Mishnah Bava Metzia

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1:1 The early commentaries ask why this chapter, which discusses details of the halakhot of found items, precedes the second chapter, which discusses the fundamental halakhot of found items.Tosafot explain that as tractate Bava Metzia follows tractate Bava Kamma, the halakhot of found items are elucidated in this chapter as a continuation of the topics discussed in the last chapter of Bava Kamma, which discussed the division of items between litigants by means of an oath, which is also the ruling in the mishna here (see Shita Mekubbetzet). The Rosh explains that because there is a suspicion of theft in this case, these matters are juxtaposed with the halakhot of theft, which are described at length in Bava Kamma.If two people came to court holding a garment, and this one, the first litigant, says: I found it, and that one, the second litigant, says: I found it; this one says: All of it is mine, and that one says: All of it is mine; how does the court adjudicate this case? This one takes an oath that he does not have ownership of less than half of it, and that one takes an oath that he does not have ownership of less than half of it, and they divide it. If this one says: All of it is mine, and that one says: Half of it is mine, since they both agree that half of the cloak belongs to one of them, the conflict between them is only about the other half. Therefore, the one who says: All of it is mine, takes an oath that he does not have ownership of less than three parts, i.e., three-fourths, of it, and the one who says: Half of it is mine, takes an oath that he does not have ownership of less than one-quarter of it. This one takes three parts, and that one takes one-quarter.
1:2 If two people were sitting in a riding position on the back of an animal, e.g., a donkey or camel, or one was sitting in a riding position on the animal and one was leading it by its halter, and this one says: All of it is mine, and that one says: All of it is mine, how does the court adjudicate this case? This one takes an oath that he does not have ownership of less than half of it, and that one takes an oath that he does not have ownership of less than half of it, and they divide it. When they admit to the validity of each other’s claims or when they each have witnesses attesting to their claims, they divide the disputed item without taking an oath, as an oath is administered only in a case where the parties have no other way to prove their claims.
1:3 If one was riding on an animal and saw a found item, and said to another person who was walking beside him: Give it to me, if the pedestrian took it and said: I have acquired it for myself, he has acquired it by means of lifting it,

even though he did not see it first. But if, after giving it to the one riding the animal, he said: I acquired it for myself at the outset, he has said nothing and the rider keeps the item.

1:4 If one saw a found item and fell upon it, intending to thereby acquire it, but did not employ one of the formal modes of acquisition, and then another came and seized it, the one who seized it acquired it because he employed one of the formal modes of acquisition. If one saw people running after a found ownerless animal, e.g., after a deer crippled by a broken leg, or after young pigeons that have not yet learned to fly, which can be caught easily, and he said: My field has effected acquisition of this animal for me, it has effected acquisition of it for him. If the deer were running in its usual manner, or the young pigeons were flying, and he said: My field has effected acquisition of this animal for me, he has said nothing, as one's courtyard cannot effect acquisition of an item that does not remain there on its own.

1:5 With regard to the found item of one's minor son or daughter, i.e., an ownerless item that they found; the found item of his Canaanite slave or maidservant; and the found item of his wife, they are his. By contrast, with regard to the found item of one's adult son or daughter; the found item of his Hebrew slave or maidservant; and the found item of his ex-wife, whom he divorced, even if he has not yet given her payment of the marriage contract that he owes her, they are theirs.

1:6 With regard to one who found promissory notes, if they include a property guarantee for the loan he may not return them to the creditor, as, if he were to return them, the court would then use them to collect repayment of the debts from land that belonged to the debtor at the time of the loan, even if that land was subsequently sold to others. If they do not include a property guarantee, he returns them to the creditor, as in this case the court will not use them to collect repayment of the debt from purchasers of the debtor's land. This is the statement of Rabbi Meir. And the Rabbis say: In both this case and that case he should not return the promissory notes to the creditor, as, if he were to return them, the court would in any event use them to collect repayment of the loan from purchasers of the debtor's land.

1:7 If one found bills of divorce, or bills of manumission of slaves, or wills, or deeds of a gift, or receipts, he may not return these items to the one who is presumed to have lost them, as I say it is possible that they were written and then the writer reconsidered about them and decided not to deliver them.

1:8 If one found documents of appraisal of a debtor's property for the purpose of debt collection; or documents concerning food, which were drawn up when one accepted upon himself to provide sustenance for another; documents of halitza; or documents of refusal of a girl upon reaching majority to remain married to the man to whom her mother or brothers married her as a minor after the death of her father; or documents of beirurin, a concept that will be explained in the Gemara; or any court enactment, e.g., a promissory note that has been authenticated by the court, in all of these cases, the finder must return the document to its presumed owner. If one found documents in a hafisa or in a deluskema, both of them types of containers, or if he found a roll of documents or a bundle of documents, he must return them. And how many documents

are considered to be a bundle of documents? It is three that are tied together. Rabban Shimon ben Gamliel says: If the documents make reference to loans of one person who borrowed money from three people, the finder must return them to the debtor, as they were presumably in his possession before being lost. If the documents make reference to loans of three people who borrowed money from one person, he must return them to the creditor, as they were presumably in his possession before being lost. If one found a document among his documents that were given to him by other people as a trustee, and he does not know what its nature is, i.e., he does not remember who gave it to him or whether the debt mentioned in it has been paid, the document is placed aside until Elijah the prophet comes and clarifies the issue through his prophecy. If there are cancellations of contracts [simponot] among them, he should do what is stated in the simponot.

2:1 In a case where one discovers lost items, which found items belong to him, and for which items is one obligated to proclaim his find so that the owner of the lost items can come and reclaim them? These found items belong to him: If one found scattered produce, scattered coins, bundles of grain in a public area, round cakes of pressed figs, baker’s loaves, strings of fish, cuts of meat, unprocessed wool fleeces that are taken from their state of origin directly after shearing, bound flax stalks, or bound strips of combed purple wool, these belong to him, as they have no distinguishing marks that would enable their owners to claim them. This is the statement of Rabbi Meir. Rabbi Yehuda says: If one finds any lost item in which there is an alteration, he is obligated to proclaim his find. How so? If he found a round cake of pressed figs with an earthenware shard inside it or a loaf of bread with coins inside it, he is obligated to proclaim his find, as perhaps the owner of the item inserted them as a distinguishing mark by means of which he could reclaim his property in case it became lost. Rabbi Shimon ben Elazar says: If one finds any anpurya vessels, since their shape is uniform and they are indistinguishable, he is not obligated to proclaim his find.

2:2 And for these found items, one is obligated to proclaim his find: If one found produce inside a vessel, or a vessel by itself; coins inside a pouch, or a pouch by itself; piles of produce; piles of coins, three coins stacked one atop another; bundles of grain in a secluded area; loaves of a homeowner, as each shapes his loaves in his own unique manner; wool fleeces that are taken from the house of a craftsman, as each craftsman processes the wool in his own unique manner; jugs of wine; or jugs of oil. If one finds any of these, he is obligated to proclaim his find.

2:3 If one found, behind a wooden fence or behind a stone fence, bound fledglings, or if he found them in the paths that run through fields, he may not touch them, as they were certainly placed there intentionally. In a case where one found a vessel in a garbage dump, if it is concealed, he may not touch it, as a person certainly concealed it there. If it is exposed, the finder takes the item and proclaims his find. If one found lost items in a heap of stone rubble or in an old wall, these belong to him. If one found lost items in a new wall from its midpoint and outward, they belong to him. If he found the items from its midpoint and inward, they belong to the homeowner. If the

homeowner would rent the house to others on a regular basis and there was a steady turnover of residents, even if one found lost items inside the house, these belong to him. Since the owner of the lost items cannot be identified based on location, he will certainly despair of recovering his lost items.

2:4 If one found items without a distinguishing mark in a store, those items belong to him, as, since the store is frequented by the multitudes, the owner despairs of its recovery. If the items were found between the storekeeper's counter and the storekeeper, the items belong to the storekeeper; since his customers do not typically have access to that area, presumably the items are his. If one found coins before a money changer, those coins belong to him. If the coins were found between the money changer's chair and the money changer, those coins belong to the money changer, because his clients do not typically have access to that area. In the case of one who purchases produce from another or in a case where another sent him produce as a gift, and he found coins intermingled with the produce, those coins belong to him. If the coins were bundled, this serves as a distinguishing mark and the finder takes the coins and proclaims his find.

2:5 This mishna is an excerpt from a halakhic midrash concerning lost items, based on the verse: "You shall not see your brother's ox or his sheep wandering, and disregard them; you shall return them to your brother…And so shall you do with his donkey; and so shall you do with his garment; and so shall you do with every lost item of your brother, which shall be lost from him, and you have found it; you may not disregard it" (Deuteronomy 22:1, 3). The garment was also included in the generalization that one must return all of these items. And why did it emerge from the generalization that is should be specified? To draw an analogy to it and to say to you: What is notable about a garment? It is notable in that there are distinguishing marks concerning it and it has claimants asserting ownership, and its finder is obligated to proclaim his find. So too with regard to any item concerning which there are distinguishing marks and it has claimants asserting ownership, its finder is obligated to proclaim his find.

2:6 And until when is one who finds a lost item obligated to proclaim his find? He is obligated to do so until the moment that the neighbors will know of its existence; this is the statement of Rabbi Meir. Rabbi Yehuda says: He is obligated to proclaim his find for three pilgrimage Festivals and for seven days after the last of the three pilgrimage Festivals, so that its owner will have time to go to his home, a trip lasting up to three days, and ascertain that he in fact lost the item, and he will return to Jerusalem, a trip lasting up to three days, and proclaim his loss for one day.

2:7 If a claimant accurately stated what type of item the lost item that was found by another is, but did not state, i.e., describe, its distinguishing marks, the finder shall not give it to him. And in the case of a swindler, even though he stated its distinguishing marks, the finder shall not give the lost item to him, as it is stated: "And if your brother be not near you, and you know him not, then you shall bring it into your house, and it shall be with you until your brother claims [derosh] it [oto], and you shall return it to him" (Deuteronomy 22:2). Would it enter your mind that the finder would give it to

him before he claims it? How can the finder return it if he does not know the identity of the owner? Rather, the verb derosh is not referring to the claim of the owner; it is referring to the scrutiny performed by the finder. You shall not return the lost item until you scrutinize [shetidrosh] your brother to determine whether he, the claimant, is a swindler or whether he is not a swindler. If one finds any living being that works and generates enough revenue to cover the costs of the food that it eats, it shall work and eat while in the finder's possession. And any living being that does not work but it does eat shall be sold, as it is stated: "Then you shall bring it into your house, and it shall be with you until your brother claims it, and you shall return it to him" (Deuteronomy 22:2), indicating that the finder must see how best to return it to him. Since the owner must repay the finder for his expenditures, if feeding the animal costs more than its value, the finder's keep-ing the animal in his possession will prevent the owner from recovering it. What shall be done with the money received from the sale of the animal? Rabbi Tarfon says: The finder may use it; therefore, if the money is lost, he is liable to pay restitution for it. Rabbi Akiva says: He may not use the money; therefore, if it is lost, he is not liable to pay restitution for it.

2:8 If one found scrolls, he reads them once in thirty days in order to ventilate them and prevent mold. And if he does not know how to read, he rolls and unrolls them in order to ventilate them. But he shall not study passages in them for the first time, as he would leave the scroll exposed to the air for a lengthy period, thereby causing damage. And another person shall not read the scroll with him, as each might pull it closer to improve his vantage point, which could cause the scroll to tear. If one found a garment, he shakes it once in thirty days, and he spreads it out for its sake, to ventilate it, but he may not use it as a decoration for his own prestige. If one found silver vessels or copper vessels, he may use them for their own sake to prevent tarnish and rust, but he may not use them to the extent that he will erode them. If he finds gold vessels or glass vessels, which are not ruined by neglect, he may not touch them until Elijah will come and identify the owner. If a person found a sack or a basket or any other item that it is not his typical manner to take and carry because it is beneath his dignity, he shall not take it, as one need not demean himself in order to return a lost item.

2:9 Which is the item that is considered lost property? If one found a donkey or a cow grazing on the path, that is not lost property, as presumably the owners are nearby and are aware of the animals' whereabouts. If one found a donkey with its accoutrements overturned, or a cow that ran through the vineyards, that is lost property. In a case where one returned the lost animal and it fled, and he again returned it and it fled, even if this scenario repeats itself four or five times, he is obligated to return it each time, as it is stated: "You shall not see your brother's ox or his sheep wandering and disregard them; you shall return them to your brother" (Deuteronomy 22:1). If in the course of tending to and returning the lost item, the finder was idle from labor that would have earned him a sela, he shall not say to the owner of the item: Give me a sela to compensate me for my lost income. Rather, the owner gives him his wage as if he were a laborer, a payment that is

considerably smaller. If there are three men there who can convene as a court, he may stipulate before the court that he will undertake to return the item provided that he receives full compensation for lost income. If there is no court there before whom can he stipulate his condition, his financial interests take precedence and he need not return the lost item.

2:10 If one found an animal in a stable belonging to its owner, he is not obligated to return it to its owner. If he found it in a public area, he is obligated to return it. And if the animal was lost in a graveyard and a priest found it, he may not become impure to return it. If his father said to him: Become impure; or in a case where one was obligated to return the animal and his father said to him: Do not return it, he may not listen to his father, as one may not violate Torah law to honor his father. If one unloaded a burden from an animal collapsing under its weight and then later loaded it onto the animal, and later unloaded and loaded it again, even if this scenario repeats itself four or five times, he is obligated to continue unloading and loading, as it is stated: “If you see the donkey of him that hates you collapsed under its burden, you shall forgo passing him by; you shall release it [azov ta’azov] with him” (Exodus 23:5). It is derived from the verse that one is obligated to perform the action as needed, even several times. If the owner went, and sat, and said to a passerby: Since there is a mitzva incumbent upon you to unload the burden, if it is your wish to unload the burden, unload it, in such a case the passerby is exempt, as it is stated: “You shall release it with him,” with the owner of the animal. If the failure of the owner to participate in unloading the burden was due to the fact he was old or infirm, the passerby is obligated to unload the burden alone. There is a mitzva by Torah law to unload a burden, but there is no mitzva to load it. Rabbi Shimon says: There is even a mitzva to load the burden. Rabbi Yosei HaGelili says: If there was a burden upon the animal greater than its typical burden, one need not attend to it, as it is stated: “Under its burden,” i.e., the obligation is with regard to a burden that the animal can bear.

2:11 If one finds his lost item and his father’s lost item, tending to his own lost item takes precedence. Similarly, if one finds his lost item and his teacher’s lost item, tending to his own lost item takes precedence. If one finds his father’s lost item and his teacher’s lost item, tending to his teacher’s lost item takes precedence, as his father brought him into this world, and his teacher, who taught him the wisdom of Torah, brings him to life in the World-to-Come. And if his father is a Torah scholar, then his father’s lost item takes precedence. If his father and his teacher were each carrying a burden and he wants to assist them in putting down their burdens, he first places his teacher’s burden down and thereafter places his father’s burden down. If his father and his teacher were in captivity, he first redeems his teacher and thereafter redeems his father. And if his father is a Torah scholar, he first redeems his father and thereafter redeems his teacher.

3:1 In the case of one who deposits an animal or vessels with another, who is acting as an unpaid bailee, and they were stolen or they were lost, and the bailee paid the owner the value of the deposit, and did not wish to take an oath that he did not misappropriate the item and that he was not negligent in

safeguarding it, that will effect who keeps the deposit if it is found or returned. The bailee may also choose to take the oath, as the Sages said: An unpaid bailee takes an oath, and he is thereby released from the liability to pay the owner. If the thief is later found, the thief pays the double payment. If the deposited item was a sheep or an ox and the thief slaughtered or sold it, he pays the fourfold or fivefold payment. To whom does the thief pay? He gives the payment to the one who had the deposit in his possession when it was stolen, i.e., the bailee. When the bailee paid the owner for the stolen item, the owner granted the rights to the item to the bailee. Therefore, the bailee is entitled to any payment the thief presents for the item, be it compensation for the item's value or a fine. In the case of a bailee who took an oath and did not wish to pay, if the thief is then found and required to pay the double payment, or if he slaughtered or sold the animal and is required to pay the fourfold or fivefold payment, to whom does the thief pay? He gives the payment to the owner of the deposit, not the bailee.

3:2 In the case of one who rents a cow from another, and this renter then lends it to another person, and the cow dies in its typical manner, i.e., of natural causes, in the possession of the borrower, the renter takes an oath to the owner of the cow that the cow died in its typical manner, and the borrower pays the renter for the cow that he borrowed. A renter is exempt in a case of damage due to circumstances beyond his control, including death, but a borrower is liable to compensate the owner even for damage due to circumstances beyond his control. Rabbi Yosei said: How does the other party, i.e., the renter, do business with and profit from another's cow? Rather, the value of the cow should be returned to the owner. The renter need not take an oath, but the borrower must compensate the owner of the cow.

3:3 If one said to two people: I robbed one of you of one hundred dinars, but I do not know from which of you I took the money, or if one said to two people: The father of one of you deposited one hundred dinars with me, but I do not know the father of which of you he is, then he gives one hundred dinars to this person and one hundred dinars to that person. This is because there is no way to determine which of them is entitled to the money, and he admitted his obligation at his own initiative.

3:4 In the case of two people who deposited money with one person, and this one deposited one hundred dinars and that one deposited two hundred dinars, and when they come to collect their deposit, this one says: My deposit was two hundred dinars, and that one says: My deposit was two hundred dinars, the bailee gives one hundred dinars to this one and one hundred dinars to that one. And the rest of the money, i.e., the contested one hundred dinars, will be placed in a safe place until Elijah comes and prophetically determines the truth. Rabbi Yosei said: If so, what did the swindler lose? He lost nothing by claiming the one hundred dinars that belongs to another, and he has no incentive to admit the truth. Rather, the entire deposit will be placed in a safe place until Elijah comes. As his fraud will cause him to lose even the one hundred dinars that he deposited, perhaps he will be discouraged from making a fraudulent claim.

3:5 And likewise, if two people deposited two vessels, one worth one hundred

dinars and one worth one thousand dinars, and this one says: The expensive vessel is mine, and that one says: The expensive vessel is mine, the bailee gives the small vessel to one of them, and from the proceeds of the sale of the large vessel he gives the value of the small vessel to the other, and the rest of the money is placed in a safe place until Elijah comes. Rabbi Yosei said: If so, what did the swindler lose? Rather, the entire deposit, i.e., both vessels, are placed in a safe place until Elijah comes or one of them admits his deceit.

3:6 In the case of one who deposits produce with another, even if it is lost due to spoilage or vermin, the bailee may not touch it, as it is not his. Rabban Shimon ben Gamliel says: He sells it before the court, as by doing so he is like one returning a lost item to the owner, since through its sale he prevents the owner from losing the value of his produce.

3:7 In the case of one who deposits produce with another, and the bailee provides him with different produce in return, that bailee deducts from the produce that he returns an amount equal to the standard decrease of the produce. The decrease is calculated according to this formula: For wheat and for rice, he deducts nine half-kav per kor, which is 180 kav; for barley and millet, he deducts nine kav per kor; for spelt and flaxseed, he deducts three se’a, which total eighteen kav, per kor. The entire calculation is according to the measure, and the entire calculation is according to the time elapsed. This is the amount of produce that the bailee deducts per one kor of produce over the course of one year. Rabbi Yohanan ben Nuri said: And what do the mice care how much produce the bailee is safeguarding? Don’t they eat the same amount whether it is from much produce and whether it is from little produce? Rather, he deducts an amount equal to the standard decrease of just one kor of produce. Rabbi Yehuda says: If the deposit was a large measure, the bailee does not deduct the decrease from it, due to the fact that for different reasons it increases. Therefore, he returns the measure of produce that was deposited with him, because the increase offsets the decrease.

3:8 When the bailee returns liquids that were deposited with him, he deducts one-sixth of the amount for wine, to offset the decrease in volume due to absorption into the cask and evaporation. Rabbi Yehuda says: He deducts one-fifth. He deducts three log of oil for one hundred log: A log and a half for sediment that sinks to the bottom of the cask, and a log and a half for absorption into the cask. If it was refined oil, he does not deduct any of the oil for sediment because it was filtered. If the oil was stored in old casks that are already saturated, he does not deduct any of the oil for absorption. Rabbi Yehuda says: Even in a case of one who sells refined oil to another all the days of the year, this buyer accepts upon himself that the seller will deduct a log and a half of sediment for one hundred log, as that is the standard measure of sediment.

3:9 In the case of one who deposits a barrel with another, and the owners did not designate a specific place for the barrel to be stored in the bailee’s house, and the bailee moved it and it broke, if it broke while still in his hand, there is a distinction: If he moved the barrel for his purposes, he is liable to pay for the damage. If he moved the barrel for its own purposes, to prevent it from being damaged, he is exempt. If, after he replaced the barrel

it broke, whether he initially moved it for his purposes or whether he moved it for its own purposes, he is exempt. But if the owners designated a specific place for the barrel, and the bailee moved it and it broke, whether it broke while still in his hand or whether it broke after he replaced the barrel, if he moved it for his purposes he is liable to pay, and if he moved it for its own purposes, he is exempt.

3:10 In the case of one who deposited coins with another, and that bailee bound it in a cloth and slung it behind him, or conveyed them to his minor son or daughter for safeguarding, or locked the door before them in an inappropriate, i.e., insufficient, manner to secure them, the bailee is liable to pay for the coins, as he did not safeguard the coins in the manner typical of bailees. But if he safeguarded the money in the manner that bailees safeguard items and it was nevertheless stolen, he is exempt.

3:11 In the case of one who deposits money with a money changer, if the money is bound, the money changer may not use it. Therefore, if it is lost he does not bear responsibility for it. If the money was unbound, the money changer may use it. Therefore, if it is lost he bears responsibility for it. If he deposited money with a homeowner, whether it is bound or whether it is unbound, the homeowner may not use it, as it never entered the mind of the depositor that the homeowner might use the money. Therefore, if the homeowner lost the money, he does not bear responsibility for it. If the bailee is a storekeeper, his status is like that of a homeowner; this is the statement of Rabbi Meir. Rabbi Yehuda says: If the bailee is a storekeeper, his status is like that of a money changer.

3:12 With regard to one who misappropriates a deposit, Beit Shammai say: He is penalized for its decrease and its increase. If the value of the deposit decreases, the bailee is liable to pay in accordance with its value at the time of the misappropriation. If it increases in value, he is liable to pay in accordance with its value at the time of repayment. And Beit Hillel say: He pays in accordance with its value at the time of removal. Rabbi Akiva says: He pays in accordance with its value at the time of the claim. With regard to one who intends to misappropriate a deposit and voices that intent in the presence of witnesses, Beit Shammai say: He is liable to pay for any damage to the deposit from that point forward, and Beit Hillel say: He is liable to pay only if he actually misappropriates the deposit, as it is stated concerning a bailee: “Whether he has misappropriated his neighbor’s goods” (Exodus 22:7). If he tilted the deposited barrel and took from it a quarter-log of wine for his own use, and the barrel broke, then he pays only for that quarter-log. If he lifted the barrel and took from it a quarter-log of wine, and the barrel broke, since he acquired the barrel by lifting it, he pays the value of the entire barrel.

4:1 There is a halakhic principle that when one purchases an item, the payment of the money does not effect the transaction. The transaction is effected only by means of the buyer’s physically taking the item into his possession, e.g., by pulling the item. Payment of money by the buyer creates only a moral obligation for the seller to sell him the item. When two types of currency are exchanged for each other, one of the types will have the status of the money

being paid, and the other will have the status of the item being purchased. Handing over the former will not effect the transaction, while handing over the latter will. The mishna teaches: When one purchases gold coins, paying with silver coins, the gold coins assume the status of the purchased item and the silver coins assume the status of money. Therefore, when one party takes possession of the gold coins, the other party acquires the silver coins. But when one party takes possession of the silver coins, the other party does not acquire the gold coins. In an exchange of silver coins for copper coins, when one party takes possession of the copper coins, the other party acquires the silver coins. But when one party takes possession of the silver coins, the other party does not acquire the copper coins. In an exchange of flawed coins for unflawed coins, when one party takes possession of the flawed coins, the other party acquires the unflawed coins. But when one party takes possession of the unflawed coins, the other party does not acquire the flawed coins. In an exchange of an unminted coin for a minted coin, when one party takes possession of an unminted coin [asimon], the other party acquires a minted coin. But when one party takes possession of a minted coin, the other party does not acquire an unminted coin. In an exchange of a coin for movable property, when one party takes possession of the movable property the other party acquires the coin. But when one party takes possession of the coin, the other party does not acquire the movable property. This is the principle: With regard to those who exchange all forms of movable property, each acquires the property of the other, i.e., the moment that one of the parties to the exchange takes possession of the item that he is acquiring, e.g., by means of pulling, the other party acquires the item from the first party.

4:2 How so? If the buyer pulled produce from the seller, but the buyer did not yet give the seller their value in money, he cannot renege on the transaction, but if the buyer gave the seller money but did not yet pull produce from him, he can renege on the transaction, as the transaction is not yet complete. But with regard to the latter case, the Sages said: He Who exacted payment from the people of the generation of the flood, and from the generation of the dispersion, i.e., that of the Tower of Babel, will in the future exact payment from whoever does not stand by his statement. Just as the people of those generations were not punished by an earthly court but were subjected to divine punishment, so too, although no earthly court can compel the person who reneged to complete the transaction, punishment will be exacted at the hand of Heaven for any damage that he caused. Rabbi Shimon says: Anyone who has the money in his possession has the advantage. The Sages said it is only with regard to the seller that payment of money does not effect a transaction, so that if the buyer paid for the item and did not yet take possession of the purchase item, the seller can renege on the sale and return the money. By contrast, once the buyer paid for the item he cannot renege on his decision and demand return of his money, even if he did not yet take possession of the purchase item.

4:3 The measure of exploitation for which one can claim that he was exploited is four silver ma’a from the twenty-four silver ma’a in a sela, or one-sixth of the transaction. Until when is it permitted for the buyer to return the item? He may return it only until a period of time has passed that

would allow him to show the merchandise to a merchant or to his relative who is more familiar with the market price of merchandise. If more time has elapsed he can no longer return the item, as the assumption is that he waived his right to receive the sum of the disparity. The mishna continues: Rabbi Tarfon ruled in Lod: Exploitation is a measure of eight silver ma'a from the twenty-four silver ma'a of a sela, one-third of the transaction. And the merchants of Lod rejoiced, as this ruling allowed them a greater profit margin and rendered the nullification of a transaction less likely. Rabbi Tarfon said to them: Throughout the entire day it is permitted to renege on the transaction and not merely for the period of time it takes to show the purchase item to a merchant or a relative. The merchants of Lod said to him: Let Rabbi Tarfon leave us as we were, with the previous ruling, and they reverted to following the statement of the Rabbis in the mishna with regard to both rulings.

4:4 Both the buyer and the seller are subject to the halakhot of exploitation. Just as the halakhot of exploitation apply to a layman, so do the halakhot of exploitation apply to a merchant. Rabbi Yehuda says: There is no exploitation for a merchant, as he is an expert in the market price of merchandise. The one upon whom the exploitation was imposed has the advantage. If he wishes, he can say to the other: Give me back my money and nullify the transaction, or he can say: Give me back the sum that you gained by exploiting me.

4:5 How much can the sela coin be eroded through usage, and its use in a transaction at its original value will still not constitute exploitation? Rabbi Meir says: The accepted depreciation is four issar, which is a rate of one issar per dinar, or one twenty-fourth of a dinar. And Rabbi Yehuda says: The accepted depreciation is four pundeyon, which is a rate of one pundeyon per dinar, or one-twelfth of a dinar. And Rabbi Shimon says: The accepted depreciation is eight pundeyon, which is a rate of two pundeyon per dinar, or one-sixth of a dinar.

4:6 The mishna continues: Until when is it permitted for one to return a worn coin once he realizes that it is defective? In the cities [bakerakim], one may return it only until a period of time has passed that would allow him to show it to a money changer, who is an expert in matters of coins. In the villages, where there is no money changer, one may return it only until Shabbat eves, when people purchase their Shabbat needs. Although these are the limits of how much a coin must be eroded in order for there to be exploitation, if the one who gave the coin to the aggrieved party recognized it, he must accept it back from him even after twelve months have passed no matter how little the erosion affected its value. And he has only a grievance against him, as the Gemara will explain. And one may give the slightly eroded coin for use in the desacralizing of second-tithe produce and he need not be concerned, as one who would refuse to accept a slightly eroded coin is merely a miserly soul, while the coin is in fact valid for any use.

4:7 The measure of exploitation is four silver ma'a from the twenty-four silver ma'a of a sela. And the smallest monetary claim in court for which a plaintiff can obligate a respondent to take an oath is two silver ma'a. And the smallest monetary admission for which that respondent takes the oath is an admission that one owes at least the value of one peruta. On a related note,

the tanna adds that there are five halakhic situations involving perutot: The admission to part of a claim must be that one owes at least the value of one peruta, and a woman is betrothed with the value of one peruta. And one who derives benefit of the value of one peruta from consecrated property has misused consecrated property and is liable to bring an offering, and one who finds an item that has the value of one peruta is obligated to proclaim that he found it. And with regard to one who robs from another an item that has the value of one peruta and took an oath to him that he robbed nothing, when he repents and seeks to return the stolen item he must take it and follow its owner even to Media. In that case, he may not return the item by means of a messenger; he must give it directly to its owner.

4:8 In this mishna, as in the previous one, the tanna enumerates several halakhot that share a common element. There are five halakhic situations where one-fifth is added to the value of the principal, and these are they: A non-priest who eats either teruma, or teruma of the tithe, which the Levite separates from the first tithe and gives to a priest, or teruma of the tithe of demai, or halla, or first fruits; in each of these cases, he adds one-fifth when paying restitution to the priest who owned the produce. And one who redeems his own fruit of a fourth-year sapling or second-tithe produce adds one-fifth. One who redeems his own consecrated property adds one-fifth. One who derives benefit worth one peruta from consecrated property adds one-fifth. And one who robs the value of one peruta from another and takes a false oath in response to his claim adds one-fifth when paying restitution.

4:9 These are matters that are not subject to the halakhot of exploitation even if the disparity between the value and the payment is one-sixth or greater: Slaves, and documents, and land, and consecrated property. In addition, if they are stolen, these items are subject neither to payment of double the principal for theft nor to payment of four or five times the principal, if the thief slaughtered or sold a stolen sheep or cow, respectively. An unpaid bailee does not take an oath and a paid bailee does not pay if these items were stolen or lost. Rabbi Shimon says: With regard to sacrificial animals for which one bears responsibility to replace them, they are subject to the halakhot of exploitation, as this responsibility indicates a certain aspect of ownership. And those for which one does not bear responsibility to replace them, they are not subject to the halakhot of exploitation. Rabbi Yehuda says: Even in the case of one who sells a Torah scroll, an animal, or a pearl, these items are not subject to the halakhot of exploitation, as they have no fixed price. The Rabbis said to him: The early Sages stated that only these items listed above are not subject to the halakhot of exploitation.

4:10 Just as there is a prohibition against exploitation [ona’a] in buying and selling, so is there ona’a in statements, i.e., verbal mistreatment. The mishna proceeds to cite examples of verbal mistreatment. One may not say to a seller: For how much are you selling this item, if he does not wish to purchase it. He thereby upsets the seller when the deal fails to materialize. The mishna lists other examples: If one is a penitent, another may not say to him: Remember your earlier deeds. If one is the child of converts, another may not say to him: Remember the deeds of your ancestors, as it is stated: “And a

convert shall you neither mistreat, nor shall you oppress him” (Exodus 22:20).

4:11 One may not intermingle produce bought from one supplier with other produce, even if he intermingles new produce with other new produce and ostensibly the buyer suffers no loss from his doing so. And needless to say, one may not intermingle new produce with old produce, in the event that the old produce is superior, as with grains, since intermingling lowers its value. Actually, they said: With regard to wine, they permitted one to mix strong wine with weak wine, because one thereby enhances it. One may not intentionally mix wine sediment with the wine, but one may give the buyer wine with its sediment; the seller is not required to filter the wine. One who had water mix with his wine may not sell it in the store, unless he informs the buyer that it contains water. And he may not sell it to a merchant, even if he informs him of the mixture, as, although he is aware that there is water mixed with the wine, it will be used for nothing other than deceit because the merchant will likely not inform the buyer that it is diluted. In a place where they are accustomed to place water into the wine to dilute it and everyone is aware of that fact, one may place water in the wine.

4:12 The prohibition against mixing different types of produce applies only to an individual selling the produce of his field. By contrast, a merchant may take grain from five threshing floors belonging to different people, and place the produce in one warehouse. He may also take wine from five winepresses and place the wine in one large cask [pitom], provided that he does not intend to mix low-quality merchandise with high-quality merchandise. Rabbi Yehuda says: A storekeeper may not hand out toasted grain and nuts to children who patronize his store, due to the fact that he thereby accustoms them to come to him at the expense of competing storekeepers. And the Rabbis permit doing so. And one may not reduce the price of sale items below the market rate. And the Rabbis say: If he wishes to do so, he should be remembered positively. One may not sift ground beans to remove the waste, lest he charge an inappropriately high price for the sifted meal, beyond its actual value; this is the statement of Abba Shaul. And the Rabbis permit doing so. And the Rabbis concede that one may not sift the meal only from the beans that are close to the opening of the bin to create the impression that the contents of the entire bin were sifted, as this is nothing other than deception. One may neither adorn a person before selling him on the slave market, nor an animal nor vessels that he seeks to sell. Rather, they must be sold unembellished, to avoid deceiving the buyer.

5:1 The Torah states the prohibition against taking interest: “And if your brother becomes impoverished, and his hand falters with you, then you shall support him; whether a stranger or a native, he shall live with you. You shall not take from him interest [neshekh] or increase [tarbit]; you shall fear your God and your brother shall live with you. You shall not give him your money with neshekh and with marbit you shall not give him your food” (Leviticus 25:35–37). The mishna asks: Which is neshekh, and which is tarbit? Which is the case in which there is neshekh? With regard to one who lends another a sela, worth four dinars, for five dinars to be paid later, or one who lends another two se’a of wheat for three se’a to be returned later, this is

prohibited, as it is taking interest [noshekh]. And which is the case in which there is tarbit? It is the case of one who enters into a transaction that yields an increase in the produce beyond his investment. How so? For example, one acquired wheat from another at the price of one kor of wheat for one gold dinar, worth twenty-five silver dinars, with the wheat to be supplied at a later date, and such was the market price of wheat at the time he acquired it. The price of one kor of wheat then increased and stood at thirty dinars. At that point, the buyer said to the seller: Give me all of my wheat now, as I wish to sell it and purchase wine with it. The seller said to him: Since it is ultimately wine that you want, not wheat, each kor of your wheat is considered by me to be worth thirty dinars, and you have the right to collect its value in wine from me. And in this case, the seller did not have wine in his possession. If wine then appreciates in value, the result will be an interest-bearing transaction, as the buyer collects from the seller wine worth more than the wheat for which he paid.

5:2 One who lends another money may not reside in the borrower's courtyard free of charge, nor may he rent living quarters from him at less than the going rate, because this is interest. The benefit he receives from living on the borrower's property constitutes the equivalent of an additional payment as interest on the loan. One may increase the price of rent to be received at a later date instead of at an earlier one, but one may not similarly increase the price of a sale. How so? If a courtyard owner rented his courtyard to a renter, and the owner said to the renter: If you give me the payment now, the rental is yours for ten sela a year, but if you pay on a monthly basis it will cost a sela for each month, equaling twelve sela a year. Such a practice is permitted, despite the fact that he charges more for a monthly payment. If a field owner sold his field to a buyer and said to him: If you give me the payment now, it is yours for one thousand dinars, but if you wait and pay me at the time of the harvest, it is yours for twelve hundred dinars, this transaction is prohibited as interest.

5:3 If one sold another a field and the buyer gave him some of the money, and the seller said to him: Whenever you wish, bring the outstanding money and take your field at that point, this is prohibited. If one lent money to another on the basis of the borrower's field serving as a guarantee, and said to him: If you do not give me the money now and instead delay your payment from now until three years have passed, the field is mine, then after three years, the field is his. This is permitted even if the field is worth more than the amount of the loan. And this is what Baitos ben Zunin would do, with the consent of the Sages, when he lent money.

5:4 One may not establish a deal with a storekeeper for half the profits. It is prohibited for one to provide a storekeeper with produce for him to sell in his store, with half the profits going to the lender. In such an arrangement, the storekeeper himself is responsible for half of any loss from the venture, effectively rendering half of the produce as a loan to the storekeeper. The lender remains responsible for the other half of any loss, and the storekeeper provides a service by selling his produce for him. This service, if provided free of charge, is viewed as interest paid for the loan, and is prohibited. And

similarly, one may not give a storekeeper money with which to acquire produce for the storekeeper to sell for half the profits. These activities are both prohibited unless the owner gives the storekeeper his wages as a salaried laborer hired to sell the produce, after which they can divide the remaining profits. One may not give eggs to another to place chickens on them in exchange for half the profits, and one may not appraise calves or foals for another to raise them for half the profits. These activities are both prohibited unless the owner gives the other wages for his toil and the cost of the food he gives to the animals in his temporary care. All this applies when the lender establishes a fixed minimum profit he insists on receiving regardless of what happens to the animals. But one may accept calves or foals to raise as a joint venture for half of the earnings, with one side providing the animals and taking full responsibility for losses, and the other providing the work and the sustenance, and the one raising them may raise them until they reach one-third of their maturation, at which point they are sold and the profits shared. And with regard to a donkey, it can be raised in this manner until it is large enough to bear a load.

5:5 One may appraise a cow or a donkey or any item that generates revenue while it eats and give it to another to feed it and take care of it in exchange for one-half the profits, with the one who cares for the animal benefiting from the profits it generates during the period in which he raises it. Afterward, they divide the profit that accrues due to appreciation in the value of the animal and due to the offspring it produces. In a place where it is customary to divide the offspring immediately upon their birth, they divide them, and in a place where it is customary for the one who cared for the mother to raise the offspring for an additional period of time before dividing them, he shall raise them. Rabban Shimon ben Gamliel says: One may appraise a calf together with its mother or a foal with its mother even though these young animals do not generate revenue while they eat. The costs of raising the young animal need not be considered. And one may inflate [umafriz] the rental fee paid for his field, and he need not be concerned with regard to the prohibition of interest, as the Gemara will explain.

5:6 One may not accept from a Jew sheep to raise or other items to care for as a guaranteed investment, in which the terms of the transaction dictate that the one accepting the item takes upon himself complete responsibility to repay its value in the event of depreciation or loss, but receives only part of the profit. This is because it is a loan, as the principal is fixed and always returned to the owner, and any additional sum the owner receives is interest. But one may accept a guaranteed investment from gentiles, as there is no prohibition of interest in transactions with them. And one may borrow money from them and one may lend money to them with interest. And similarly, with regard to a gentile who resides in Eretz Yisrael and observes the seven Noahide mitzvot [ger toshav], one may borrow money from him with interest and lend money to him with interest, since he is not a Jew. Also, a Jew may serve as a middleman and lend a gentile’s money to another Jew with the knowledge of the gentile, but not with the knowledge of a Jew, i.e., the middleman himself, as the Gemara will explain.

5:7 One may not set a price with a buyer for the future delivery of produce until the market rate is publicized, as, if he is paid for supplying produce at a later date in advance of the publication of the market rate for that type of produce, he may set a price that is too low. The money paid in advance is deemed a loan, and if the initial payment was lower than the later market value, delivery of the produce will constitute interest on the loan. Once the market rate is publicized, the seller may set a price, even if the produce is not yet in his possession. The reason for this is that even though this one, i.e., the seller, does not have any of the produce, that one, someone else, has it, and the seller could theoretically acquire the produce now at the price he set. If the seller was first among the reapers, having harvested his crop before the market rate was set, he may set a price with a buyer as he wishes for a stack of grain that is already in his possession, or for a large basket of grapes prepared for pressing into wine, or for a vat [hama'atan] of olives prepared for pressing into oil, or for the clumps [habeitzim] of clay prepared for use by a potter, or for plaster nearing the end of the manufacturing process at the point after he has sunk it, i.e., baked it, in the kiln.

Although the market rate has yet to be set, the seller may nevertheless set a price now for their eventual delivery. The mishna continues: And he may set a price with a buyer for manure on any of the days of the year, as the manure will certainly be available and it is therefore viewed as if it is ready. Rabbi Yosei says: One may set the price of manure only if he already had a pile of manure in his dunghill to which the sale can immediately be applied, but the Rabbis permit it in all cases. And one may also set a price with a buyer at the highest rate, i.e., a large amount of produce sold for the lowest price, stipulating with the seller that the sale price match the lowest market rate for this product during the course of the year. Rabbi Yehuda says: Even if he did not set a price with him beforehand at the highest rate, the buyer may say to the seller: Give me the produce at this rate or give me back my money. Since he did not formally acquire the produce, if the price changed he may withdraw from the transaction.

5:8 A person may lend wheat to his sharecroppers in exchange for wheat, for the purpose of seeding, meaning that he may lend them a quantity of wheat with which to seed the field, and at harvest time the sharecropper will add the amount of grain that he borrowed to the landowner's portion of the yield. But he may not lend wheat for the sharecroppers to eat and be paid back with an equivalent quantity because this creates a concern about interest, as the price of wheat may rise. As Rabban Gamliel would lend wheat to his sharecroppers in exchange for wheat, for purposes of seeding, and if he lent it at a high price and the price then fell, or if he lent it at an inexpensive price and the price subsequently rose, in all cases he would take it back from them at the inexpensive price. But this was not because this is the halakha; rather, he wanted to be stringent with himself.

5:9 A person may not say to another: Lend me a kor of wheat and I will give it back to you at the time the wheat is brought to the granary, as the wheat may increase in value, which would mean that when he gives him back a kor of wheat at the time the wheat is brought to the granary it is worth more than the value

of the loan, and he therefore will have paid interest. But he may say to him: Lend me a kor of wheat for a short period of time, e.g., until my son comes or until I find the key, as there is no concern about a change in price during such a short interval of time. And Hillel prohibits the practice even in this case. And Hillel would similarly say: A woman may not lend a loaf of bread to another unless she establishes its monetary value, lest the wheat appreciate in value before she returns it, and they will therefore have come to transgress the prohibition of interest.

5:10 A person may say to another: Weed the wild growths from my field with me now, and I will weed your field with you at a later stage, or: Till my field with me today and I will till with you on a different day. But he may not say to him: Weed with me today and I will till with you a different day, or: Till with me today and I will weed with you, as due to the different nature of the tasks it is possible that one of them will have to work harder than the other did, which is a type of interest, since he repaid him with additional labor. All the dry days during the summer, when it does not rain, are viewed as one period, meaning that if they each agreed to work one day, the dry days are viewed as though they were all exactly equal in length, despite the slight differences between them. Similarly, all the rainy days are treated as one period. But he may not say to him: Plow with me in the dry season and I will plow with you in the rainy season. Rabban Gamliel says: There is a case of pre-paid interest, and there is also a case of interest paid later, both of which are prohibited. How so? If he had hopes of borrowing money from him in the future, and he sends him money or a gift and says: I am sending you this gift in order that you will lend to me, this is pre-paid interest. Similarly, if he borrowed money from him and subsequently returned his money, and he later sends a gift to him and says: I am sending you this gift in order to repay you for your money, which was idle with me, preventing you from earning a profit from it, this is interest paid later. Rabbi Shimon says: Not only is there interest consisting of payment of money or items, but there is also verbal interest. For example, the borrower may not say to the lender: You should know that so-and-so has come from such and such a place, when he is aware that this information is of significance to his creditor. Since his intention is to provide a benefit to the lender, he has effectively paid him an extra sum for the money he lent him, which constitutes interest.

5:11 And these people violate a prohibition of interest: The lender, and the borrower, and the guarantor, and the witnesses. And the Rabbis say: Also the scribe who writes the promissory note violates this prohibition. These parties to the transaction violate different prohibtions. Some are in violation of: “You shall not give him your money with interest” (Leviticus 25:37), and of: “Do not take from him interest or increase” (Leviticus 25:36), and of: “Do not be to him as a creditor” (Exodus 22:24), and of “Do not place interest upon him” (Exodus 22:24), and of: “And you shall not place a stumbling block before the blind, and you shall fear your God; I am the Lord” (Leviticus 19:14).

6:1 With regard to one who hires artisans or laborers, and they deceived one another, they have nothing but a grievance against one another, and they have

no financial claim against the deceptive party. If one hired a donkey driver or a potter to bring posts [piryafarin] for a canopy or flutes to play in honor of a bride or the dead, or if he hired laborers to bring up his flax from the retting tub, i.e., the container of water in which flax is placed in the first stage of the manufacture of linen, and likewise any matter that involves financial loss if not performed on time and the laborers reneged, if this occurred in a place where there is no other person to perform the task, he may hire replacements for a large fee at the expense of the first workers, or deceive them to get them to return to work.

6:2 The mishna states a related halakha: With regard to one who hires artisans or laborers to perform work and they reneged on the agreement midway through the work, they are at a disadvantage. They must ensure that the employer does not suffer a loss. Conversely, if the employer reneges, he is at a disadvantage. These two rulings are in accordance with the principle that whoever changes the terms accepted by both parties is at a disadvantage, and whoever reneges on an agreement is at a disadvantage.

6:3 With regard to one who rents a donkey to lead it on a mountain but he led it in a valley, or one who rents a donkey to lead it in a valley but he led it on a mountain, even if this path is ten mil and that one is also ten mil, and the animal dies, he is liable. With regard to one who rents a donkey and it became ill or was seized for public service [angarya], the owner can say to the renter: That which is yours is before you, and he is not required to reimburse the renter or to supply him with another donkey. If the animal died or its leg broke, the owner is obligated to provide the renter with another donkey. With regard to one who rents a donkey to lead it on a mountain but he led it in a valley, if it slipped and injured itself he is exempt, but if it died of heatstroke he is liable, as it was the walk in the hotter valley that caused its death. With regard to one who rents a donkey to lead it in a valley but he led it on a mountain, if it slipped he is liable, because this was caused by the mountainous terrain, but if it died of heatstroke he is exempt. If it suffered from heatstroke due to the ascent, he is liable.

6:4 With regard to one who rents a cow and a plow in order to plow on the mountain but he plowed in the valley, if the plowshare, the cutting tool on the bottom part of the plow, breaks, he is exempt, as it was even more likely to break on mountainous terrain. In a case where he rents the cow and a plow to plow in the valley but he plowed on the mountain, if the plowshare breaks he is liable. If he hired the cow to thresh legumes but it threshed grain, and the cow slipped and broke its leg, he is exempt. If he hired it to thresh grain but it threshed legumes he is liable, because legumes are slippery.

6:5 With regard to one who rents a donkey in order to bring wheat on it, to transport it on its back, and he brought upon it an identical weight of barley, which is lighter than wheat, and the donkey was injured, he is liable. Similarly, if he hired it for transporting grain, and he brought straw of the same weight upon it, he is liable, because the extra volume is as difficult for the animal as the load itself. If he rented a donkey in order to bring on it a letekh, i.e., a measurement of volume, of wheat, but he brought a letekh of barley, he is exempt, as he brought the same volume of a lighter substance. And

one who adds to a load a greater volume than he stipulated is liable. And how much must he add to the load for him to be liable? Sumakhos says in the name of Rabbi Meir: A se’a on a camel and three kav on a donkey.

6:6 All artisans and laborers who take raw materials to their homes are considered paid bailees for those items until they return them to the owner. And with regard to all those who said to the owner: I finished the work, and therefore take what is yours, i.e., this item, and bring money in its stead, from that point on each of them is considered an unpaid bailee. If one person says to another: Safeguard my property for me and I will safeguard your property for you, each of them is a paid bailee, as each receives the services of the other as payment for his safeguarding. If one says: Safeguard for me, and the other says to him: Place it before me, the second individual is an unpaid bailee.

6:7 One who lent to another based on collateral is a paid bailee for the collateral. Rabbi Yehuda says: One who lent another money is an unpaid bailee for the collateral, whereas one who lent another produce is a paid bailee. Abba Shaul says: It is permitted for a person to rent out a poor person’s collateral that was given to him for a loan, so that by setting a rental price for it he will thereby progressively reduce the debt, i.e., the lender will subtract the rental money he receives from the amount owed by the borrower, because this is considered like returning a lost item. The borrower profits from this arrangement, whereas if the lender does not use the collateral in this manner it provides benefit to no one.

6:8 With regard to one who was transporting a barrel from one place to another and he broke it, whether he was an unpaid bailee or a paid bailee, if he takes an oath that he was not negligent he is exempt from payment. Rabbi Eliezer says: Both this one, an unpaid bailee, and that one, a paid bailee, must take an oath to exempt themselves from payment, but I wonder whether both this one and that one can take an oath. In other words, this is the halakha that I heard from my teachers, but I do not understand their ruling.

7:1 With regard to one who hires laborers and tells them to rise exceptionally early and to continue working until exceptionally late, if this is in a locale where laborers are not accustomed to rising so early or to continuing to work until so late, the employer is not permitted to compel them to do so. In a locale where employers are accustomed to feeding their laborers, the employer must feed them. If they are in a locale where an employer is accustomed to providing their laborers with sweet foods, he must provide such food. Everything is in accordance with the regional custom in these matters. There was an incident involving Rabbi Yohanan ben Matya, who said to his son: Go out and hire laborers for us. His son went, hired them, and pledged to provide sustenance for them as a term of their employment, without specifying the details. And when he came back to his father and reported what he had done, Rabbi Yohanan ben Matya said to him: My son, even if you were to prepare a feast for them like that of King Solomon in his time, you would not have fulfilled your obligation to them, as they are the descendants of Abraham, Isaac, and Jacob. Rather, before they begin engaging in their labor, go out and say to them: The stipulation that food will be provided is on the condition

that you have the right to claim from me only a meal of bread and legumes, which is the typical meal given to laborers. Rabban Shimon ben Gamliel says: Rabbi Yohanan ben Matya's son did not need to state this condition, as the principle is that everything is in accordance with the regional custom.

7:2 This mishna details the halakha that a laborer is permitted to eat from the produce with which he is working. And these laborers may eat by Torah law: A laborer who works with produce attached to the ground at the time of the completion of its work, e.g., harvesting produce; and a laborer who works with produce detached from the ground before the completion of its work, i.e., before it is sufficiently processed and thereby subject to tithes. And this is the halakha provided that they are working with an item whose growth is from the land. And these are laborers who may not eat: A laborer who works with produce attached to the ground not at the time of the completion of its work, i.e., while it is still growing; and a laborer who works with produce detached from the ground after the completion of its work, when it is sufficiently processed and therefore subject to tithes; and a laborer who works with an item whose growth is not from the land.

7:3 If a laborer was performing labor with his hands but not with his feet, or with his feet but not with his hands, e.g., pressing grapes, or even if he was performing labor only with his shoulder, this one may eat the produce of the field. Rabbi Yosei, son of Rabbi Yehuda, says: A laborer may not eat unless he performs labor with his hands and with his feet.

7:4 If a laborer was performing labor with figs he may not eat grapes; if he was performing labor with grapes he may not eat figs, as he may eat only the type of food with which he is working. This is the halakha even if he was employed to perform labor with both types of produce but is currently performing labor with only one of them. But he may hold himself back from eating until he reaches a place of good-quality grapes or figs and eat from these, as they are the same type of food. And with regard to all of these cases the Sages said that he may eat only at the time of work. But due to the obligation to restore lost property to its owners, i.e., so that workers would not neglect their task, they said that laborers may eat as they walk from one row of a vineyard or plantation to another row, and upon their return from the winepress. And with regard to a donkey, it is permitted to eat when it is being unloaded. This statement will be explained in the Gemara.

7:5 A laborer may eat cucumbers while he works, and this is the halakha even if the amount he eats is equal in value to a dinar; or he may eat dates, and this is the halakha even if the amount he eats is equal in value to a dinar. Rabbi Elazar Hisma says: A laborer may not eat more than the value of his wages, but the Rabbis permit it, according to the strict letter of the law. But one teaches a person not to be a glutton and thereby close the opening to other job offers in his face. When people hear of his greed they will be reluctant to hire him.

7:6 A man can stipulate on his own behalf that he receive a certain increase in his wages instead of eating the produce with which he works, and similarly, he can stipulate this on behalf of his adult son or daughter, on behalf of his adult Canaanite slave or Canaanite maidservant, or on behalf of his wife, with

their agreement, because they have the basic level of mental competence, i.e., they are legally competent and can therefore waive their rights. But he cannot stipulate this on behalf of his minor son or daughter, nor on behalf of his minor Canaanite slave or Canaanite maidservant, nor on behalf of his animal, as they do not have the basic level of mental competence.

7:7 In the case of one who hires a laborer to perform labor with his fourth-year fruit, such laborers may not eat the fruit. And if he did not inform them beforehand that they were working with fourth-year fruit, he must redeem the fruit and feed them. If his fig cakes broke apart and crumbled, so that they must be preserved again, or if his barrels of wine opened and he hired workers to reseal them, these laborers may not eat, as the work of the figs or wine had already been completed with regard to tithes, from which point a laborer may not eat them. And if he did not inform them, he must tithe the food and feed them.

7:8 The mishna adds: Watchmen of produce may eat the produce of the field or vineyard by local regulations, i.e., in accordance with the ordinances accepted by the residents of that place, but not by Torah law. There are four types of bailees, to whom different halakhot apply. They are as follows: An unpaid bailee, who receives no compensation for safeguarding the item; and the borrower of an item for his own use; a paid bailee, who is provided with a salary for watching over an item; and a renter, i.e., a bailee who pays a fee for the use of a vessel or animal. If the item was stolen, lost, or broken, or if the animal died in any manner, their halakhot are as follows: An unpaid bailee takes an oath over every outcome; whether the item was lost, stolen, or broken, or if the animal died, the unpaid bailee must take an oath that it happened as he described, and he is then exempt from payment. The borrower does not take an oath, but pays for every outcome, even in a circumstance beyond his control. And the halakhot of a paid bailee and a renter are the same: They take an oath over an injured animal, over a captured animal, and over a dead animal, attesting that the mishaps were caused by circumstances beyond their control, and they are exempt, but they must pay for loss or theft.

7:9 One wolf that approaches a flock and attacks is not considered a circumstance beyond one’s control, as the shepherd can drive it away, but an attack by two wolves is considered a circumstance beyond one’s control. Rabbi Yehuda says: At a time of wolf attacks, when many wolves come out of hiding and pounce on animals at every corner, even an attack by one wolf is considered a circumstance beyond one’s control. An attack by two dogs is not considered a circumstance beyond one’s control. Yadua the Babylonian says in the name of Rabbi Meir: If the two dogs came and attacked from one direction it is not considered a circumstance beyond one’s control, but if they attacked from two directions, this is considered a circumstance beyond one’s control, as the shepherd cannot protect his flock from both of them at once. If bandits came, this is considered a circumstance beyond one’s control. Likewise, with regard to an attack by a lion, a bear, a leopard, a cheetah, and a snake, these are each considered a circumstance beyond one’s control. When is an attack by one of the above considered beyond his control, which means that a paid bailee is exempt? It is when the dangerous beasts or bandits came of their own accord to

the usual grazing spot. But if the shepherd led his flock to a place of groups of beasts or bandits, this is not considered a circumstance beyond one's control, as he is at fault.

7:10 If the animal died in its normal manner, this is considered a circumstance beyond one's control; if he afflicted it by overworking it or by negligent treatment and it died, this is not considered a circumstance beyond one's control. If the animal ascended to the top of a cliff and fell down and died, this is considered a circumstance beyond one's control. If the shepherd himself brought it up to the top of a cliff and it fell down and died, this is not considered a circumstance beyond one's control. The halakhot of bailees stated in the previous mishna apply to standard cases. The halakha is that in any case involving monetary matters the parties may agree to special terms. Therefore, an unpaid bailee may stipulate with the owner that he will be exempt from taking an oath if the item is lost, and similarly, a borrower may stipulate that he will be exempt from having to pay, and a paid bailee or a renter can stipulate that he will be exempt from taking an oath and from having to pay, as one can relinquish his monetary rights.

7:11 With regard to matters that do not involve monetary claims, anyone who stipulates counter to that which is written in the Torah, his stipulation is void. And any condition that is preceded by an action, i.e., the agreement is formulated with the promise of an action followed by a statement that this action will be carried out only under certain terms, the condition is void and the promise remains intact. The condition must be stated before the action. And with regard to any condition that one can ultimately fulfill, but he stipulated with him initially, i.e., in practice the action is performed first, followed by the fulfillment of the condition, nevertheless, because it was formulated in the proper manner, with the condition first, his condition is valid. If the condition cannot be fulfilled at all, once the action has been carried out the condition is void.

8:1 In the case of one who borrowed a cow and borrowed the services of its owner with it, or he borrowed a cow and hired its owner with it, or he borrowed the services of the owner or hired him and afterward borrowed the cow; in all such cases, if the cow died, the borrower is exempt from liability. Although a borrower is generally liable to pay if a cow he borrowed dies, here he is exempt, as it is stated: "If its owner is with him, he does not pay" (Exodus 22:14). But if one first borrowed the cow and only afterward borrowed the services of the owner or hired him, and the cow died, he is liable to pay the owner for the cow. This is the halakha even if the owner was working for the borrower at the time, as it is stated: "If its owner is not with him, he shall pay" (Exodus 22:13).

8:2 There is one who borrowed a cow. He borrowed it for half of the day and rented it for the other half of the day; or he borrowed it for today and rented it for tomorrow; or he rented one cow and borrowed another one from the same person. And in one of the first two cases, the cow died and it is not clear during which period the cow died. Or in the last case, one of the cows died and it is not clear whether it had been the borrowed cow or the rented cow. If the lender then says: The borrowed cow is the one that died; or: It died on the day

that it was being borrowed; or: It died during the period in which it was being borrowed, so that, according to his claim, the borrower is liable to pay for the cow, and the other one, the borrower, says: I do not know what happened, the borrower is liable to pay. If the renter says: The rented cow is the one that died; or: It died on the day that it was being rented; or: It died during the period in which it was being rented, and the other one, the owner of the cow, says: I do not know what happened, the renter is exempt. If this owner says with certitude: The borrowed cow is the one that died, and that renter says with certitude: The rented cow is the one that died, then the renter takes an oath that the rented cow is the one that died, and he is then exempt from liability. If this one says: I do not know what happened, and that one says: I do not know what happened, then they divide the disputed amount. The bailee is liable to pay for only half the value of the cow.

8:3 In the case of one who borrowed a cow, and the lender sent it to the borrower by the hand of his son, or by the hand of his slave, or by the hand of his agent, or by the hand of the borrower's son, or by the hand of his slave, or by the hand of the agent of the borrower; and it died on the way, the borrower is exempt, because the period of borrowing begins only once the cow reaches his domain. The borrower said to the lender: Send it to me by the hand of my son, or by the hand of my slave, or by the hand of my agent, or by the hand of your son, or by the hand of your slave, or by the hand of your agent. Or, in a case where the lender said explicitly to the borrower: I am sending it to you by the hand of my son, or by the hand of my slave, or by the hand of my agent, or by the hand of your son, or by the hand of your slave, or by the hand of your agent; and the borrower said to him: Send it as you have said, and he then sent it, and it died on the way, then the borrower is liable to pay the lender the value of his cow. Since the borrower agreed to the cow's being brought to him by the hand of another, he bears liability from the moment the cow was transferred into that person's possession.

8:4 With regard to one who exchanges a cow for a donkey, such that by virtue of the cow owner's act of acquisition on the donkey, the donkey's erstwhile owner simultaneously acquires the cow, wherever it happens to be located, and afterward the cow is found to have calved; and similarly, with regard to one who sells his Canaanite maidservant, with the acquisition effected by the buyer giving him money, and afterward she is found to have given birth to a child, who will be a slave belonging to his mother's master, at times it is uncertain whether the offspring was born before or after the transaction. If this seller says: The birth occurred before I sold the cow or maidservant, and so the offspring belongs to me, and that buyer says: The birth occurred after I purchased the cow or maidservant, and so the offspring belongs to me, they divide the value of the offspring between them. The mishna continues: There is a case of one who had two Canaanite slaves, one large, worth more on the slave market, and one small, worth less on the slave market, and similarly, one who had two fields, one large and one small. He sold one of them, and there was a dispute between the buyer and the seller concerning which one was sold. If the buyer says: I purchased the large one, and the other one, i.e., the seller, says: I do not know which I sold; the buyer is entitled to take the large one.

If the seller says: I sold the small one, and the other one, i.e., the buyer, says: I do not know which one I purchased; the buyer is entitled to take only the small one. If this one says: The large one was sold, and that one says: The small one was sold, then the seller takes an oath that it was the small one that he sold, and then the buyer takes the small one. If this one says: I do not know which one was sold, and that one says: I do not know which one was sold, they divide the disputed amount between them.

8:5 In the case of one who sells his olive trees to another so he can chop them down and use them for their wood, and before he chopped them down they yielded olives, if the olives are of a quality that could provide the value of less than a quarter-log of oil per se'a of olives, these olives are the property of the new owner of the olive trees, i.e., the buyer. If they yielded olives that could provide the value of a quarter-log or more of oil per se'a of olives, and this one, the buyer, says: My olive trees yielded the olives and so I have a right to them, and that one, the seller, says: The nourishment from my land yielded the olives and so I have a right to them, then they divide the olives between them. In the event that a river swept away one's olive trees and deposited them in the field of another, and they took root there and yielded olives, this one, i.e., the owner of the trees, says: My olive trees yielded the olives and so I have a right to them, and that one, i.e., the owner of the field, says: The nourishment from my land yielded the olives and so I have a right to them, then they divide the olives between them.

8:6 In the case of one who rents out a house in a town to another in the rainy season, the owner cannot evict the renter from the house from the festival of Sukkot until Passover. If the rental was in the summer, he must give thirty days' notice before he can evict him. And for a house located in the cities [uvakerakim], both in the summer and in the rainy season he must give twelve months' notice. And for shops that he rented out, both in towns and in cities, he must give twelve months' notice. Rabban Shimon ben Gamliel says: For a baker's shop or a dyer's shop, one must give three years' notice.

8:7 If one rents out a house to another, the landlord bears the responsibility for providing the door, for providing the bolt, for providing the lock, and for providing every item in the house that is essential for normal living and requires the work of a craftsman to provide it. But with regard to an item that does not require the work of a craftsman, the renter is responsible to make it. The manure found in the courtyard of a rented house is the property of the landlord, and the renter has rights only to the ashes that come out of the oven and the stove, which can also be used as a fertilizer.

8:8 In the case of one who rents out a house to another for a year and then the year was intercalated, adding an additional month to that year, the fact that it was intercalated is to the benefit of the renter. Since the rental was defined in terms of a year, the additional month is automatically included, and the renter need not pay additional rent for it. If a landlord rented out a house to another for a year, with the price set as a certain sum for each of the months, and then the year was intercalated, the fact that it was intercalated is to the benefit of the landlord. An incident occurred in Tzippori involving one who rented a bathhouse from another where they stated

that the rent would be: Twelve gold dinars per year, a gold dinar per month, and then the year was intercalated. And this incident came to court before Rabban Shimon ben Gamliel and before Rabbi Yosei, and they said: The two expressions have contradictory implications, and it is uncertain which expression should be followed. Therefore, the landlord and the renter should divide the intercalary month between them, i.e., the renter should pay half a gold dinar for it.

8:9 In the case of one who rented out a house to another, and then the house fell, the landlord is obligated to provide the renter with another house. If the original house was small, the landlord may not construct a large house as a replacement, and if the original was large, he may not construct a small house as a replacement. If the original had one room, he may not construct the replacement with two rooms, and if the original had two rooms, he may not construct the replacement with one. He may not reduce the number of windows, nor add to them, except with the agreement of both of them.

9:1 With regard to one who receives a field from another to cultivate, either as a tenant farmer, who, in exchange for the right to farm the land, gives a set amount of the produce to the owner, or as a sharecropper, who cultivates the land and receives a set proportion of the produce, the halakha is as follows: In a location where those cultivating the land were accustomed to cut the produce, this one must cut it as well. In a location where they were accustomed to uproot the produce, not to cut it with a sickle or a scythe, this one must uproot it as well. If they were accustomed to plow the land after harvesting the produce, this one must plow as well. All farming of the land shall be conducted in accordance with regional custom. Just as the halakha is that the owner of the field and the one cultivating it divide the produce, so too the halakha is that they divide the stubble and the straw. Just as the halakha is that the owner of the field and the one cultivating it divide the wine, so too the halakha is that they divide the branches pruned from the vines and the poles. And the two of them, i.e., the landowner and the one cultivating the field, both supply the poles.

9:2 In the case of one who receives a field from another to cultivate and it is an irrigated field or a field with trees, if the spring that irrigated the field dried up or the trees were cut down, he does not subtract from the produce he owes the owner as part of his tenancy, despite the fact that he presumably considered these factors when agreeing to cultivate the field. But if the cultivator said to the landowner explicitly: Lease me this irrigated field, or he said: Lease me this field with trees, and the spring dried up or the trees were cut down, he may subtract from the produce he owes as part of his tenancy.

9:3 With regard to one who receives a field from another as a contractor and then lets it lie fallow and does not work the land at all, the court appraises it by evaluating how much it was able to produce if cultivated, and he gives his share of this amount to the owner. The reason is that this is what a cultivator writes to the owner in a standard contract: If I let the field lie fallow and do not cultivate it, I will pay with best-quality produce.

9:4 With regard to one who received a field from another to cultivate and did

not want to weed it, and he then said to the owner: What do you care if I neglect the land? You will not suffer a loss since I will give you the amount of produce I owe you for your granting me tenancy, regardless of the state of the field. Nevertheless, they do not listen to him. The reason is because the owner of the land can say to him: Tomorrow you will depart from the field, and it will grow weeds for me, which will remain there and disrupt the yield of the field for years to come.

9:5 With regard to one who receives a field from another to cultivate and it did not produce a sufficient crop to cover the expenses of its upkeep, if it has enough produce to form a pile he is obligated to take care of it and give the owner his share. Rabbi Yehuda says: What fixed measure is a pile? There is no inherent measure of produce that is considered significant, as it all depends on the size of the plot of land in question. Rather, the relevant issue is whether it has a crop equivalent to the measure of seeds for dropping in a field in order to sow it.

9:6 In the case of one who receives a field from another to cultivate and grasshoppers consumed it or it was wind blasted, if it is a regional disaster which affected all the fields in the area, the cultivator subtracts from the produce he owes as part of his tenancy. If it is not a regional disaster, the cultivator does not subtract from the produce he owes as part of his tenancy. Rabbi Yehuda says: If the cultivator received it from the owner for a fixed sum of money, whether this way, i.e., there is a regional disaster, or whether that way, i.e., there was no regional disaster, he does not subtract the produce he owes as part of his tenancy.

9:7 In the case of one who receives a field from another to cultivate in return for the payment of ten kor of wheat per year, and its produce was blighted by a crop disease or the like, the cultivator gives the owner the ten kor of wheat from it but does not have to provide him with high quality wheat. If the wheat stalks produced by the field were particularly good stalks of wheat, the cultivator may not say to the owner: I will buy regular wheat from the market; rather, he gives him from inside the field itself.

9:8 With regard to one who receives a field from another in order to plant it with barley, he may not plant it with wheat, as wheat weakens the field more than barley does. But if he receives it in order to plant wheat, he may plant it with barley if he wishes, but Rabban Shimon ben Gamliel forbids it. Similarly, if he receives it to plant it with grain he may not plant it with legumes, as they weaken the field more than grains do, but if he receives it in order to plant legumes he may plant it with grain, but Rabban Shimon ben Gamliel forbids it.

9:9 One who receives a field from another to cultivate for a few years, i.e., fewer than seven, may not plant flax in it, as flax greatly weakens the soil, and if a sycamore tree was growing in the field, he does not have rights to the beams fashioned from the branches of the sycamore tree. Therefore, he may not cut down its branches for his own use, as it takes many years for new ones to grow. If he received the field from him for seven years, in the first year he may plant flax in it, and he does have rights to the beams fashioned from the branches of the sycamore tree.

9:10 In the case of one who receives a field from another to cultivate for one Sabbatical cycle of seven years culminating with the Sabbatical Year for seven hundred dinars, the Sabbatical Year is included in the tally, despite the fact that he is unable to work the land during that year. If he received it from him to cultivate for seven years for seven hundred dinars, the Sabbatical Year is not included in the number, and he may keep the field for an additional year to take the place of the Sabbatical Year, during which he could not work the land.
9:11 The tanna addresses a different issue, the halakha of the payment of workers. A day laborer collects his wages from his employer all night following his work shift. A night laborer collects his wages all the following day, while an hourly laborer collects his wages all night and all day. With regard to a weekly laborer, a monthly laborer, a yearly laborer, or a laborer for a Sabbatical cycle of seven years, if he left upon the completion of his work in the day, he collects his wages all day; if he left at night, he collects his wages all night and all day.
9:12 Whether referring to a person's wages that he receives or the renting of an animal or the renting of utensils, are all subject to the prohibition of: "On the same day you shall give him his wages" (Deuteronomy 24:15), and are subject to the prohibition of: "The wages of a hired laborer shall not remain with you all night until the morning" (Leviticus 19:13). When does he transgress these prohibitions? He transgresses them when the one owed the money claimed the payment from him. If he did not claim his payment from him the other does not transgress the prohibitions. If the one who owes the money transferred his payment by leaving instructions with a storekeeper or with a money changer to pay him, he does not transgress the prohibitions. The mishna discusses other related halakhot: If a hired laborer requests payment at the proper time and the employer claims he already paid him, the laborer takes an oath that he did not receive his wages and then takes the wages from the employer. If the time had passed, he does not take an oath and take the wages. If there are witnesses who testify that he claimed the money from him at the proper time, he takes an oath and takes the money. One who hires a gentile who resides in Eretz Yisrael and observes the seven Noahide mitzvot [ger toshav] is subject to the prohibition of: "On the same day you shall give him his wages," but is not subject to the negative mitzva of: "The wages of a hired laborer shall not remain with you all night until the morning."
9:13 With regard to one who lends money to another and the debtor fails to repay it at the end of the term of the loan, the creditor may take collateral from him to ensure payment only by means of an agent of the court, not of his own accord. And he may not enter the debtor's house to take his collateral, as it is stated: "When you lend your neighbor any manner of loan, you shall not go into his house to take his collateral. You shall stand outside, and the man to whom you lend shall bring forth the collateral to you outside" (Deuteronomy 24:10–11). If the debtor had two utensils of the same kind, the creditor takes one and leaves the other one in the debtor's possession. And in addition, the creditor must return a pillow at night, as the debtor requires it for sleeping, and a plow, which is needed for his daytime work, by day. If the debtor died, he is not required to return it to the debtor's heirs.

Rabban Shimon ben Gamliel says: Even to the debtor himself he needs to return the collateral each day only until thirty days have passed, and from thirty days onward, the creditor can sell them in court, with the proceeds going toward payment of the debt. With regard to a widow, whether she is poor or whether she is wealthy, one may not take collateral from her, as it is stated: "And you may not take the garment of a widow as collateral" (Deuteronomy 24:17). One who takes a millstone as collateral violates a prohibition, and he is liable for taking two vessels, i.e., both millstones in the pair, as it is stated: "He shall not take the lower or upper millstone as collateral" (Deuteronomy 24:6). The tanna adds: Not only did the Sages say that it is prohibited to take the lower or upper millstone as collateral, but they also said that one may not take anything that people use in the preparation of food [okhel nefesh], as it is stated: "For he takes a man's life [nefesh] as collateral" (Deuteronomy 24:6).

10:1 In the case of the house and the upper story belonging to two people, i.e., the lower story was owned by one individual, while the upper story belonged to someone else, that collapsed, the two of them divide the timber and the stones and the earth of the collapsed structure. And the court considers which stones were likely to break, those of the lower or upper story, and gives those broken stones to the one who presumably owned them. If one of them recognized some of his stones he may take them for himself, and they count toward his amount of stones, and the other party takes other stones accordingly. They do not divide the remaining stones equally.

10:2 If there was a house and an upper story owned by one person, and the upper story was rented out to another, if the floor of the upper story was broken, i.e., it fell in or collapsed, and the owner of the house does not want to repair it, the resident of the upper story can go down and live in the house below until the owner repairs the upper story for him. Rabbi Yosei says: With regard to a house of two stories owned by two people, i.e., the lower level was owned by one and the upper level by the other, in which the ceiling collapsed; the owner of the lower story provides the ceiling of beams or stones, and the owner of the upper story provides the plaster.

10:3 In the case of the house and the upper story belonging to two different people, and that house and upper story collapsed, and the owner of the upper story told the owner of the house to build the lower story in order to enable him to rebuild the upper story, and he does not want to build it, the owner of the upper story may build the house and reside in it, until the other gives him his expenses for the construction of the house, and he then rebuilds his upper story. Rabbi Yehuda says: This one too, i.e., the owner of the upper story, who is meanwhile residing inside the property of the other, must pay him rent. Since he derived benefit by living in the house of the other, as he had no other place in which he could live, he must pay rent. This solution is therefore flawed. Rather, the owner of the upper story builds the house and the upper story, and he roofs the upper story, i.e., he completes the entire construction of the upper story, and he may then sit in the house, i.e., the lower story, until the other gives him his expenses for the building of the house, at which point he returns to his upper story. Since in any event he

could have lived in the upper story, he is not considered to have derived any benefit by living in the lower story, and is not obligated to pay rent.

10:4 And likewise, in the case of an olive press that is built inside a cave in a rock, and one garden, belonging to another person, was planted on top of it, and the roof of the olive press broke, which caused the garden to collapse inward, in such a case, the owner of the garden may descend and sow below until the other one constructs for his olive press sturdy arches to support the roof, so that the owner of the garden can once again sow above him. The mishna continues: In the case of a wall or a tree that fell into the public domain and caused damage, the owner is exempt from having to pay, as it was an accident. If the court saw that the wall was shaky, or that the tree was tilting, and they gave him time to cut down the tree or to dismantle the wall, and then they fell down, if this occurred during the allotted time, he is exempt, but if they collapsed after the time given to him had elapsed, he is liable to pay, since he was warned against this very occurrence.

10:5 In the case of one whose wall was adjacent to another’s garden, and the wall fell, and the owner of the garden said to him: Clear away your stones, and the owner of the stones said to him: They are yours, as I hereby declare them ownerless, and you can take them for yourself; the court does not listen to him, since he cannot force the other to acquire the stones. If after the owner of the garden voluntarily accepted ownership of the stones upon himself, the owner of the wall said to him: Here you are, take your expenditures for the removal of the stones, and I will take the stones that are mine; the court does not listen to him, as they had already been acquired by the owner of the garden. The mishna continues: In the case of one who hires a laborer to do work with him with hay or with straw, and after he finished the task, the laborer said to the employer: Give me my wages, and the employer said to him: Take what you have worked with as your wages, i.e., take some of the hay or straw as payment, the court does not listen to him. Although debts can be paid with any item of value, even hay or straw, the wages of a laborer must be paid in accordance with the initial agreement between the laborer and the employer. But if after the laborer accepted upon himself to keep the hay or straw as payment, the employer changed his mind and said to him: Here you are, take your wages and I will take what is mine; the court does not listen to him, since the laborer had already acquired the hay. In the case of one who takes manure out to the public domain, in order for it to be transported to fertilize a field, he who takes it out from his property takes it out, and immediately, he who takes it to fertilize the field takes it to fertilize the field. They must relocate the manure immediately without allowing it to sit around in the public domain. Similarly, one may not soak clay in the public domain before it is kneaded, and one may not mold bricks in the public domain since this takes a long time and inhibits use of the public domain by others. But one may knead clay in the public domain, as this process does not take long, but not bricks. With regard to one who builds a structure, keeping the building materials in the public domain, he who brings the stones brings them, and immediately, he who builds the structure builds with them, and may not leave them there. And if the stones cause damage before he had a chance to build them into the

structure, he must pay for what he damaged. Rabban Shimon ben Gamliel says: One may even prepare his work thirty days beforehand; he may keep the building materials in the public domain for that duration.
10:6 In the case of two gardens that were located one above the other, i.e., a garden on a plateau that borders another garden below, and vegetables grew in-between, out of the wall of soil resulting from the difference in height between the two gardens, Rabbi Meir says: These vegetables belong to the owner of the upper garden. Rabbi Yehuda says: They belong to the owner of the lower one. Rabbi Meir said in explanation of his ruling: If the owner of the upper garden would want to dig and take his dirt and does so, no vegetables would grow here, as that wall made of soil would not exist. The vegetables therefore belong to him. In response, Rabbi Yehuda said: If the owner of the lower garden would want to fill his garden with dirt and does so, thereby raising its level, no vegetables would grow here, as that wall made of soil would not exist. The vegetables therefore belong to him. Rabbi Meir said: Since the two of them can object to each other, as they each have the ability to prevent the vegetable growth, nothing can be decided based on such considerations. Instead, the court considers from where this vegetable lives and derives nourishment, whether from above or from below. Rabbi Shimon said: Any vegetables that the owner of the upper garden can stretch out his hand and take, those vegetables are his, and the rest belong to the owner of the lower garden.
73:1 even in the first mishna in this chapter, and Rabbi Yosei holds that even when a bailee pays for the deposit and chooses not to take an oath, the thief pays the double payment to the owner. Is the halakha in accordance with his opinion even in that case, or is the halakha not in accordance with his opinion? Rav Yehuda said to him: Rabbi Yosei was in disagreement even in the first mishna in this chapter, and the halakha is in accordance with his opinion even in the first mishna.
73:2 It was also stated that the amora’im in Eretz Yisrael disagreed about this matter. Rabbi Elazar says: Rabbi Yosei was in disagreement even in the first mishna and the halakha is in accordance with his opinion even in the first mishna. And Rabbi Yohanan says: Rabbi Yosei conceded in the first mishna because the bailee already paid and acquired the animal.
73:3 The Gemara questions the formulation of Rabbi Yohanan’s statement: If he paid, yes, the thief pays the double payment to him; if he did not pay, no? But doesn’t Rabbi Hiyya bar Abba say that Rabbi Yohanan himself says: When the mishna says: If the bailee paid, it does not mean that he actually paid; rather, once the bailee said: I hereby choose to pay, even if he did not yet actually pay, he acquired the double payment? The Gemara answers: Emend the statement of Rabbi Yohanan and say: Rabbi Yosei conceded in the first mishna because the bailee already said: I hereby choose to pay.
73:4 MISHNA: If one said to two people: I robbed one of you of one hundred dinars, but I do not know from which of you I took the money, or if one said to two people: The father of one of you deposited one hundred dinars with me, but I do not know the father of which of you he is, then he gives one hundred dinars to this person and one hundred dinars to that person. This is because there is no way to determine which of them is entitled to the money, and he

admitted his obligation at his own initiative.
73:5 In the case of two people who deposited money with one person, and this one deposited one hundred dinars and that one deposited two hundred dinars, and when they come to collect their deposit, this one says: My deposit was two hundred dinars, and that one says: My deposit was two hundred dinars, the bailee gives one hundred dinars to this one and one hundred dinars to that one. And the rest of the money, i.e., the contested one hundred dinars, will be placed in a safe place until Elijah comes and prophetically determines the truth.
73:6 Rabbi Yosei said: If so, what did the swindler lose? He lost nothing by claiming the one hundred dinars that belongs to another, and he has no incentive to admit the truth. Rather, the entire deposit will be placed in a safe place until Elijah comes. As his fraud will cause him to lose even the one hundred dinars that he deposited, perhaps he will be discouraged from making a fraudulent claim.
73:7 And likewise, if two people deposited two vessels, one worth one hundred dinars and one worth one thousand dinars, and this one says: The expensive vessel is mine, and that one says: The expensive vessel is mine, the bailee gives the small vessel to one of them, and from the proceeds of the sale of the large vessel he gives the value of the small vessel to the other, and the rest of the money is placed in a safe place until Elijah comes. Rabbi Yosei said: If so, what did the swindler lose? Rather, the entire deposit, i.e., both vessels, are placed in a safe place until Elijah comes or one of them admits his deceit.
73:8 GEMARA: From the fact that the mishna teaches that if the bailee does not know whom he robbed, he gives one hundred dinars to this one and one hundred dinars to that one, apparently, in cases of uncertainty, we expropriate property and return it to those claiming it. And we do not say: Establish the money in the possession of its owner. In this case, the bailee is currently the owner of the money, but the money is not left in his possession.
73:9 And raise a contradiction from the continuation of the mishna: In the case of two people who deposited money with one person, and this one deposited one hundred dinars and that one deposited two hundred dinars, and when they come to collect their deposit, this one says: My deposit was two hundred dinars, and that one says: My deposit was two hundred dinars, the bailee gives one hundred dinars to this one and one hundred dinars to that one. And the rest of the money will be placed in a safe place until Elijah comes and prophetically determines the truth.
73:10 The Sages said to the one who raised the contradiction: Are you raising a contradiction between the halakha stated in the case of a deposit and the halakha stated in the case of a robbery? In the case of robbery, where one transgressed a prohibition, the Sages penalized him and ruled that he must pay both possible robbery victims. In the case of a deposit, where he did not transgress a prohibition, the Sages did not penalize him.
73:11 And they raised a contradiction between the halakha stated in the case of a deposit and the halakha stated in the case of a deposit, and they raised a contradiction between the halakha stated in the case of a robbery and the halakha stated in the case of a robbery. There is a contradiction between the

halakha stated in the case of a deposit and the halakha stated in the case of a deposit, as it is taught in the first clause of the mishna: Or, if one said to two people: The father of one of you deposited one hundred dinars with me, but I do not know the father of which of you he is, he gives one hundred dinars to this person and one hundred dinars to that person. The Gemara raises a contradiction from the continuation of the mishna cited above: In the case of two people who deposited money with one person, the contested sum is placed in a safe place until Elijah comes.

73:12 Rava said: In the first clause of the mishna, in the case where the bailee receives money from the father of one person, he becomes like one with whom they deposited sums of money in two separate bundles, as the bailee should have been discerning with regard to who gave him the money. His failure to do so constitutes negligence, and therefore he pays the sum to both claimants. In the latter clause of the mishna, in the case where he receives money from two people, he becomes like one with whom they deposited sums of money in one bundle, as there is no expectation that he should have been discerning. It is a case where they both deposited their money together at one time, as the bailee says to them: If you yourselves were not suspicious of each other, should I be suspicious? Therefore, he is required to pay them only the sum that they can prove is theirs.

73:13 And they raised a contradiction between the halakha stated in the case of a robbery and the halakha stated in the case of a robbery. It is taught here: If one said to two people: I robbed one of you of one hundred dinars, but I do not know from which of you I took the money, or if one said to two people: The father of one of you deposited one hundred dinars with me, but I do not know the father of which of you he is, then he gives one hundred dinars to this person and one hundred dinars to that person.

73:14 The Gemara raises a contradiction from a mishna (Yevamot 118b): If one robbed one of five people and he does not know which of them he robbed, and this one says: He robbed me, and that one says: He robbed me, the robber places the stolen item between them and withdraws from them; this is the statement of Rabbi Tarfon. Apparently, contrary to the mishna, we do not expropriate property due to an uncertainty and return it to those claiming it, and instead we say: Establish the money in the possession of its owner.

73:15 The Gemara asks: And from where is it known that the mishna here is in accordance with the opinion of Rabbi Tarfon? Perhaps the mishna is in accordance with the opinion of Rabbi Akiva, who holds the robber must pay each of the five possible victims, and there is no contradiction at all. The Gemara answers: It is known that the mishna here is in accordance with the opinion of Rabbi Tarfon, as it is taught in a baraita concerning the halakha taught in that mishna, in tractate Yevamot: Rabbi Tarfon concedes that in a case where a robber says to two people: I robbed one of you of one hundred dinars, but I do not know which of you it was, he gives one hundred dinars to this person and one hundred dinars to that person, as he has already admitted his obligation on his own. There is an apparent contradiction between the two statements of Rabbi Tarfon.

73:16 The Gemara answers: There, in the mishna where one robbed one of five

people of money, it is referring to a case where the claimants demand payment from him. He is required to pay them only one hundred dinars, as the burden of proof rests upon the claimant. By contrast, here, i.e., in this mishna and the statement of Rabbi Tarfon in the baraita, it is referring to a case where the robber comes to fulfill his obligation to Heaven. Only by returning the money to the person he robbed can he atone for his transgression. Therefore, he goes beyond the halakhic requirement and pays both claimants. The Gemara notes: The language of this mishna is also precise, as the tanna teaches: Because he admitted his obligation at his own initiative. The Gemara affirms: Learn from the wording of the mishna that this is the explanation of the mishna.

73:17 With regard to returning stolen money, the Master said: There, it is referring to a case where the claimants demand payment from him. The Gemara asks: And the other person, the thief, what does he claim in response? Rav Yehuda says that Rav says: The other person is silent, as he does not know to whom he owes the money. Rav Mattana says that Rav says: The other person