to repay double.[13] Now, in this case, where it was impossible [for him] to consume meat even of the size of an olive[14] unless the animal was first slaughtered [effectively].[15] It was stated that he would repay double [thus implying that it is] only double payment which will be made but not fourfold and fivefold pay ments![16] We might have been dealing here with a case where it was consumed nebelah.[17] Why did he[18] not answer that it was consumed terefah?[19] — [He adopted] the View of R. Meir who stated[20] that a slaughter which does not [render the animal ritually] fit for consumption is still designated [in law] slaughter.[21] But again, why not answer that the ox was an animal taken alive out of a slaughtered mother's womb [and as such it may be eaten[22] without any ritual slaughter]?[23] — [But on this point too he[18] followed] the view of R. Meir who said that an animal taken alive out of a slaughtered mother's womb is subject to the law of slaughter.[22] But still, why not answer that the ruling applied where, e.g., the bailee had already appeared in the Court, and was told[24] to 'go forth and pay the plaintiff'? For Raba stated:[25] [Where a thief was ordered to] go and pay the owner [and after that] he slaughtered or sold the animal, he would be exempt,[26] the reason being that since the judges had already adjudicated 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 make fourfold and fivefold payments;[27] [but where 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 repay fourfold or fivefold], the reason being that since they have not delivered the final sentence upon the matter, he is still a thief![28] — To this I might say: Granting all this,[29] why not answer that the bailee was a partner in the theft and slaughtered the ox without the knowledge of his fellow partner [in which case he could not be made liable for fourfold or fivefold payment]?[30] It must therefore be that one out of two or three [possible] answers has been adopted.

R. Hiyya b. Abba said that R. Johanan stated: He who advanced in his own defence a plea of theft regarding a lost article[31] [which had been found by him] would have to repay double, the reason being that it is written: For any manner of lost thing whereof one saith.[32] R. Abba b. Memel pointed out to R. Hiyya b. Abba an objection [from the following:] If a man shall deliver[33] implies that the delivery by a minor[34] is of no effect [in law].[35] So far I only know this to be the case where he was a minor at the time of the delivery and was still a minor at the time of the demand, but whence could it be proved that this is so also in the case where at the time of the delivery he had been a minor though at the time of the demand he had already come of age? Because it says further: The cause of both parties shall come before the judges.[36] [thus showing that the law of bailment does not apply] unless the delivery and the demand were made under the same circumstances.[37] Now, if your view is sound,[38] why should this case [with the minor] not be like that of the lost article?[39] — He replied:[40] We are dealing here with a case where the deposit was consumed by the bailee while the depositor was still a minor.[41] But what would be the law where he consumed it after the depositor had already come of age? Would he have to pay?[42] If so, why state 'unless the delivery and the demand were made under the same circumstances,' and not 'unless the consumption[43] and the demand took place under the same circumstances'? — He said to him:[44] You should indeed read 'unless the consumption[45] and the demand took place under the same circumstances'. R. Ashi moreover said: The two cases[46] could not be compared, as the lost article came into the hands of the finder from the

possession of a person of responsibility,[47] whereas [in the case of a minor] the deposit did not come to the bialee from the possession of a person of responsibility.

R. Hiyya b. Abba further said that R. Johanan stated: He[48] who puts forward a defence of theft in the case of a deposit could not be made liable[49] unless he denies a part and admits a part [of the claim], the reason being that Scripture states: This is it[50] [implying 'this' only].[50] This view is contrary to that of R. Hiyya b. Joseph. for R. Hiyya b. Joseph said:

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(1) In accordance with Lev. V, 21-26.
(2) V. p. 616, n. 8.
(3) If he confirmed the plea by an oath.
(4) Cf. Ex. XXI, 37.
(5) Ibid. XXII, 6.
(6) V. supra 62b, 63b.
(7) Lit. 'It is an analogy, hekkesh. In Ex. XXII, 6-8 as interpreted supra pp. 368 ff.
(8) This being an axiomatic hermeneutic rule; v. supra 63b and Men. 82b.
(9) For notes, v. supra 63b.
(10) I.e., where then were the two made analogous in Scripture?
(11) Which has the effect of denoting the thing par excellence as in Pes. 58b; v. also Kid. 15a.
(12) V. p. 617. n. 5.
(13) Infra 108b, v. also Shebu. 49a.
(14) Which is the minimum quantity constituting the act of eating; cf. 'Er. 4b.
(15) In accordance with the law referred to in Deut. XII, 21 and laid down in detail in Hul. III.
(16) Does this not contradict the view expressed by R. Johanan that even fourfold or fivefold payment would have to be made?
(17) I.e. where the animal was not slaughtered in accordance with the ritual, v. Glos., in which case the law of fourfold and fivefold payments does not apply, as laid down supra p. 445,
(18) I.e., R. Johanan.
(19) I.e., where an organic disease was discovered in the animal, v. Glos.; according to the view of R. Simeon stated supra p. 403 the law of fourfold and fivefold payments does similarly not apply.
(20) Hul. VI, 2.
(21) So that the law of fourfold and fivefold payments will apply which is also the anonymous view stated supra p. 403.
(22) V. Hul. IV, 5.
(23) On account of the ritual slaughter carried out effectively on the mother.
(24) Before he slaughtered the animal, in which case he would not have to make fourfold and fivefold payments for a subsequent slaughter.
(25) Supra 68b.
(26) From fourfold and fivefold payments.
(27) In fact no pecuniary fine at all; cf. supra p. 452.
(28) Who is subject to the law of Ex. XXI, 37. Why then not give this answer?
(29) That there was also some other answer to be given.
(30) V. supra 78b.
(31) Supra 57a and 63a.
(32) V. Ex. XXII, 8.
(33) Ex. XXII, 6.
(34) Since he has not yet attained manhood; cf. Sanh. 69a.
(35) Regarding the possible liability upon the bailee for double payment.
(36) V. Ex. XXII, 8.
(37) Cf. J. Shebu. VI, 5.
(38) That there would be double payment in the case of perjury committed regarding a lost article.
(39) Where there would be liability in the absence of any depositor at all.
(40) I.e., R. Hiyya to R. Abba.

(41) In which case the bailee had regarding that deposit never had any responsibility to a person of age.
(42) Double payment for perjury.
(43) Though not the delivery.
(44) V. p. 623. n. 11.
(45) V. p. 623, n. 14.
(46) I.e. a lost article and a deposit of a minor.
(47) Lit., 'understanding', i.e. the person who lost it.
(48) I.e., an unpaid bailee.
(49) To take the oath of the bailees and in case of perjury to have consequently to restore double payment.
(50) And no more, which thus constitutes an admittance of a certain part and the denial of the balance.

Talmud - Mas. Baba Kama 107a

There is here an 'interweaving of sections',[1] as the words, this is it written here[2] have reference to loans.[3] But why a loan [in particular]? In accordance with Rabbah, for Rabbah stated:[4] 'On what ground did the Torah lay down[5] that he who admits a part of a claim has to take an oath?[6] Because of the assumption that no man is so brazen-faced as to deny [outright] in the presence of his creditor[7] [the claim put forward against him].[8] It could therefore be assumed that he[9] was desirous of repudiating the claim altogether, and the reason that he did not deny it outright is[10] because no man is brazen-faced [enough to do so].[11] It may consequently be argued that he was on this account inclined[12] to admit the whole claim; the reason that he denied a part was because he considered: Were I to admit [now] the whole liability, he will soon demand the whole claim from me; I should therefore [better] at least for time being get rid of him,[13] and as soon as I have the money will pay him.[14] It was on account of this that the Divine Law[15] imposed an oath upon him so that he should have to admit the whole of the claim.[16] Now, it is only in the case of a loan that such reasoning could apply.[17] whereas regarding a deposit the bailee would surely brazen it out [against the depositor].[18]

Rami b. Mama learnt: The four bailees

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(1) I.e., an interpolation of another passage; Ex. XXII, 8, v. n. 7.

(2) Confining the imposition of the oath to cases of part-admission.

(3) According to Rashi a.l. the phrase in Ex. XXII, 8 confining the oath to part. admission referred not to v. 6 but to 24; v. also Sanh. (Sonc. ed.) P. 5, n. 3; regarding deposits there would thus he an oath even in cases of total denial. For the interpretation of R. Tam, cf. Tosaf. a.l. and Shebu. 45b. The accepted view is expounded by Riba and Rashb., a.l. that the condition of part admission is attached to all cases of pecuniary litigation including deposits, providing the defences were such as would avail also in cases of loans, such as e.g.. the denial of the contract or a plea of payment and restoration; v. also Maim. Yad., Sekiroth, 11, 11-12; Tur. H.M. 296, 2. The meaning in the Talmudic text here would therefore be 'ascribed as dealing with the defences of loans.' For regarding the specific defences in the case of a deposit, i.e. theft or loss or accident, a biblical oath is imposed even without an admission of part liability. But as Ex. XXII,6 deals with two kinds of deposits, i.e. 'money or stuff' there is indeed an interweaving of sections in this paragraph, for a deposit of money might in accordance with B.M. III, 11, amount to an implied mutuum involving all the liabilities of a loan. In other systems of law it is indeed called depositum irregulare for which see Dig. 19.2.31; Moyle, Imp. Just. Inst. 396 and Goodeve on 'Personal Property', 6th Ed., 25. The phrase in Ex. XXII, 8 confining the oath to part admission is thus said to be ascribed as dealing exclusively with this depositum irregulare, i.e. with the bailment of money when it became a loan to all intents and purposes; v. also J. Shebu. VI, I.

(4) B.M. 3a; Shebu. 42b.

(5) In Ex. XXII. 7-8.

(6) Whereas for total denial there is no biblical oath.

(7) Who was his benefactor.

(8) A total denial in the case of a loan is thus somehow supported by this general assumption; cf. also Shebu. 40b.

(9) Who admitted a part of the claim.

(10) Not perhaps on account of honesty.

(11) The fact that he admitted a part of the claim is to a certain extent a proof that he found it almost impossible to deny the claim outright.

(12) Lit., 'willing'.

(13) At least so far as a part of the claim is concerned.

(14) For the whole of the claim.

(15) Ex. XXII,7-8.

(16) As he would surely be loth to commit perjury.

(17) As the creditor was a previous benefactor of his.

(18) As in this case the bailee was generally the benefactor and not necessarily the depositor, so that the whole psychological argumentation of Rabbah fails; [and an oath is thus to be imposed even where there is a total denial, which is contrary to the view reported by R. Hiyya b. Abba in the name of R. Johanan.]

have to deny a part and admit a part [of the claim before the oath can be imposed upon them]. They are as follows: The unpaid bailee and the borrower, the paid bailee and the hirer.[1] Raba said: The reason of Rami b. Hama is [as follows]: In the case of an unpaid bailee it is explicitly written: This is it;[2] the law for the paid bailee could be derived [by comparing the phrase expressing] ‘giving’[3] [to the similar term expressing] ‘giving’ in the section of unpaid bailee;[4] the law for borrower begins with ‘and if a man borrow’[5] so that the waw copula [‘and’] thus conjoins it with the former subject;[6] the hirer is similarly subject to the same condition, for according to the view that he is equivalent [in law] to a paid bailee[7] he should be treated as a paid bailee, or again, according to the view that he is equivalent [in law] to an unpaid bailee,[7] he should be subject to the same conditions as the unpaid bailee.

R. Hiyya b. Joseph further said: He who [falsely] advances the defence of theft in the case of a deposit would not be liable[8] unless he had [first] committed conversion,[9] the reason being that Scripture says: The master of the house shall come near unto the judges to see whether he have not put his hand unto his neighbour's goods,[10] implying that if he put his hand he would be liable,[8] and thus indicating that we are dealing here with a case where he had already committed conversion.[9] But R. Hiyya b. Abba said to them:[11] R. Johanan [on the contrary] said thus: The ruling[12] was meant to apply where the animal was still standing at the crib.[13] R. Ze'ira then said to R. Hiyya b. Abba: Did he mean to say that this is so[12] only where it was still standing at the crib,[13] whereas if the bailee had already committed conversion,[9] the deposit would thereby [already] have been transferred to his possession,[14] so that the subsequent oath would have been of no legal avail,[15] or did he perhaps mean to say that this is so even where it was still standing at the crib?[16] — He replied: This I have not heard, but something similar to this I have heard. For R. Assi said that R. Johanan stated: One[17] who had in his defence pleaded loss and had sworn thus, but came afterwards and pleaded theft,[18] also confirming it by an oath, though witnesses appeared [proving otherwise], would be exempt.[19] Now, is the reason of this ruling not because the deposit had already been transferred to his possession through the first[20] oath? — He replied to him:[21] No; the reason is because he had already discharged his duty to the owner by having taken the first oath.[22]

It was indeed similarly stated: R. Abin said that R. Elai stated in the name of R. Johanan: If one advanced in his defence a plea of loss regarding a deposit and had sworn thus, but came afterwards and advanced a plea of theft also confirming it by an oath, and witnesses appeared [proving otherwise], he would be exempt.[19] because he had already discharged his duty to the owner by having taken the first oath.[22]

R. Shesheth said: One[20] who [falsely] pleads theft in the case of a deposit, if he had already committed conversion,[23] would be exempt,[19] the reason being that Scripture says, ‘The master of the house shall come near unto the judges to see whether he have not put his hand’ etc.[24] implying that were he to have already committed conversion he would be exempt. But R. Nahman said to him: Since three oaths are imposed upon him,[25] an oath that he was not careless, an oath that he did not commit conversion and an oath that the deposit was no more in his possession, does this not mean that the oath ‘that he did not commit conversion’ should be compared to the oath ‘that the deposit was no more in his possession so that just as where he swears ‘that the deposit was no more In his possession,’ as soon as it becomes known that the deposit was really at that time in his possession he would be liable for double payment, so also where he swore ‘that he did not commit conversion, when the matter becomes known that he did commit conversion he would be liable?[26] — He replied: No; the oath ‘that he did not commit conversion’ was meant to be compared to the oath ‘that he was not careless’; just as where he swears ‘that he was not careless’ even if it should become known that he was careless,[27] he would be exempt from double payment.[28] so also where he swears ‘that he did

not commit conversion,' even if it becomes known that he did commit conversion,[29] he would still be exempt from double payment.

Rami b. Hama asked: [Since where there is liability for double payment there is no liability for a Fifth,[30] is it to be understood that] a pecuniary value for which there is liability to make double payment exempts from the Fifth, or is it perhaps the oath which involves the liability of double payment that exempts from the Fifth? In what circumstances [could this problem have practical application]? — E.g., where the bailee had pleaded in his defence theft confirming it by an oath and then came again and pleaded loss and similarly confirmed it by an oath,

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(1) B.M. 5a and 98a.
(2) Ex. XXII, 8.
(3) Opening the section of the paid bailee in Ex. XXII, 9.
(4) V. Ex. XXII, 6, the opening section of the unpaid bailee.
(5) Ibid. XXII, 13.
(6) And makes him analogous in this respect to the bailees dealt with previously; v. B.M. 95a.
(7) Cf. supra 57b.
(8) To double payment in the case of perjury.
(9) Lit., 'put his hand unto it'; v. Ex. XXII, 7.
(10) Ibid.
(11) I.e., to the sages, but correctly omitted in MS.M.
(12) Regarding the liability for double payment.
(13) And no conversion was committed; v. also J. Shebu. VIII, 3.
(14) V. p. 616, n. 2.
(15) Since the bailee had become already subject to the law of robbery.
(16) And no conversion was committed.
(17) An unpaid bailee.
(18) Regarding the same deposit.
(19) From double payment.
(20) V. p. 616, n. 2.
(21) I.e., R. Ze'ira to R. Hiyya b. Abba.
(22) So that the second oath is no more judicial and could therefore not involve double payment.
(23) V. p. 626, n. 9.
(24) Ex. XXII, 7.
(25) An unpaid bailee. Cf. B.M. 6a.
(26) To double payment in case of perjury.
(27) I.e., that the deposit was stolen from him through his carelessness.
(28) Since he did not misappropriate the deposit for himself.
(29) And then misappropriated it for himself.
(30) For which v. supra 65b and 106a.

Talmud - Mas. Baba Kama 108a

and it so happened that witnesses appeared and proved the first oath [to have been perjury][1] while he himself confessed that the last oath was perjury.[2] Now, what is the law? Is it the pecuniary value for which there is liability to make double payment that exempts from the Fifth, so that [as] in this case too there is liability to make double payment [for the deposit, there would be no Fifth for it], or perhaps it is the oath which involves a liability for double payment that exempts from a Fifth, so that since the last oath does not entail liability for double payment[3] it should entail the liability for the Fifth? — Said Raba: Come and hear: If a man said to another in the market: 'Where is my ox which you have stolen,' and the other rejoined, 'I did not steal it at all,' whereupon the first said, 'Swear to me, and the defendant replied, 'Amen,' and witnesses then gave evidence against him that he did

steal it, he would have to repay double, but if he confessed on his own accord, he would have to pay the Principal and a Fifth and bring a trespass offering.[4] Now here it is the witnesses[5] who make him liable for double paymentl, and yet it was only where he confessed of his own accord that he would be subject to the law of a Fifth,[6] whereas where he made a confession after [the evidence was given by] the witnesses, it would not be so. But if you assume that it is the oath involving liability of double payment that exempts from the Fifth, why then [in this case] even where he made confession after the evidence had already been given by the witnesses should the liability for the Fifth not be involved? Since the oath here was not instrumental in imposing the liability for double payment why should it not involve the liability for the Fifth? This would seem conclusively to prove that a pecuniary value for which there is liability to make double payment exempts from the Fifth, would it not? — This could indeed be proved from it.

Rabina asked: What would be the law as to a Fifth and double payment to be borne by two persons respectively? — What were the circumstances? — E.g., where an ox was handed over to two persons and both pleaded in defence theft, but while one of them confirmed it by an oath and subsequently confessed [it to have been perjury] the other one confirmed it by an oath and witnesses appeared [and proved it perjury]. Now, what is the law? Shall we say that it was only in the case of one man that the Divine Law was particular that he should not pay both the Fifth and double payment,[7] so that in this case [where two persons are involved]. one should make double payment and the other should pay a Fifth, or shall it perhaps be said that it was regarding one and the same pecuniary value that the Divine Law was particular that there should not be made any payment of both a Fifth and double payment;[8] and in this case also it was one and the same pecuniary value? — This must stand undecided.

R. Papa asked: What would be the law regarding two Fifths and two double payments in the case of one man? What are the circumstances? E.g., where the bailee first pleaded in his defence loss and after confirming it by an oath confessed [it to have been perjury],[9] but afterwards came back and pleaded [again a subsequent] loss, confirming it by an oath, and then again confessed [it to have been perjury];[9] or, e.g., where he pleaded in defence theft confirming it by an oath and witnesses appeared [and proved it to have been perjury],[10] but he afterwards came back and advanced [again] the defence of [a subsequent] theft, confirming it by an oath, and witnesses appeared against him. Now, what would be the law? Shall we say that it was only two different kinds of pecuniary liability[11] that the Divine Law forbade to be paid regarding one and the same pecuniary value,[8] whereas here the liabilities are of one kind[12] [and should therefore be paid], or perhaps it was two pecuniary liabilities[13] that the Divine Law forbade to be paid regarding one and the same pecuniary value and here also the pecuniary liabilities are two?[12] — Come and hear what Raba stated: And shall add the fifth:[14] the Torah has thus attached many fifths to one principal.[15] It could surely be derived from this.

If the owner had claimed [his deposit] from the bailee who, [though] he [denied the claim] on oath [nevertheless] paid it, and [it so happened that] the actual thief was identified,[16] to whom should the double payment go?[17] — Abaye said: To the owner of the deposit, but Raba said: To [the bailee with] whom the deposit was in charge. Abaye said that it should go to the depositor, for since he was troubled[18] to the extent of having to impose an oath, he could not be expected to have transferred the double payment.[19] But Raba said that it would go to [the bailee with] whom the deposit was in charge, for since [after all] he paid him, the double payment was surely transferred to him. They are divided on the implication of a Mishnah, for we learned: Where one person deposited with another an animal or utensils which were subsequently stolen or lost, if the bailee paid, rather than deny on oath, although it has been stated[20] that an unpaid bailee can by means of an oath discharge his liability and [it so happened that] the actual thief was found and had thus to make double payment, or, if he had already slaughtered the animal or sold it, fourfold or fivefold payment, to whom should he pay? To him with whom the deposit was in charge. But if the bailee took an oath [to defend

himself] rather than pay and [it so happened that] the actual thief was found and has to make double payment, or, where he already slaughtered the animal or sold it, fourfold or fivefold payment, to whom shall he pay? To the owner of the deposit.[21] Now, Abaye infers his view from the commencing clause, whereas Raba deduces his ruling from the concluding clause. Abaye infers his view from the commencing clause where it was stated: 'If the bailee paid, rather than deny on oath . . .' this is so only where he was not willing to swear,

(1) And thus subject to Ex. XXII, 8.
(2) Rendering himself thus liable under Lev. V, 21-25.
(3) Since he did not confirm a defence of theft.
(4) The Mishnah of Shebu. 49a, where, however, the adjuration is missing, but v. also Jer. ibid. 3.
(5) And not at all the oath.
(6) I.e., Lev. V, 24.
(7) V. p. 628, n. 5.
(8) V. p. 628, n. 5.
(9) V. p. 628, n. 7.
(10) V. p. 628, n. 6.
(11) Such as double payment and a Fifth.
(12) I.e., either two Fifths or two amounts of double payment.
(13) No difference whether of one kind or of two different kinds.
(14) Lev. V, 24.
(15) Supra 65b, v. also Sifra on Lev. V, 24, and Malbim, a.l.
(16) And has to pay double.
(17) Either to the bailee in accordance with B.M. 33b, to be quoted presently, or to the depositor.
(18) By the bailee.
(19) To the bailee; v. B.M. 34a and also 35a.
(20) Ibid VII, 8.
(21) V. B.M. 33b.

Talmud - Mas. Baba Kama 108b

but where he did take an oath, even though he subsequently paid, the thief would surely have to pay the owner of the deposit; but Raba deduces his ruling from the concluding clause where it was stated: 'But if the bailee took an oath [to defend himself] rather than pay . . .', this is so only where he was not willing to pay, but where he did pay even though he first denied the claim on oath, the thief would of course have to pay him with whom the deposit was in charge. Does not the implication of the concluding clause contradict the view of Abaye? — Abaye would say to you: What it means to say is this: 'If the bailee swore rather than pay before having taken the oath, though he did so after he took the oath, to whom will the thief pay? To the owner of the deposit.' But does not the implication of the commencing clause contradict the view of Raba? — Raba could say to you that the meaning is this: 'If the bailee paid, as he was not willing to take his stand upon his oath and consequently paid, to whom should the thief pay? To him with whom the deposit was in charge.

Suppose the owner had claimed [his deposit] from the bailee, and the latter denied upon oath, and the actual thief was then identified and the bailee demanded payment from him and he confessed the theft, but when the owner [of the deposit] demanded payment from him he denied it and witnesses were brought, did the thief become exempt[1] through his confession to the bailee,[2] or did the thief not become exempt[1] through his confession to the bailee?[3] — Said Raba: If the oath [taken by the bailee] was true, the thief would become exempt through his confession to the bailee,[4] but if he perjured himself in the oath[5] the thief would not become exempt through his confession to the bailee.[6] But Raba asked: What would be the law where the bailee was prepared to swear falsely but [it so happened that for some reason or other] he was not allowed to do so?[7] — This must remain

undecided. But while R. Kahana was stating the text thus, R. Tabyomi was reading it as follows: ‘Rab asked: What would be the law where the bailee has sworn falsely [to defend himself]?’[8] — This must stand undecided.

Suppose the owner claimed [his deposit] from the bailee who thereupon paid him, and the thief was then identified and when the owner demanded payment from him he confessed, whereas when the bailee demanded payment from him he denied it, and witnesses appeared [against him], should the thief become exempt[9] through his confession to the owner or not? Shall we maintain that the bailee is entitled to say to the owner: ‘Since you have received the value [of your deposit] your interest has completely lapsed[10] in this matter’, or can the owner say to him: ‘Just as you did us a favour,[11] we also are willing to do you the same and are therefore hunting after the thief. Let us take back what belonged to us and you receive back what belonged to you’? — This must stand undecided.

It was taught:[12] Where the deposit was stolen through violence[13] and the thief was identified, Abaye said that if the bailee was unpaid he has the option of going to law with him,[14] or of [clearing himself by] an oath [so that the owner will himself have to deal with the thief], whereas if it was a paid bailee he would have to go to law with the thief and he cannot take an oath to discharge his liability.[15] But Raba said: Whichever he is[16] he would have to go to law with the thief and not take an oath. May we say that Raba differs from the view of R. Huna b. Abin, for R. Huna b. Abin sent word that where the deposit was stolen by violence and the thief was identified, if the bailee was unpaid he had the option of going to law with him or of [clearing himself by] an oath, whereas if he was a paid bailee he would have to go to law with the thief and could not clear himself by an oath?[17] — Raba could say to you that [in this last ruling] we are dealing with a case where the paid bailee took the oath before [the thief was identified].[18] But did R. Huna not say: ‘He had the option of going to law or of clearing himself by an oath’?[19] — What he meant was this: ‘The unpaid bailee had the choice of taking his stand on his oath[20] or of going to law with him.’ Rabbah Zuti asked thus: Where the deposited animal was stolen by violence and the thief restored it to the house of the bailee where it then died through carelessness [on the part of the bailee], what should be the law? Shall we say that since it was stolen by violence, the duty of bailment came to an end,[21] or perhaps since it was restored to him it once more came into his charge [which thus revived]?[22] — This must stand undecided.

MISHNAH. [IF A MAN SAYS TO ANOTHER] ‘WHERE IS MY DEPOSIT?’ AND HE[23] REPLIES: ‘IT IS LOST’ [AND THE DEPOSITOR THEN SAYS]. ‘I PUT IT TO YOU ON OATH.’ AND THE OTHER REPLIES. ‘AMEN’, IF WITNESSES TESTIFY AGAINST HIM THAT HE HIMSELF HAD CONSUMED IT, HE HAS TO PAY ONLY THE PRINCIPAL, WHEREAS IF HE CONFESSES ON HIS OWN ACCORD HE HAS TO REPAY THE PRINCIPAL TOGETHER WITH A FIFTH AND BRING A TRESPASS OFFERING.[24] [BUT IF THE DEPOSITOR SAYS] ‘WHERE IS MY DEPOSIT?’ AND THE BAILEE REPLIES: ‘IT WAS STOLEN’ [AND THE DEPOSITOR THEN SAYS] I PUT IT TO YOU ON OATH, AND THE BAILEE REPLIES, AMEN, IF WITNESSES TESTIFY AGAINST HIM THAT HE HIMSELF HAD STOLEN IT HE HAS TO REPAY DOUBLE,[25] WHEREAS IF HE CONFESSES ON HIS OWN ACCORD HE HAS TO REPAY THE PRINCIPAL TOGETHER WITH A FIFTH AND BRING A TRESPASS OFFERING.[24] IF A MAN ROBBED HIS FATHER AND, [WHEN CHARGED BY HIM,] DENIED IT ON OATH, AND [THE FATHER AFTERWARDS] DIED,[26] HE WOULD HAVE TO REPAY THE PRINCIPAL AND A FIFTH [AND A TRESPASS OFFERING][27] TO HIS [FATHER'S] CHILDREN[28] OR TO HIS [FATHER'S] BROTHERS;[29] BUT IF HE IS UNWILLING TO DO SO,[30] OR HE HAS NOTHING WITH HIM,[31] HE SHOULD BORROW [THE AMOUNT FROM OTHERS AND PERFORM THE DUTY OF RESTORATION TO ANY OF THE SPECIFIED RELATIVES] AND THE CREDITORS CAN SUBSEQUENTLY COME AND [DEMAND TO] BE PAID[32] [THE PORTION WHICH WOULD BY LAW HAVE BELONGED TO THE ROBBER AS

HEIR]. IF A MAN SAID TO HIS SON: 'KONAM BE[33] WHATEVER BENEFIT YOU HAVE OF MINE,'[34] AND SUBSEQUENTLY DIED, THE SON WILL INHERIT HIM.[35]

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(1) From paying the fine.
(2) In accordance with supra p. 427.
(3) The problem is whether the bailee had an implied mandate to approach the thief or not, as a confession made not to the plaintiff or his authorised agent but to a third party uninterested in the matter is of no avail to exempt from the fine; cf. however the case of R. Gamaliel and his slave Tabi, supra p. 428.
(4) As in this case the trust in the bailee has not been impaired and the implied mandate not cancelled.
(5) I.e., he advanced another defence, e.g., accidental death.
(6) Who could no longer be trusted and thus had no right to represent the depositor any more.
(7) Has the trust in him thereby been impaired or not?
(8) Shall it be said that though he had already sworn inaccurately he would sooner or later have been compelled by his conscience to make restoration, as he in fact exerted himself to look for the thief and should therefore still retain the trust reposed in him, especially since the article had really been stolen though he advanced for some reason another plea; R. Tabyomi had thus not read the concluding clause in the definite statement made above by Raba.
(9) V. p. 632. n. 1.
(10) Lit., 'removed'.
(11) By paying us for the deposit and not resisting our claim.
(12) Cf. B.M. 93b.
(13) By an armed robber; v. supra, 57a.
(14) I.e. the thief.
(15) For since he was paid, though he is exempt in the case of theft by violence, it is nevertheless his duty to take the trouble to litigate with the thief, since the thief is identified.
(16) I.e., unpaid as well as paid.
(17) B.M. 93b.
(18) In which case the depositor will himself have to deal with the case.
(19) Which makes it clear that the oath has not yet been taken.
(20) 'Already taken by him.
(21) So that the bailee should no more be subject to the law of bailment.
(22) To make the law of bailment still applicable.
(23) Being an unpaid bailee.
(24) In accordance with Lev. V, 21-25.
(25) In accordance with Ex. XXII, 8.
(26) When the son confessed the theft.
(27) The phrase in parenthesis occurs in the Mishnaic text but not in Rashi. [And rightly so, for what have the children etc. to do with the trespass offering.]
(28) I.e., to his own brothers, for if he would retain anything for himself he would not obtain atonement, since he did not make full restoration (Rashi). [Tosaf.: to his own children, or to his own brothers in the absence of any children to him, v. B.B. 159a.]
(29) I.e., his uncles, in the absence of any other children to his father.
(30) I.e., to forfeit his own share in the payment which he has to make.
(31) To be in a position to do so.
(32) From the amount restored.
(33) I.e., Let it be forbidden as sacrifice; v. Ned. I, 2.
(34) [J.: 'that you do not benefit out of anything belonging to me.']
(35) For through the death of the father his possessions passed out of his ownership and the son is no more benefiting out of anything belonging to him; cf. Ned. V, 3.

Talmud - Mas. Baba Kama 109a

[BUT IF HE SAID 'KONAM. . . '] BOTH DURING HIS LIFE AND AFTER HIS DEATH,[1] AND

[THE FATHER] DIED, THE SON WILL NOT INHERIT HIM,[2] [BUT THE PORTION] WILL BE TRANSFERRED TO HIS FATHER'S [OTHER] CHILDREN OR TO HIS [FATHER'S] BROTHERS; IF THE SON HAS NOTHING [FOR A LIVELIHOOD], HE MAY BORROW [FROM OTHERS AN AMOUNT EQUAL TO HIS PORTION IN THE INHERITANCE] AND THE CREDITORS CAN COME AND DEMAND PAYMENT [OUT OF THE ESTATE].

GEMARA. R. Joseph said: [He must pay[3] the amount due for the robbery] even to the charity[4] box.[5] R. Papa added: He must however say, This is due for having robbed my father. But why should he not remit the liability to himself?[6] Have we not learnt: Where the plaintiff released him from payment of the principal though he did not release him from payment of the Fifth [etc.],[7] thus proving that this liability is subject to be remitted? — Said R. Johanan: This is no difficulty as that was the view of R. Jose the Galilean, whereas the ruling [here][6] presents the view of R. Akiba, as indeed taught: But if the man have no kinsman to restore the trespass unto,[8] how could there be a man in Israel who had no kinsmen?[9] Scripture must therefore be speaking of restitution to a proselyte.[10] Suppose a man robbed a proselyte and when charged denied it on oath and as he then heard that the proselyte had died he accordingly took the amount of money [due] and the trespass offering to Jerusalem, but there [as it happened] came across that proselyte who then converted the sum [due to him] into a loan, if the proselyte were subsequently to die the robber would acquire title to the amount in his possession; these are the words of R. Jose the Galilean. R. Akiba, however, said: There is no remedy for him [to obtain atonement] unless he should divest himself of the amount stolen.[11] Thus according to R. Jose the Galilean, whether to himself or to others, the plaintiff may[12] remit the liability,[13] whereas according to R. Akiba no matter whether to others or to himself, he cannot remit it. Again, according to R. Jose the Galilean, the same law[14] would apply even where the proselyte did not convert the amount due into a loan, and the reason why it says, ‘who then converted the sum [due to him] into a loan’ is to let you know how far R. Akiba is prepared to go, since he maintains that even if the proselyte converted the sum due into a loan there is no remedy for the robber [to obtain atonement] unless he divests himself of the proceeds of the robbery. R. Shesheth demurred to this: If so [he said] why did not R. Jose the Galilean tell us his view in a case where the claimant [remits it] to himself, the rule then applying a fortiori to where he remits it to others? And again why did not R. Akiba tell his view that it is impossible to remit, to others, then arguing a fortiori that he cannot remit it to himself? R. Shesheth therefore said that the one ruling as well as the other is in accordance with R. Jose the Galilean, for the statement made by R. Jose the Galilean that it is possible to remit such a liability applies only where others get the benefit,[15] whereas where he himself would benefit it would not be possible to remit it. Raba, however, said: The one ruling as well as the other [here,] is in accordance with R. Akiba, for when R. Akiba says that it is impossible to remit the liability, he means to himself, whereas to others[15] it is possible for him to remit it.

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(1) [J.: ‘both during my life and after my death.’]

(2) As in this case it was the estate as such, and not as belonging to his father, which was declared forbidden; Ned. V, 3.

(3) Where no other heir could be traced to his father except himself.

(4) Lit., ‘Arnaki’, **; v. K. Krauss, Lehnworter, II, 133.

(5) Cf. supra p. 204 and p. 540.

(6) V. p. 635, n. 1.

(7) Supra Mishnah 103a.

(8) Num. V, 8.

(9) Cf.Kid. 21a and Sanh. 68b; for if he has no issue the inheritance will revert to ancestors and their descendants; v. B.B. VIII, 2.

(10) Who has no kinsman in law except the children born to him after he became a proselyte; cf. Sheb. X, 9 and Kid. 17b.

(11) Tosef. B.K. X.

(12) In all cases.

(13) The Mishnah on 103a will accordingly agree with R. Jose.
(14) Stated by him in the case of the proselyte.
(15) V. p. 636. n. 2.

Talmud - Mas. Baba Kama 109b

This would imply that R. Jose the Galilean maintained that even to himself[1] he could remit it. Now, if that is so, how could a case ever arise that restitution for robbery committed upon a proselyte[2] should be made to the priests[3] as ordained in the Divine Law? — Said Raba: We are dealing here with a case where one robbed a proselyte and [falsely] denied to him on oath [that he had done so], and the proselyte having died the robber confessed subsequently, on the proselyte's death,[4] so that at the time he made confession God[5] acquired title to it[6] and granted it to the priests.[7]

Rabina asked: What would be the law where a proselytess was robbed? Shall we say that when the Divine Law says ‘man’[7] it does not include ‘woman’ or perhaps this is only the Scriptural manner of speaking? — Said R. Aaron to Rabina: Come and hear: It was taught: ‘[The] man’;[7] this tells me only that the law applies to a man; whence do I know that it applies also to a woman? When it is further stated ‘That the trespass be restored’[7] we have two cases mentioned.[8] But if so, why was ‘man’ specifically mentioned? To show that only in the case of [a person who has reached] manhood[9] is it necessary to investigate whether he had kinsmen[10] or not, but in the case of a minor it is not necessary, since it is pretty certain that he could have no ‘redeemers’.[11]

Our Rabbis taught: Unto the Lord even to the priest[12] means that the Lord acquired title to it[13] and granted it to the priest[14] of that [particular] division. You say ‘to the priest of that [particular] division’, but perhaps it is not so, but to any priest whom the robber prefers? — Since it is further stated, Beside the ram of atonement whereby he shall make an atonement for him,[12] it proves that Scripture referred to the priest of that [particular] division.

Our Rabbis taught: In the case where the robber was a priest, how do we know that he is not entitled to say: Since the payment would [in any case] have to go to the priests, now that it is in my possession it should surely remain mine? Cannot he argue that if he has a title to payment which is in the possession of others,[15] all the more should he have a title to payment which he has in his own possession? R. Nathan put the argument in a different form: Seeing that a thing in which he had no share until it actually entered his possession cannot be taken from him once it has entered his possession,[16] does it not stand to reason that a thing[17] in which he had a share[18] even before it came into his possession cannot be taken from him once it has come into his possession?[19] This, however, is not so: for while this may be true[20] of a thing in which he had no share, since in that case just as he had no share in it, so has nobody else any share in it, it is not necessarily true[20] of the proceeds of robbery where just as he has a share in it, so also have others a share in it.[21] The [payment for] robbery must therefore be taken away from his possession and shared out to all his bretheren the priests. But is it not written: And every man's hallowed things shall be his?[22] — We are dealing here with a priest who was [levitically] defiled.[23] But if the priest was defiled, could there be anything in which he should have a share?[24] — [The fact is that] the ruling[25] is derived by the analogy of the term, ‘To the priest’[26] to a similar term ‘To the priest’ occurring in the case of a field of [Permanent] possession,[27] as taught:[28] What is the point of the words the [permanent] possession thereof?[27] [The point is this:] How can we know that if a field which would [in due course] have to fall to the priests in the jubilee[27] but was redeemed by one of the priests, he should not have the right to say, ‘Since the field is destined to fall to the priests in the jubilee and as it is already in my possession it should remain mine, as is indeed only reasonable to argue, for since I have a title to a field in the possession of others, should this not be the more so when the field is in my own possession?’ The text therefore significantly says. As a field devoted, the [permanent] possession thereof shall be the priest's, to indicate that a field of [permanent] possession[29] remains with him, whereas this [field][30] will not

remain with him.[31] What then is to be done with it? It is taken from him and shared out to all his brethren the priests.

Our Rabbis taught: Whence can we learn that a priest is entitled to come and sacrifice his offerings at any time and on any occasion he prefers? It is significantly stated, And come with all the desire of his mind . . . and shall minister.[32] But whence can we learn that the fee for the sacrificial operation[33] and the skin of the animal will belong to him? It is stated: And every man's hallowed thing shall be his,[34] so that if he was blemished,[35] he has to give the offering to a priest of that particular division, while the fee for the operation and the skin will belong to him,

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(1) V. p. 635. n. I.

(2) Who subsequently died without legal issue.

(3) For since the proselyte died without leaving legal issue, why should the robber not acquire title to the payment due for the robbery which is in his possession.

(4) For if the confession was made prior to his death the amount to be paid would have become a liability as a debt upon the robber and would thus become remitted through the subsequent death of the proselyte; cf. supra p. 283.

(5) Lit., 'the Name'.

(6) V. Men. 45b.

(7) V. p. 636, n. 3.

(8) Either because the term expressing 'recompense' or because the term expressing 'trespass' occurs there twice in the text (Rashi). — This solves the question propounded by R. Aaron.

(9) I.e., a proselyte who died after having already come of age.

(10) I.e., descendants, for his ancestors and collateral relatives are not entitled to inherit him; v. Kid. 17b.

(11) V. also Sanh. 68a-69b.

(12) V. p. 636, n. 3.

(13) V. p. 637, n. 7.

(14) On duty at the time of restoration. The priests were divided into twenty-four panels; v. I. Chron. XXIV, 1-18.

(15) [For as soon as the robbery of a proselyte is placed in the charge of a particular division, all priests of that division share a title to it.]

(16) [A priest may come and offer his own sacrifice at any time and retain the flesh and skin for himself without sharing it with the priests of the division on duty. Once he however gave it to another priest who hitherto had no title to it, he cannot reclaim it of him.]

(17) Such as payment for a robbery committed upon a proselyte.

(18) As soon as it was restored to anyone of the division.

(19) As in the case where the priest himself was the robber.

(20) That a priest may retain for himself the priestly portions in his possession.

(21) V. p. 638, n. 8.

(22) Num. V, 10. So that the right to sacrifice the trespass offering would be his. The flesh therefore consequently belongs to him, in which case the payment for the robbery should similarly remain with him.

(23) And as he is thus unable himself to sacrifice the trespass offering he cannot retain the payment.

(24) V. Zeb. XII, 1; how then comes it to be stated in the text that he would be entitled to a share as soon as it was restored to any one of the division?

(25) That a priest may not retain for himself the payment for a robbery he committed upon a proselyte, though he himself had a right to the sacrifice and the whole of the flesh.

(26) V. p. 636, n. 3.

(27) Cf. Lev. XXVII, 21.

(28) 'Ar. 25b.

(29) Which belonged as such to his father and was inherited by him; cf. Rashi' Ar. 25b.

(30) Which he redeemed from the Temple treasury.

(31) After the arrival of the jubilee.

(32) Deut. XVIII, 6-7.

(33) Lit., 'the reward of the service thereof'. I.e., the priestly portions thereof.

(34) Num. V. 10.
(35) And thus himself unable to sacrifice but able to partake of the portions in accordance with Lev. XXI, 17-22.

Talmud - Mas. Baba Kama 110a

but if he was old or infirm[1] he may give it to any priest[2] he prefers, and the fee for the operation and the skin will belong to the members of the division.[3] How are we to understand this 'old or infirm priest'? If he was still able to perform the service,[4] why should the fee for the sacrifice and the skin similarly not be his? If on the other hand he was no longer able to perform the service, how can he appoint an agent?[5] — Said R. Papa: He was able to perform it only with effort, so that in regard to the service which even though carried out only with effort is still a valid service he may appoint an agent, whereas in regard to the eating which if carried through only with effort would constitute an abnormal eating,[6] which is not counted as anything[7] [in the eyes of the law], the fee for the sacrifice and the skin must belong to the members of the division.

R. Shesheth said: If a priest [in the division] is unclean, he has the right to hand over a public sacrifice to whomever[2] he prefers.[8] but the fee and the skin will belong to the members of the division. What are the circumstances? If there were in the division priests who were not defiled, how then could defiled priests perform the service?[9] If on the other hand there were no priests there who were not defiled, how then could the fee for the sacrifice and the skin belong to the members of the division who were defiled and unable to partake of holy food?[10] — Said Raba: Read thus: '[The fee for it and the skin of it will belong] to blemished undefiled priests[11] in that particular division.' R. Ashi said: Where the high priest was an Onan[12] he may hand over his sacrifice to any priest[13] he prefers,[14] whereas the fee for it and the skin of it will belong to the members of the division. What does this tell us [which we do not already know?] Was it not taught: 'The high priest may sacrifice even while an Onan, but he may neither partake of the sacrifice, nor [even] acquire any share in it for the purpose of partaking of it in the evening'?[15] — You might have supposed that the concession made by the Divine Law to the high priest[12] was only that he himself should perform the sacrifice, but not that he should be entitled to appoint an agent; we are therefore told that this is not the case.

MISHNAH. IF ONE ROBBED A PROSELYTE AND [AFTER HE] HAD SWORN TO HIM [THAT HE DID NOT DO SO], THE PROSELYTE DIED, HE WOULD HAVE TO PAY THE PRINCIPAL AND A FIFTH TO THE PRIESTS, AND BRING A TRESPASS OFFERING TO THE ALTAR, AS IT IS SAID: BUT IF THE MAN HAVE NO KINSMAN TO RESTORE THE TRESPASS UNTO, LET THE TRESPASS BE RESTORED UNTO THE LORD, EVEN TO THE PRIEST; BESIDE THE RAM OF ATONEMENT WHEREBY AN ATONEMENT SHALL BE MADE FOR HIM.[16] IF WHILE HE WAS BRINGING THE MONEY AND THE TRESPASS OFFERING UP TO JERUSALEM HE DIED [ON THE WAY], THE MONEY WILL BE GIVEN TO HIS HEIRS,[17] AND THE TRESPASS OFFERING WILL BE KEPT ON THE PASTURE UNTIL IT BECOMES BLEMISHED,[18] WHEN IT WILL BE SOLD AND THE VALUE RECEIVED WILL GO TO THE FUND OR FREEWILL OFFERINGS.[19] BUT IF HE HAD ALREADY GIVEN THE MONEY TO THE MEMBERS OF THE DIVISION AND THEN DIED, THE HEIRS HAVE NO POWER TO MAKE THEM GIVE IT UP, AS IT IS WRITTEN, WHATSOEVER ANY MAN GIVE TO THE PRIEST IT SHALL BE HIS.[20] IF HE GAVE THE MONEY TO JEHOIARIB[21] AND THE TRESPASS OFFERING TO JEDAIAH,[22] HE HAS FULFILLED HIS DUTY.[23] IF, HOWEVER, THE TRESPASS OFFERING WAS FIRST GIVEN TO JEHOIARIB AND THEN THE MONEY TO JEDAIAH, IF THE TRESPASS OFFERING IS STILL IN EXISTENCE THE MEMBERS OF THE JEDAIAH DIVISION WILL HAVE TO SACRIFICE IT,[24] BUT IF IT IS NO MORE IN EXISTENCE HE WOULD HAVE TO BRING ANOTHER TRESPASS OFFERING; FOR HE WHO BRINGS [THE RESTITUTION FOR] ROBBERY BEFORE HAVING BROUGHT THE TRESPASS OFFERING FULFILS HIS OBLIGATION, WHEREAS HE WHO BRINGS THE TRESPASS OFFERING BEFORE HAVING

BROUGHT [THE RESTITUTION FOR] THE ROBBERY HAS NOT FULFILLED HIS OBLIGATION. IF HE HAS REPAID THE PRINCIPAL BUT NOT THE FIFTH, THE [NON-PAYMENT OF THE] FIFTH IS NO BAR [TO HIS BRINGING THE OFFERING].

GEMARA. Our Rabbis taught: The trespass[25] this indicates the Principal; be restored: this indicates the Fifth. Or perhaps this is not so, but 'the trespass' indicates the ram, and the practical difference as to which view we take would involve the rejection of the view of Raba, for Raba said: '[Restitution for] robbery committed upon a proselyte, if made at night time does not fulfil the obligation, nor does restitution by halves, the reason being that the Divine Law termed it trespass?[26] — Since it says later 'beside the ram of atonement', you must surely say that 'the trespass' is the Principal.

Another [Baraitha]: 'The trespass' is the Principal, 'be restored' is the Fifth. Or perhaps this is not so, but 'the trespass' means the Fifth and the practical difference as to which view we take, would involve the rejection of the ruling of our Mishnah, viz. IF HE HAS REPAID THE PRINCIPAL BUT NOT THE FIFTH, THE [NONPAYMENT OF THE] FIFTH IS NO BAR', for in this case on the contrary the [non-payment of the] Fifth would be a bar?[27] — Since it has already been stated: And he shall recompense his trespass with the Principal thereof and add unto it a Fifth thereof,[28] you must needs say that the trespass is the Principal.

Another [Baraitha] taught: 'The trespass'[29] is the Principal, 'be restored' is the Fifth, as the verse here deals with robbery committed upon a proselyte. Or perhaps this is not so, but 'be restored' indicates the doubling of the payment, the reference being to theft[30] committed upon a proselyte? — Since it has already been stated: And he shall restore his trespass with the Principal thereof and add unto it a Fifth part thereof,[28] it is obvious that Scripture deals here with money which is paid as Principal.[31]

[To revert to] the above text. 'Raba said: [Restitution for] robbery committed upon a proselyte, if made at night time would not be a fulfilment of the obligation, nor would it if made in halves, the reason being that the Divine Law termed it trespass;' Raba further said: If [in the restitution for] robbery committed upon a proselyte there was not the value of a perutah[32] for each priest [of the division] the obligation would not be fulfilled, because it is written: 'The trespass be recompensed' which indicates that unless there be recompense to each priest [there is no atonement]. Raba thereupon asked: What would be the law if it were insufficient with respect to the division of Jehoiarib,[33] but sufficient

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(1) Competent to sacrifice but unable to partake of the portions.

(2) Even of another division.

(3) Men. 74a. For a transposed text cf. J. Yeb. XI, 10.

(4) For priests unlike levites do not become disqualified by age; v. Hul. 1, 6.

(5) Cf. Kid. 23b.

(6) Cf. however Shab. 76a and supra 19b.

(7) Cf. Yoma 80b; and Pes. 107b.

(8) For since he himself can perform the service he can hand it over to whomever he likes.

(9) And since he could not perform the service he should surely be unable to transfer it to whomever he wishes.

(10) V. Zeb. XII, 1.

(11) V. p. 640, n. 6.

(12) I.e., a mourner on the day of the death of a kinsman; V. Lev, XXI, 10-12.

(13) V. p. 640, n. 8.

(14) V. p. 640, n. 14.

(15) Tosef. Zeb. XI, 2; cf. Yoma 13b.

(16) Num. V, 8.

(17) I.e., of the robber.
(18) And thus unfit to be sacrificed, cf. Lev. XXII, 20.
(19) Cf. Shek. VI, 5.
(20) Num. V, 10.
(21) I.e., to a member of the Jehoiarib division, which was the first of the twenty-four divisions of the priests; cf. I Chron. XXIV, 7.
(22) I.e., to a member of the Jedaiah division, which was the second of the priestly divisions, v. ibid.
(23) For the payment of the money has to precede the trespass offering.
(24) For Jehoiarib had no right to accept the trespass offering before the money was paid.
(25) Num. V. 8.
(26) And an offering could not be sacrificed at night time. [Consequently should it be assumed that 'the trespass' denotes the ram and not the Principal Raba's ruling would be rejected.]
(27) Being the trespass.
(28) Num. V, 7.
(29) Num. V, 8.
(30) Which is subject to Ex. XXII, 3.
(31) And not with double payment.
(32) V. Glos.
(33) Consisting of many priests.

Talmud - Mas. Baba Kama 110b

for the division of Jedaiah?[1] What are the circumstances? If we suppose that he paid it to Jedaiah during the time [of service] of the division of Jedaiah,[1] surely in such a case the amount is sufficient?[2] — No, we must suppose that he paid it to Jedaiah[1] during the time of the division of Jehoiarib. Now, what would be the law? Shall we say that since it was not in the time of his division, the restoration is of no avail, or perhaps since it would not do for Jehoiarib it was destined from the very outset to go to Jedaiah? — Let this stand undecided.

Raba again asked: May the priests set [one payment for] a robbery committed upon a proselyte against another [payment for a] robbery committed upon a proselyte? Shall we say that since the Divine Law designated it trespass,[3] therefore, just as in the case of a trespass offering, one trespass offering can not be set against another trespass offering,[4] so also in the case of [payment for] a robbery committed upon a proselyte, one [payment for] robbery committed upon a proselyte cannot be set against another [payment for] robbery committed upon a proselyte[5] or perhaps [since payment for] robbery committed upon a proselyte is a matter of money, [it should not be subject to this restriction]? He however subsequently decided that [as] the Divine Law termed it trespass, [it should follow the same rule]. R. Aha the son of Raba stated this explicitly. Raba said: The priests have no right to set one [payment for a] robbery committed upon a proselyte against another [payment for] robbery committed upon a proselyte, the reason being that the Divine Law termed it trespass.

Raba asked: Are the priests in relation to [the payment for] robbery committed upon a proselyte in the capacity of heirs[6] or in the capacity of recipients of endowments? A practical difference arises where e.g., the robber misappropriated leaven and Passover meanwhile passed by.[7] If now you maintain that they are in the capacity of heirs, it will follow that what they inherited they will have,[8] whereas if you maintain that they are recipients of endowments, the Divine Law surely ordered the giving of an endowment, and in this case nothing would be given them since the leaven is considered [in the eye of the law] as being mere ashes.[9] R. Ze'ira put the question thus: Even if you maintain that they are recipients of endowments, then still no question arises, since it is this endowment [originally due to the proselyte] which the Divine Law has enjoined to be bestowed upon them.[10] What, however, is doubtful to us is where e.g., ten animals fell to the portion of a priest as [payment for] robbery committed upon a proselyte. Is he then under an obligation to set aside a tithe[11] or not?

Are they [the priests] heirs, in which case the dictum of the master applies that [where] heirs have bought animals out of the funds of the general estate they would be liable [to tithe], or are they perhaps endowment recipients in which case we have learnt 'He who buys animals or receives them as a gift is exempt from the law of tithing animals'?[12] Now, what should be the law?[13] — Come and hear: Twenty-four priestly endowments were bestowed upon Aaron and his sons. All these were granted to him by means of a generalisation followed by a specification which was in its turn followed again by a generalisation[14] and a covenant of salt[15] so that to fulfil them is like fulfilling [the whole law which is expounded by] generalisation, specification and generalisation and [like offering all the sacrifices forming] the covenant of salt,[16] whereas to transgress them is like transgressing [the whole Torah which is expounded by] generalisation, specification and generalisation, and [all the sacrifices forming] the covenant of salt. They are these: Ten to be partaken in the precincts of the Temple, four in Jerusalem and ten within the borders [of the Land of Israel]. The ten in the precincts of the Temple are: A sin offering of an animal,[17] a sin offering of a fowl,[18] a trespass offering for a known sin,[19] a trespass offering for a doubtful sin,[20] the peace offering of the congregation,[21] the log of oil in the case of a leper,[22] the remnant of the Omer,[23] the two loaves,[24] the shew bread[25] and the remnant of meal offerings.[26] The four in Jerusalem are: the firstling.[27] the first of the first fruits,[28] the portions separated in the case of the thank offering[29] and in the case of the ram of the Nazirite[30] and the skins of [the most] holy sacrifices.[31] The ten to be partaken in the borders [of the Land of Israel] are: terumah,[32] the terumah of the tithe,[33] hallah,[34] the first of the fleece,[35] the portions[36] [of unconsecrated animals], the redemption of the son,[37] the redemption of the firstling of an ass,[38] a field of possession,[39] a field devoted,[40] and [payment for a] robbery committed upon a proselyte.[41] Now, since it is here designated an 'endowment', this surely proves that the priests are endowment recipients in this respect.[42] This proves it.

BUT IF HE HAD ALREADY GIVEN THE MONEY TO THE MEMBERS OF THE DIVISION etc. Abaye said: We may infer from this that the giving of the money effects half of the atonement: for if it has no [independent] share in the atonement, I should surely say that it ought to be returned to the heirs, on the ground that he would never have parted with the money upon such an understanding.[43] But if this could be argued, why should a sin offering whose owner died not revert to the state of unconsecration,[44] for the owner would surely not have set it aside upon such an understanding?[45] — It may however be said that regarding a sin offering whose owner died there is a halachah handed down by tradition that it should be left to die.[46] But again, according to your argument, why should a trespass offering whose owner died not revert to the state of unconsecration,[47] as the owner would surely not have set it aside upon such an understanding? — With regard to a trespass offering there is similarly a halachah handed down by tradition that whenever [an animal, if set aside as] a sin offering would be left to die, [if set aside as] a trespass offering it would be subject to the law of pasturing.[46] But still, according to your argument why should a deceased brother's wife on becoming bound to one affected with leprosy not be released [even] without the act of halizah,[48] for surely she would not have consented to betroth herself[49] upon this understanding?[50] — In that case we all can bear witness[51]

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(1) Which consisted of not so many priests.

(2) For the priests of the division; why at all consider the number of the priests of a different division?

(3) V. p. 643, n. 8.

(4) But each offering is distributed among all the priests of the division; v. Kid, 531 and Men. 73a.

(5) But each payment would have to be shared by all the priests of the division.

(6) Of the proselyte so far as this liability is concerned,

(7) Rendering the leaven forbidden for any use; v. supra p. 561 and Pes. II. 2.

(8) I.e., whether they would be able to make use of it or not.

(9) Cf. Tem. VII, 5.

(10) The priests could thus never be in a better position then the proselyte himself.

(11) In accordance with Lev. XXVII, 32.

(12) Cf, Bek. IX, 3.
(13) Here where a priest received animals in payment for a robbery committed upon a proselyte.
(14) V. supra, p. 364. [Generalisation: Num. XVIII, 8, where the priestly portions are referred to in general terms; specification: verses 9-18, where they are enumerated; second generalisation: verse 19, where they are again mentioned generally.]
(15) Cf. Num. XVIII, 8-19.
(16) Lev. II, 13.
(17) Ibid. VI, 17-23.
(18) Ibid. V, 8.
(19) For which cf. ibid. V, 14-16; 20-26; ibid. XIX, 20-22 a.e.
(20) Ibid. V, 17-19.
(21) Ibid. XXIII, 19-20.
(22) Ibid. XIV, 12.
(23) Lit., 'Sheaf' referred to in Lev. XXIII, 10-12; the remainder of this meal offering after the handful of flour has been taken and sacrificed, is subject to Lev. VI, 9-11.
(24) Referred to in Lev. XXIII, 17.
(25) Dealt with in Ex. XXV, 30 and Lev. XXIV, 5-9.
(26) Lev. II, 3
(27) Num. XVIII, 17-18.
(28) Cf. Ex. XXIII, 19 and Num. XVIII, 13; v, also Deut. XII, 17 and XXVI, 2-10.
(29) Lev. VII, 11-14.
(30) Num. VI, 14-20.
(31) Such as of the burnt and of the sin and of the trespass offerings; for the skins of the minor sacrifices belong to the donors; v, Zeb. 103b.
(32) Cf. Num. XVIII, 12; v. Glos.
(33) Cf. ibid. 25-29.
(34) I.e., the first of the dough; v. Num. XV, 18-21.
(35) Deut. XVIII, 4.
(36) Lit., 'the gifts'; v. Deut. ibid. 3.
(37) Num. XVIII, 15-16.
(38) Ex. XIII, 13.
(39) Cf. Lev. XXVII, 16-21.
(40) Num. XVIII, 14.
(41) Hul. 133b. Tosef. Hal. II.
(42) I.e., the payment for robbery committed upon a proselyte.
(43) I.e., to obtain no atonement and yet lose the money.
(44) Why then should it be destined by law to die as stated in Tem. II, 2.
(45) That it should be unable to serve any purpose and yet remain consecrated.
(46) No stipulation to the contrary could therefore be of any avail; cf. e.g. Pe'ah VI, 11 and B.M. VII, 11.
(47) Why then should it be kept on the pastures until it will become blemished, as also stated supra p. 642.
(48) I.e., the loosening of his shoe, as required in Deut. XXV, 9; cf. Glos,
(49) And as the retrospective annulment of the betrothal would be not on account of the death of the husband but on account of his brother being a leper, this case, unlike that of the sin offering or trespass offering referred to above, could not be subject to Pe'ah VI, 11 and B.M. VII, 11.
(50) I.e., to become bound to (the husband's brother who was) a leper; cf. Keth. VII, 10.
(51) The brother who died but who had no deformity.

Talmud - Mas. Baba Kama 111a

that she was quite prepared to accept any conditions,[1] as we learn from Resh Lakish; for Resh Lakish said:[2] it is better [for a woman] to dwell as two[3] than to dwell in widowhood.[4]

WHERE HE GAVE THE MONEY TO JEHOIARIB AND THE TRESPASS OFFERING TO JEDAIAH etc. Our Rabbis taught: Where he gave the trespass offering to Jehoiarib and the money to Jedaiah the money will have to be brought to [whom] the trespass offering [is due].[5] This is the view of R. Judah, but the Sages say that the trespass offering will have to be brought[6] to [whom] the money [is due].[7] What are the circumstances? Do we suppose that the trespass offering was given to Jehoiarib during the [time of the] division of Jehoiarib and so also the money was given to Jedaiah during the [time of the] division of Jedaiah? If so, why should the one not acquire title to his and the other to his?[8] — Said Raba: We are dealing here with a case where the trespass offering was given to Jehoiarib during the [time of the] division of Jehoiarib and [so also] the money was given to Jedaiah during [the time of] the division of Jehoiarib. In such a case R. Judah maintained that since it was not [the time of] the division of Jedaiah,[9] it is Jedaiah whom we ought to penalise, and the money has therefore to be brought to the [place of the] trespass offering,[5] whereas the Rabbis maintained that as it was the members of the Jehoiarib division that acted unlawfully[7] in having accepted the trespass offering before the money,[10] it is they who have to be penalised and the trespass offering accordingly should be brought[6] to the [place where] the money [is due].[7]

It was taught: Rabbi said: According to the view of R. Judah, if the members of the Jehoiarib division had already sacrificed the trespass offering,[11] the robber would have to come again and bring another trespass offering which will now be sacrificed by the members of the Jedaiah division,[12] though the others[13] would acquire title to that which remained in their possession.[14] But I would fain ask: For what could the disqualified trespass offering have any value? — Said Raba: For its skin.[15]

It was taught: Rabbi said: According to R. Judah, if the trespass offering was still in existence, the trespass offering will have to be brought[16] to [whom] the money [is due]. But is R. Judah not of the opinion that the money should be brought to [whom] the trespass offering [is due]?[17] We are dealing here with a case where e.g. the division of Jehoiarib has already left without, however, having made any demand,[18] and what we are told therefore is that this should be considered as a waiving of their right in favour of the members of the division of Jedaiah.

Another [Baraitha] taught again: Rabbi said: According to R. Judah, if the trespass offering was still in existence, the money would have to be brought to [whom] the trespass offering [is due].[19] But is this not obvious, since this was actually his view? — We are dealing here with a case where e.g., the divisions of both Jehoiarib and Jedaiah have already left without having made any demand [on each other].[20] In this case you might have thought that they mutually waived their claim on each other.[21] We are therefore told that since there was no demand from either of them[22] we say that the original position must be restored.[23]

FOR HE WHO BRINGS [THE PAYMENT FOR] ROBBERY BEFORE HAVING BROUGHT THE TRESPASS OFFERING [FULFILLS HIS DUTY, WHEREAS HE WHO BRINGS THE TRESPASS OFFERING BEFORE HAVING BROUGHT THE PAYMENT FOR ROBBERY DID NOT FULFILL HIS DUTY]. Whence can these rulings be derived? — Said Raba: Scripture states: Let the trespass be restored unto the Lord, even to the priest, beside the ram of the atonement whereby an atonement shall be made for him,[24] thus implying[25] that the money must be paid first. One of the Rabbis, however, said to Raba: But according to this reasoning will it not follow that in the verse: Ye shall offer these beside the burnt offering in the morning[26] it is similarly implied[27] that the additional offering will have to be sacrificed first? But was it not taught:[28] Whence do we know that no offering should be sacrificed prior to the continual offering of the morning?[29] Because it is stated, And lay the burnt offering in order upon it[30] and Raba stated: 'The burnt offering'[30] means the first burnt offering?[31] — He, however, said to him: I derive it[32] from the clause:[29] 'Whereby an atonement shall be made for him' which indicates[33] that the atonement has not yet been made.