Mishnah הַמְקַבֵּל שָׂדֶה מֵחֲבֵירוֹ – If **one leased a field from his fellow,**[26] וְלֹא עָשְׂתָה – **and it did not produce** a substantial crop[27] – אִם יֵשׁ בָּהּ כְּדֵי לְהַעֲמִיד כְּרִי – **if there is enough** growing **in it to raise up a heap,** חַיָּיב לְטַפֵּל בָּהּ – **he is obligated to care for [the field].**[28] אָמַר רַבִּי יְהוּדָה – **R' Yehudah said:** מַאי קְצָבָה בִּכְרִי – **What** kind of **limit is a heap?**[29] אֶלָּא אִם יֵשׁ בָּהּ כְּדֵי נְפִילָה – **Rather, if there is enough for sowing** the field again, the farmer is obligated to continue to care for the field.[30]

Gemara The Gemara explains the reason for the Tanna Kamma's ruling:

תָּנוּ רַבָּנָן – **The Rabbis taught in a Baraisa:** הַמְקַבֵּל שָׂדֶה מֵחֲבֵירוֹ וְלֹא עָשְׂתָה – IF ONE LEASED A FIELD FROM HIS FELLOW AND IT DID NOT PRODUCE a substantial crop, אִם יֵשׁ בָּהּ כְּדֵי לְהַעֲמִיד כְּרִי – IF THERE IS ENOUGH IN IT TO RAISE UP A HEAP, חַיָּיב לְטַפֵּל בָּהּ – HE IS OBLIGATED TO CARE FOR [THE FIELD]. שֶׁכָּךְ כּוֹתֵב לוֹ – FOR THIS IS WHAT [A SHARECROPPER] WRITES TO [THE LANDOWNER] in his contract: אֲנָא אוֹקִים וַאֲנִיר וְאֶזְרַע וְאֶחֱצוֹד – "I WILL STAND AND PLOW, SOW AND REAP; וַאֲעַמֵּר וְאָדוֹשׁ וְאֵידְרֵי – AND BIND, THRESH AND WINNOW; וְאוֹקִים בְּרֵיעָא קֳדָמָךְ – AND RAISE UP A HEAP FOR YOU; וְתֵיתֵי אַנְתְּ וְתִיטוֹל פַּלְגָא – AND YOU WILL THEN COME AND TAKE HALF, וַאֲנָא בַּעֲמָלִי וּבְנַפְקוּת יָדֵי פַּלְגָא – AND I, FOR MY LABOR AND MY EXPENSES, will take HALF." The sharecropper is thus obligated to fulfill the terms of his contract as long as the field produces enough to make a heap.[31]

The Gemara inquires how big the heap must be in order to force the sharecropper to stay on the field:

וְכַמָּה כְּדֵי לְהַעֲמִיד בָּהּ כְּרִי – **And how much** produce **is** needed **in order to raise up a heap?** That is, how large must the heap be?

The Gemara answers:

אָמַר רַבִּי יוֹסֵי בְּרִ' חֲנִינָא – **R' Yose the son of R' Chanina said:** כְּדֵי שֶׁתַּעֲמוֹד בּוֹ הָרֵחַת – **So that the winnowing shovel can stand up in it.**[32]

The Gemara inquires:

רֵחַת הַיּוֹצֵא מֵהַאי גִּיסָּא לְהַאי גִּיסָּא אִיבָּעְיָא לְהוּ – **They inquired:** מַאי – **If the winnowing shovel** stands up in the heap but it **protrudes from both sides** of the heap, **what** is the law?[33] Is such a heap sufficiently large to require the sharecropper to continue working the field?

The Gemara replies:

תָּא שְׁמַע – **Come, learn** the answer from the following statement: אָמַר רַבִּי אַבָּהוּ – **R' Abahu said:** לְדִידִי מִפַּרְשָׁא לִי מִינֵּיהּ דְּרִ' יוֹסֵי בְּרִ' חֲנִינָא – **It was explained to me by R' Yose the son of R' Chanina:** כָּל שֶׁאֵין בּוֹנֵס שֶׁלּוֹ רוֹאֶה פְּנֵי הַחַמָּה – **As long as its scoop does not see the face of the sun.**[34]

The Gemara now gives other definitions of the size of the heap:[35]

אִיתְּמַר – **It was taught:** לֵוִי אָמַר שָׁלֹשׁ סְאִין – **Levi said** that this is **three *se'ahs*** of produce. דְּבֵי רַבִּי יַנַּאי אָמְרֵי סָאתַיִם – **Those of the academy of R' Yannai said** it is **two *se'ahs.***

The Gemara elaborates further:

אָמַר רֵישׁ לָקִישׁ – **Reish Lakish said:** סָאתַיִם שֶׁאָמְרוּ – **The two *se'ahs* that they said** חוּץ מִן הַהוֹצָאָה – **are aside from the expenses** that the farmer incurred.[36]

The Gemara digresses to list a number of other rulings for which the academy of R' Yannai set down guidelines:

תְּנַן הָתָם – **We learned in a Mishnah there:**[37] פְּרִיצֵי זֵיתִים וַעֲנָבִים – THE *PERITZIM* OF OLIVES AND OF GRAPES[38] – בֵּית שַׁמַּאי מְטַמְּאִין – BEIS SHAMMAI RULE that they are susceptible to *TUMAH* contamination; וּבֵית הִלֵּל מְטַהֲרִין – WHEREAS BEIS HILLEL RULE that they always remain *TAHOR.*[39]

The Gemara asks:

מַאי פְּרִיצֵי זֵיתִים – **What are *peritzim* of olives?**

NOTES

26. This Mishnah applies to an *aris,* who pays the landowner only a percentage of what grows in the field, but not to a *chocheir,* as will become evident below (see note 30).

27. Something grew, but it was evident that the yield would not be enough to make it worthwhile for the *aris* to continue working the field. He therefore wishes to abandon it (*Rashi*).

[Although we learned above that a worker may quit at any time (see note 4), an *aris* must honor his contract because he is considered a contractor [קַבְּלָן], not a worker [פּוֹעֵל] (see *Rama, Choshen Mishpat* 320:2, and *Noda B'Yehudah* cited in *Pischei Teshuvah* there), and a contractor has an obligation to fulfill his contract once he has performed a *kinyan* to do the work (see Gemara above, end of 77a; *Rama, Choshen Mishpat* 333:1; *Shach* ibid. §14; cf. *Chavos Yair* §168).]

28. The Gemara will explain the reason for this ruling.

29. It is not proper for both a large field and a small field to have the same minimum-yield requirement, since the labor involved in caring for a large field is much more than that involved in caring for a small one (*Rashi*). R' Yehudah therefore offers a standard that is dependent on the size of the field.

30. I.e. the field produces enough seeds to be able to sow it again during the next growing season (*Rashi*; cf. *Rambam's Commentary to the Mishnah*). In that case, R' Yehudah holds that there is sufficient cause for the *aris* to honor his contract. [Sowing is referred to here as נְפִילָה, *falling,* because a field is sown by scattering seeds over it (*Rashi*).]

At any rate it is evident that this Mishnah applies only to *arisus*, but not to *chachirus*, since in the latter case, the landowner receives a fixed rental from the *chocheir,* and thus can have no objection if the *chocheir* stops working on the field (*Rashi*). [We have noted above (note 21) from *Ran* that this applies only where the *chocheir* does not want to work the field at all; in that case he pays the landowner with produce bought at the market. However, if the *chocheir* does work the field, the landowner can insist on payment from produce grown on his field rather than produce bought at the market.]

31. Since the *aris* stated that he would work the field until he had "raised up a heap," if the yield was large enough to do that, he must honor his contract. According to the Tanna Kamma, this concern overrides R' Yehudah's argument that the same limit is being used for both small and large fields (*Chavos Yair* §168).

32. This is the tool used to throw the produce in the air in order to separate the chaff from the kernels. If the produce can be placed in a heap large enough for this device to be thrust into it and remain standing, the *aris* must continue to work the field (*Rashi*).

33. That is, [even though the heap is tall enough to hold the shovel upright,] the edges of the shovel can be seen protruding on both sides (*Rashi*; cf. *Tosafos*).

34. The scoop is the part of the implement that lifts grain (equivalent to the blade of an ordinary shovel). Thus, R' Yose requires that no part of the scoop – even its sides – be exposed to the sun (*Rashi*).

35. See *Chochmas Manoach* for a discussion of whether the next two views disagree with the previous view of R' Yose or whether one or both of them are merely giving a quantitative measure of the heap described by R' Yose.

36. That is, after the farmer's expenses are deducted from the value of the meager grain harvest, two *se'ahs* of grain must remain. Otherwise, the *aris* can refuse to continue working the field.

37. *Uktzin* 3:6.

38. The Gemara will explain the type of grapes and olives referred to here.

39. [Food is among those items that are susceptible to *tumah* contamination.] Beis Hillel consider these fruits to be inedible and therefore not susceptible to *tumah* contamination (*Rashi*).

The Gemara answers:

אָמַר רַב הוּנָא – **Rav Huna said:** רִשְׁעֵי זֵיתִים – **"Wicked" olives,** i.e. olives that will never ripen.[40]

The Gemara offers Biblical sources for identifying the term *"peritzim"* with "wicked":

אָמַר רַב יוֹסֵף – **Rav Yosef said:** וּמַאי קְרָאָה – **And what is the verse** to prove this? ,,[וּבְנֵי] פָּרִיצֵי עַמְּךָ יִנַּשְּׂאוּ לְהַעֲמִיד חָזוֹן וְנִכְשָׁלוּ'' – ***[And the sons of] the wicked*** (*peritzei*) ***of your people will lift themselves up to establish a vision but they shall stumble.***[41]

רַב נַחְמָן בַּר יִצְחָק אָמַר מֵהָכָא – **Rav Nachman bar Yitzckak said** that this usage can be seen **from here:** ,,וְהוֹלִיד בֵּן־פָּרִיץ שֹׁפֵךְ דָּם'' – ***And [if] he begets a wicked son*** (*paritz*)**, *a shedder of blood.***[42]

The Gemara examines the view of Beis Hillel:

וְכַמָּה פְּרִיצֵי זֵיתִים – **How** ripe can they be and still be called **"wicked" olives?**

The Gemara presents two statements about this:

ר' אֶלְעָזָר אָמַר – **R' Elazar says:** אַרְבַּעַת קַבִּין לְקוֹרָה – When they yield only **four *kavs*** of oil **to an** olive-press **beam.**[43] But if they can produce more oil than that, they are considered food.

דְּבֵי ר' יַנַּאי אָמְרֵי – **Those of the academy of R' Yannai say:** שְׁתֵּי סָאתַיִם לְקוֹרָה – When they yield only **two *se'ahs*** (twelve *kavs*) of oil **to a beam;** if they produce more oil than that, they are considered food.

The Gemara explains:

וְלֹא פְלִיגִי – **And these** two opinions **do not disagree** with one another: הָא בְּאַתְרָא דְּמַעֲיְילֵי כּוֹרָא בְּאוּלָּא – **This** one [R' Elazar] **is** dealing **with a place where they bring one *kor*** of olives **to** make **the mound** that fills the vat of the press, הָא בְּאַתְרָא דְּמַעֲיְילֵי תְּלָתָא כּוֹרִין בְּאוּלָּא – whereas **this** one [the academy of R' Yannai] **is** dealing **with a place where they bring three *kors*** of olives **to** make **the mound.**[44]

The Gemara introduces another Mishnah that the academy of R' Yannai explained:

תָּנוּ רַבָּנָן – **The Rabbis taught in a Mishnah:**[45]

NOTES

40. Hence, according to Beis Hillel they are not considered food and thus not susceptible to the *tumah* contamination reserved for foods. Beis Shammai, however, consider them food because pressing them will still yield some oil (*Tiferes Yisrael* to Mishnah; see *Tos. Yom Tov* there).

41. *Daniel* 11:14.

42. *Ezekiel* 18:10. See *Hagahos Yavetz* for a possible explanation of why the verse from *Daniel* does not provide sufficient proof in Rav Nachman's view.

43. I.e. the amount of olives that are ordinarily pressed at one time yield only four *kavs* of oil (*Rashi*). [The "beam" is the part of the press that crushes the olives – see *Bava Basra* 67b.]

44. [The olives are heaped into the vat of the press until they form an "apple-like" mound (i.e. rounded heap). This is the amount pressed at one time (*Rashi,* who reports that this was referred to in his time as a "sack" of olives).] Some places use small oil presses that can handle only one *kor* of olives at a time, while in other places the presses are larger, being able to handle up to three *kors* at a time. In R' Elazar's locale they pressed only one *kor* at a time, whereas in the locale of the academy of R' Yannai they pressed three *kor* at a time. That is why they gave a measure three times that of R' Elazar's (*Rashi*). [One *se'ah* is equivalent to six *kavs*. Hence, the two *se'ahs* mentioned by R' Yannai's academy are equivalent to twelve *kavs,* which is three times the four *kavs* mentioned by R' Elazar.]

45. *Zavim* 3:1.

עָלוּ בְּאֵילָן שָׁבוּחַ רַע – If THEY [a *zav*[1] and a *tahor* person] CLIMBED ON A WEAK TREE,[2] וּבְסוֹכָה שָׁבוּחָה רַע – OR ON A WEAK BRANCH of even a strong tree, טָמֵא – [THE *TAHOR* PERSON] BECOMES *TAMEI*.[3]

The Gemara seeks a clarification of the Mishnah's ruling:

הֵיכִי דָּמֵי אִילָן שָׁבוּחַ רַע – **What is the case of a weak tree?**

The Gemara answers:

אָמְרֵי דְּבֵי ר' יַנַּאי – **The academy of R' Yannai said:** כָּל שֶׁאֵין בְּעִיקָּרוֹ לָחוֹק רוֹבַע – **Any** tree **that does not have in its trunk** enough space **to carve out a quarter** of a *kav*.[4]

The Gemara seeks a further clarification of the Mishnah's ruling:

הֵיכִי דָּמֵי סוֹכָה שָׁבוּחָה רַע – **What is the case of a weak branch?**

The Gemara answers:

אָמַר רֵישׁ לָקִישׁ – **Reish Lakish said:** כָּל שֶׁנֶּחְבֵּאת בְּחֶזְיוֹנָהּ – **Any** branch so thin **that** it **can be hidden within one's grasp.**[5]

The Gemara introduces another Mishnah that will be explained by the academy of R' Yannai:

תְּנַן הָתָם – **We learned in a Mishnah there:**[6] הַמְהַלֵּךְ בְּבֵית הַפְּרָס – If ONE IS WALKING IN A *BEIS HAPRAS*[7] עַל גַּבֵּי אֲבָנִים שֶׁיָּכוֹל לְהָסִיט – ON TOP OF STONES THAT HE IS ABLE TO MOVE,[8] עַל הָאָדָם וְעַל הַבְּהֵמָה שֶׁשָּׁבוּחַ רַע – or he is riding ON A WEAK MAN OR ANIMAL,[9] טָמֵא – HE IS *TAMEI*.[10]

The Gemara seeks a definition of the Mishnah's terms:

הֵיכִי דָּמֵי אָדָם שֶׁשָּׁבוּחַ רַע – **What is the case of a weak man?**

The Gemara answers:

אָמַר רֵישׁ לָקִישׁ – **Reish Lakish said:** כָּל שֶׁרוֹכְבוֹ וְאַרְכֻּבוֹתָיו נוֹקְשׁוֹת – **Anyone whose knees knock** together **when someone rides on him.**

The Gemara seeks the definition of a weak animal:

הֵיכִי דָּמֵי בְּהֵמָה שָׁבוּחָה רַע – **What is the case of a weak animal?**

The Gemara answers:

אָמְרֵי דְּבֵי ר' יַנַּאי – **The academy of R' Yannai said:** כָּל שֶׁרוֹכְבָהּ מַטִּילָה גְּלָלִים – **Any** animal **that defecates when someone rides on it.**[11]

The Gemara cites one last ruling of the academy of R' Yannai:

אָמְרֵי דְּבֵי ר' יַנַּאי – **The academy of R' Yannai said:** לְתִפְלָה וְלִתְפִילִין ד' קַבִּין – **For prayer and for tefillin,** the definition of a burden is **four *kavs*.**

The Gemara explains the first ruling:

לְתִפְלָה מַאי הִיא – **What is [the ruling] "for prayer"** to which the academy of R' Yannai referred? דְּתַנְיָא – **For it has been taught in a Baraisa:** הַנּוֹשֵׂא מַשָּׂאוֹי עַל כְּתֵיפּוֹ וְהִגִּיעַ זְמַן תְּפִלָּה – IF ONE IS CARRYING A BURDEN ON HIS SHOULDER AND THE TIME FOR PRAYER ARRIVES – פָּחוֹת מִד' קַבִּין – if the burden weighs LESS THAN FOUR *KAVS*, מַפְשִׁילִין לַאֲחוֹרָיו וּמִתְפַּלֵּל – HE MAY SWING IT BEHIND HIM AND PRAY with the burden on his back.[12] אַרְבָּעָה קַבִּין – If it weighs FOUR *KAVS*, מַנִּיחַ עַל גַּבֵּי קַרְקַע וּמִתְפַּלֵּל – HE MUST PLACE IT ON THE GROUND AND PRAY, so that he should be able to concentrate properly during the prayer. This is the ruling to which R' Yannai's academy referred when it spoke of four *kavs* "for prayer."

The Gemara explains the second ruling:

לִתְפִילִין מַאי הִיא – **What is [the ruling] "for tefillin"** to which the

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NOTES

1. A *zav* is a man who has become *tamei* through a certain type of seminal emission. Among the ways a *zav* transmits *tumah* to a *tahor* person is by leaning on the *tahor* person, or by the *tahor* person leaning on him [even if there is no direct contact between them] (see *Rashi* ד"ה טמא; see also *Rambam, Hil. Mishkav U'Moshav* 8:6, see also 6:6).

2. Literally: a tree whose strength is weak.

3. Since the tree or the branch is weak, it bends under the weight of people. Therefore, the person higher up the tree or branch is considered to be in effect leaning on the person below. If the *zav* is higher, the *tahor* person becomes *tamei* because the *zav* in effect leaned on him; if the *tahor* person is higher, he becomes *tamei* because he leaned on the *zav* (*Rashi*). [See *Chazon Ish, Zavim* 3:1 for an explanation of why this is not also dependent upon the weight of the people who climbed the tree.]

4. That is, the trunk is not thick enough for that amount of wood to be carved out of it (*Rashi*).

5. When a person grasps it, it is concealed by the palm of his hand (*Rashi*; cf. *Tos. HaRosh*). [*Bach* emends the text of the Gemara to read בַּאֲחִיזָתָהּ, related to the term אֲחִיזָה, *grasping*.]

6. *Oholos* 18:6.

7. A *beis hapras* is a field in which a grave has been plowed over (*Rashi*). It is known as בֵּית הַפְּרָס [from the root פרס meaning *broken* or *fragmented*], a reference to the bones that were plowed through and broken (*Rashi* to *Niddah* 57a ד"ה פרס).

If a field containing a grave was plowed over there is concern that some of the bones might have been dragged from the grave by the plow and deposited elsewhere in the field. If one of the bones is at least the size of a barley grain, it can transmit *tumah* to anyone who comes in contact with it or carries it [i.e. moves it even indirectly] (*Rashi*). For this reason, the Rabbis decreed that an area of one hundred *amos* surrounding the grave should be regarded possibly containing human remains, and it renders a person who comes into contact with it (or carries it) Rabbinically *tamei* (*Oholos* 17:1).

8. The stones are not embedded in the ground and consequently move when someone walks on them. It is therefore possible that when the person stepped on a stone, he moved a human bone the size of a barley grain (*Rashi*).

9. That is, he rode on a weak man or a weak animal that stepped on the movable stones (*Rashi*, as explained by *Maharsha*; cf. *Rambam, Hil. Tumas Meis* 10:11).

10. Human bones as small as a barley grain transmit *tumah* through direct contact (מַגָּע) or by being carried or moved (מַשָּׂא). Therefore, a person who walks through a *beis hapras* over movable stones is *tamei* because of the concern that he moved a bone by stepping on the stones. However, human bones do not transmit *tumah* via an *ohel* (roof) [unless there is at least a quarter-*kav* of them (see *Oholos* 2:1)] (*Rashi*). Therefore, if the stones were firmly embedded in the ground, a person walking on them does not contract any *tumah*, since he could not have moved any bones and merely passing over small bones does not render him *tamei* (see beginning of the Mishnah in *Oholos*). [It is not assumed that the large number of bones needed to transmit *tumah* via an *ohel* were dragged from the grave.]

In the second case, where the person rode on a weak person or animal, he is *tamei* because of the same concern. Since the person (or animal) underneath is weak, the rider is considered to have taken a part in moving [the stone and thus] the bone. Therefore, if he wants to eat food that requires him to be *tahor*, he does not avoid becoming *tamei* by riding through the *beis hapras* on a weak person or animal. However, if the person (or animal) on the bottom is strong, the rider remains *tahor* because he is not considered to have had any effect on the bones (*Rashi*).

The man on the bottom certainly becomes *tamei* in all cases (whether he walked on movable stones or no stones at all) because he walked through a *beis hapras* (*Rashi*). The reason the Mishnah teaches the *tumah* of the rider specifically in the case where he rode over loose stones is because if the carrier was walking on earth, the rider would *not* become *tamei* even in the case of a weak rider. This is because the strength of even a weak carrier alone suffices to move a bone embedded in the soft earth, and the rider thus provides no assistance in moving the bone. It is only when walking on top of stones that the added weight of the rider is needed to compensate for the weakness of the carrier, and thus they are moving the stone (and thereby the bone) together. Therefore, it is only in that case that the rider is considered to have helped move the bone and to have become *tamei* (*Maharsha* in explanation of *Rashi*; cf. *Rambam, Hil. Tumas Meis* 10:11).

11. This translation follows the text of *Meiri*, which apparently read וּמַטִּילָה גְּלָלִים.

12. We assume that a burden of that weight will not interfere with his concentration during the prayer (*Rashi*). [The translation follows *Bach's* emendation.]

academy of R' Yannai referred? דְּתַנְיָא – **For it has been taught in a Baraisa:** הָיָה נוֹשֵׂא מַשָּׂאוֹ עַל רֹאשׁוֹ – If ONE WAS CARRYING A BURDEN ON HIS HEAD, וּתְפִילִּין בְּרֹאשׁוֹ – AND wearing TEFILLIN ON HIS HEAD,[13] – אִם הָיוּ תְּפִילִּין רוֹצְצוֹת אָסוּר – IF THE TEFILLIN WERE BEING CRUSHED by the burden, IT IS PROHIBITED for him to carry the burden on his head while wearing the tefillin; וְאִם לָאו מוּתָּר – BUT IF NOT, IT IS PERMITTED.[14] בְּאֵיזוֹ מַשָּׂאוֹ אָמְרוּ – WITH REGARD TO WHAT size BURDEN DID THEY SAY this?[15] בְּמַשָּׂאוֹ שֶׁל אַרְבַּעַת קַבִּין – WITH REGARD TO A BURDEN OF FOUR *KAVS*. R' Yannai's academy was referring to this ruling when it spoke of four *kavs* for tefillin.

The Gemara elaborates upon this aspect of tefillin law:

תָּנֵי רַבִּי חִיָּיא – **R' Chiya taught a Baraisa:** הַמּוֹצִיא זֶבֶל עַל רֹאשׁוֹ – If ONE TAKES OUT COMPOST ON HIS HEAD – וּתְפִילִּין בְּרֹאשׁוֹ – AND he is wearing TEFILLIN ON HIS HEAD,[16] הֲרֵי זֶה לֹא יְסַלְּקֶם לְצִדָּדִין – HE SHOULD NOT MOVE [THE TEFILLIN] TO THE SIDES of his head, וְלֹא יְקַשְּׁרֶם בְּמָתְנָיו – AND HE SHOULD NOT TIE THEM TO HIS WAIST, מִפְּנֵי שֶׁהוּא נוֹהֵג בָּהֶן מִנְהַג בְּזָיוֹן – BECAUSE HE WOULD BE ACTING WITH THEM IN A DISRESPECTFUL MANNER. אֶלָּא קוֹשְׁרָם עַל זְרוֹעוֹ בְּמָקוֹם תְּפִילִּין – RATHER, HE SHOULD TIE THEM TO HIS UPPER ARM AT THE PLACE OF TEFILLIN.[17]

The Gemara cites a dissenting view to those mentioned until here:

מִשּׁוּם דְּבֵי שִׁילָא אָמְרוּ – **In the name of the academy of** R' **Shila they said:** אֲפִילּוּ מִטְפַּחַת שֶׁלָּהֶן – **Even the wrap of [the tefillin][18]** אָסוּר לְהָנִיחַ עַל הָרֹאשׁ שֶׁיֵּשׁ בּוֹ תְּפִילִּין – **may not be placed on a head on which there are tefillin.**[19]

The Gemara inquires:

וְכַמָּה – According to this view, **how much** of a burden is prohibited?

The Gemara answers:

אָמַר אַבָּיֵי – **Abaye said:** אֲפִילּוּ רְבִיעָא דִּרְבִיעָא דְּפוּמְבְּדִיתָא – **Even** something as light as **one-fourth of the quarter** *litra* **of Pumbedisa.**[20]

The Gemara returns to its analysis of our Mishnah, which presented a dispute concerning when a sharecropper can refuse to work the landowner's field due to a poor crop. Having previously analyzed the position of the Tanna Kamma, the Gemara now elaborates upon the second view:

אָמַר רַ' יְהוּדָה – R' YEHUDAH SAID: מַאי קְצָבָה בִּכְרִי – WHAT KIND OF MEASURE IS A HEAP? אֶלָּא אִם יֵשׁ בּוֹ כְּדֵי נְפִילָה – RATHER, IF THERE IS ENOUGH FOR SOWING the field again, the sharecropper must continue to work there.

The Gemara seeks an explanation of this view:

וְכַמָּה כְּדֵי נְפִילָה – **And how much is enough for sowing** the field again?

The Gemara presents two opinions:

ר' אַמִּי אָמַר רַבִּי יוֹחָנָן – **R' Ami said in the name of R' Yochanan:** אַרְבָּעָה סְאִין לְכוֹר – **Four *se'ahs*** of produce in an area that normally produces **a *kor*.** This amount is enough to sow a field that size during the next season.[21] רַבִּי אַמִּי דְּיָלְיהּ אָמַר – **R' Ami himself said:** שְׁמוֹנַת סְאִין לְכוֹר – **Eight *se'ahs*** in an area that normally produces **a *kor*.**

The Gemara explains that the two opinions are not in dispute:

אָמַר לֵיהּ הַהוּא סָבָא לְרַב חָמָא בְּרֵיהּ דְּרַבָּה בַּר אֲבוּהּ – **A certain elder said to Rav Chama the son of Rabbah bar Avuha:** אֲסַבְּרֵהּ לָךְ – **I will explain it to you:** בְּשְׁנֵי דְּרַבִּי יוֹחָנָן – **In the years of R' Yochanan** הֲוָה שְׁמִינָא אַרְעָא – **the land was** more **fertile;** therefore, four *se'ahs* of seed was sufficient to produce a *kor* of produce. בְּשְׁנֵי דְּרַבִּי אַמִּי – But **in the years of R' Ami,** a generation later, הֲוָה כְּחִישָׁא אַרְעָא – **the land was depleted;** hence, it took eight *se'ahs* of seed to produce a *kor* in the same area.[22]

Since R' Yehudah used the term כְּדֵי נְפִילָה in our Mishnah, the Gemara digresses to cite another Mishnah in which a similar term is used, although with a different meaning:

תְּנַן הָתָם – **We learned in a Mishnah there:**[23] הָרוּחַ שֶׁפִּיזְּרָה אֶת הָעוֹמְרִין – If THE WIND SCATTERED THE SHEAVES over the *leket*

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13. It is proper for a man to wear tefillin all day, even when he is at work (*Tur* and *Shulchan Aruch, Orach Chaim* 37:2; *Bach* there cites our Gemara as one of the sources for this ruling). Since it is difficult for most people to maintain the physical and mental standards required of someone who is wearing tefillin through the entire day, however, it is no longer customary for people to wear tefillin except when praying (ibid.).

14. That is, if the burden is light enough that it does not press the tefillin or it is not directly on top of the tefillin, it is permitted to keep the burden on his head (*Rashi*).

[Strictly speaking, a *kav* is a measure of volume rather than weight. See *Maadanei Yom Tov* to *Rosh, Berachos* 3:30, who discusses how the *kav* measure is converted from volume into weight.]

15. I.e. how heavy a burden qualifies as a "crushing" burden (*Rashi*).

16. Here the concern is for the repulsive nature of the burden, not its size (see *Meiri*). It is disrespectful to keep such a package next to tefillin.

17. I.e. he should tie his head-tefillin next to the tefillin he is wearing on his arm (*Rashi*). Tying the head-tefillin next to his arm-tefillin is more respectful than tying them to his right arm, which he uses to [fix and] unload the burden from his head (*Beis Yosef, Orach Chaim* §41).

18. In which the tefillin are wrapped at night (*Rashi*; cf. *Tosafos*).

19. That is, it is prohibited to carry even the tefillin wrapper on one's head while wearing tefillin (*Rashi*). However, something that is normally worn on the head, such as a hat, may be worn even over tefillin (see *Rambam, Hil. Tefillin* 4:23; *Shulchan Aruch, Orach Chaim* 41:1).

20. This is a negligible amount (*Rashi*), being the smallest-sized weight used in Pumbedisa (*Rashi* to *Gittin* 22a). Thus, according to R' Shila, it is forbidden to place any burden on the head while wearing tefillin because it is disrespectful to the tefillin. This prohibition is not dependent on the repulsiveness of the burden (e.g. compost) or whether the tefillin are being pressed by the burden (*Rabbeinu Yonah* to *Berachos* 23b).

We have explained the Gemara according to *Rashi* (ד"ה וכמה) and *Rambam* (*Hil. Tefillin* 4:23) who understand R' Shila to be disputing the opinions cited earlier. Other Rishonim disagree and are of the opinion that R' Shila's statement does not necessarily contradict those stated previously (see *Beis Yosef, Orach Chaim* §41 for various explanations of this view).

21. That is, the *aris* planted a field that normally yields a *kor* of produce, but the crop was abnormally small. R' Yochanan explains that if at least four *se'ahs* grew in that area, the *aris* may not refuse to work the field. R' Yehudah in our Mishnah calls this amount of four *se'ahs* "enough for sowing," because that is the amount needed to produce a *kor* in a field this size (*Tosafos*). [We have followed *Tosafos* in our explanation of the Gemara. *Rashi* apparently explains the Gemara to mean that the four *se'ahs* grew in a *beis kor*. This, however, is puzzling, since a *beis kor* is by definition an area in which a *kor* – thirty *se'ahs* – is sown. Thus, four *se'ahs* are certainly not enough to replant an area this size (see *Maharsha*).]

R' Yehudah prefers this limit to that of the Tanna Kamma because it is directly related to the size of the land planted. Thus, for an *aris* to be obligated to continue working a larger field, it must produce more than a smaller field (*Rashi*).

22. Both R' Yochanan and R' Ami agree that a field which normally produces a *kor* must yield enough to replant it the next year in order for the *aris* to be forced to continue working it. However, in R' Yochanan's times four *se'ahs* of seeds were enough to produce a *kor*, while in R' Ami's times eight *se'ahs* were needed to produce that amount (*Tosafos*).

23. *Pe'ah* 5:1. This Mishnah discusses the Biblical law of *leket* (gleanings). The Torah (*Leviticus* 19:9-10) states that if one or two stalks fall from the reaper's hand while he cuts a handful of grain, he is prohibited to retrieve them. Rather, they must be left for the poor to collect.

stalks,[24] אוֹמְדִים אוֹתָהּ כַּמָּה לָקֵט רְאוּיָה לַעֲשׂוֹת – WE ESTIMATE HOW MUCH *LEKET* [THE FIELD] WOULD NORMALLY YIELD, וְנוֹתֵן לָעֲנִיִּים – AND [THE LANDOWNER] GIVES that amount TO THE POOR.[25] רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר – RABBAN SHIMON BEN GAMLIEL SAYS: נוֹתֵן לָעֲנִיִּים כְּדֵי נְפִילָה – HE GIVES TO THE POOR THE AMOUNT THAT normally FALLS.[26]

The Gemara seeks an explanation of Rabban Shimon ben Gamliel's view:

וְכַמָּה כְּדֵי נְפִילָה – And how much is the amount that normally **falls?**

The Gemara answers:

כִּי אָתָא רַב דִּימִי – When Rav Dimi came from Eretz Yisrael to Babylonia אָמַר רִ' אֶלְעָזָר וְאִיתֵימָא רִ' יוֹחָנָן – **he said in the name of R' Elazar, and some say it was** in the name of **R' Yochanan:** אַרְבַּעַת קַבִּין לְכוֹר – **Four *kavs*** of *leket* **per *kor*.**

The Gemara finds this answer ambiguous:

בָּעֵי רַבִּי יִרְמְיָה – R' Yirmiyah inquired: לְכוֹר זֶרַע אוֹ לְכוֹר תְּבוּאָה – Is that amount of *leket* assumed to be **per *kor* of seed** planted **or per *kor* of produce** yielded?[27] לְמַפּוֹלֶת יָד אוֹ לְמַפּוֹלֶת שְׁוָורִים – And if it is for a *kor* of seed, is it **for** seed **sown by hand or for** seed **sown by oxen?**[28]

The Gemara replies:

תָּא שְׁמַע – Come, learn the answer to the inquiry from the following statement: **דְּכִי אָתֵי רָבִין – For when Ravin came** from Eretz Yisrael to Babylonia אָמַר רַבִּי אֲבוּהָ אָמַר רַבִּי אֶלְעָזָר – **he said in the name of R' Avuha, who said** it **in the name of R' Elazar,** וְאָמְרֵי לָהּ אָמַר רִ' יוֹחָנָן – **and some say** that Ravin **said** it in the name of **R' Yochanan:** אַרְבַּעַת קַבִּין לְכוֹר זֶרַע – **Four *kavs*** of *leket* **per *kor* of seed.**

The Gemara notes:

וַעֲדַיִין תִּבָּעֵי לָךְ – But you must still inquire whether it is לְמַפּוֹלֶת יָד אוֹ לְמַפּוֹלֶת שְׁוָורִים – **for** a *kor* of seed **sown by hand or for** a *kor* of seed **sown by oxen.**

The Gemara concludes:

תֵּיקוּ – Let [the question] stand.

Mishnah הַמְקַבֵּל שָׂדֶה מֵחֲבֵירוֹ – **If one leases a field from his fellow,**[29] וַאֲכָלָהּ חָגָב אוֹ נִשְׁדְּפָה – **and locusts devoured it** [i.e. ate up the crop] **or it was blasted by wind**[30] – אִם מַכַּת מְדִינָה הִיא – **if it is a general calamity,**[31] מְנַכֶּה לוֹ מִן חֲכוֹרוֹ – **he may deduct from his rental;**[32] אִם אֵינָהּ מַכַּת מְדִינָה – **if it is not a general calamity,** אֵין מְנַכֶּה לוֹ מִן חֲכוֹרוֹ – **he may not deduct from his rental.**[33] רִ' יְהוּדָה אוֹמֵר – R'

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24. That is, the wind blew the [unbound] sheaves that the reaper had collected over the scattered *leket* stalks that he had left behind. It was thus unknown which stalks on the bottom were *leket* and which belonged to the owner (*Rashi*).

25. The court estimates how much *leket* this field normally produces; that amount must be given to the poor (*Rashi*).

26. Rabban Shimon ben Gamliel claims that no estimate is needed, for a set formula determines how much fallen *leket* the owner is required to give to the poor. This will be explained next by the Gemara (*Rashi*; see *Rambam, Hil. Matnos Aniyim* 4:5, with *Kesef Mishneh*).

[The term כְּדֵי נְפִילָה in this Mishnah refers to the amount of *leket* that falls during the harvest. In our Mishnah, however, כְּדֵי נְפִילָה means the amount that one will have to cast on the ground when one next sows the field.]

27. Are there four *kavs* of *leket* found in a field where a *kor* of seed was planted, or are they found in a field that yields a *kor's* worth of produce [which is a much smaller-sized field]? (*Rashi*).

28. Literally: for [seed] cast by hand or for [seed] cast by oxen. If the answer to the first inquiry is that the ratio refers to a *kor* of seed sown, there is yet another question. Fields were sometimes sown by attaching a [small] wagon loaded with seed to the back of the plow. The wagon would thus be drawn over the freshly plowed furrow, and would drop seed on it through small holes in its floor. [Since the plow itself is drawn by oxen, this method of sowing is known as "sowing with oxen."] Otherwise, fields were sown by scattering the seed by hand. Since sowing with oxen uses more seed for a given area than sowing that same area by hand, the question arises as to whether the ratio of four *kavs* to a *kor* is based on a *kor* sown by hand or a *kor* sown by oxen (*Rashi*). When the concentration of seed per unit of land is greater, less grain will grow per measure of seed [since the seeds will be more tightly spaced and thus compete with each other. Thus, if a *kor* of seed is concentrated in three-quarters of a *beis kor*, for example, that *kor* of seed will produce less grain than a *kor* of seed spread over a full *beis kor*.] Accordingly, a *kor* of seed sown by oxen will produce less grain than a *kor* of seed sown by hand. The Gemara therefore inquires whether the ratio of four *kavs* to a *kor* applies to a *kor* sown by hand or by oxen (*Raavad* cited in *Shitah Mekubetzes*).

[*Maharshal* explains *Rashi* differently: When the Gemara speaks of four *kavs* for a *kor*, it means that four *kavs* of *leket* are assumed to fall in a field the size of a *beis kor* (see also *Rambam, Matnos Aniyim* 4:5; *Meiri*). Now, a *beis kor* normally refers to the area in which a *kor* of barley seed can be planted by hand (see Baraisa, *Arachin* 25a, regarding the size of a a *beis kor*). The Gemara is here inquiring, however, whether the ratio of four *kavs* to a *beis kor* mentioned above refers to a *beis kor* sown by hand or by oxen. When sowing with oxen, considerably more than a *kor* of seed is needed to sow a *beis kor* (since the seed falls in greater concentration). Thus, if the ratio refers to the amount of seed used to sow a *beis kor* with oxen, then one who sows his *beis kor* by hand will not need to give four *kavs* of *leket,* since he will have sown substantially less seed. Conversely, if the ratio refers to the amount of seed used to sow a *beis kor* by hand, one who sows his *beis kor* with oxen will have to give more than four *kavs* of *leket,* since he will have sown more seed and will thus have produced a larger crop in that *beis kor*. See *Maharsha* for yet another explanation.]

29. This Mishnah refers to *chachirus*, a fixed-rental lease, as will become evident below (see note 31).

30. The field was swept by strong winds, which blasted the standing crop (see *Rashi* to *Genesis* 41:6 and to *Deuteronomy* 28:22). The high winds blew the kernels out of the ears of grain (*Tiferes Yisrael*).

31. Literally: calamity of the province.

32. He may deduct the percentage of his rent corresponding to the percentage of destruction suffered by the field (see *Rambam, Sechirus* 8:5).

Since the whole area was stricken by this calamity, the field is considered unfit for crops. The *chocheir* may therefore reduce his rental payment accordingly (see *Tosafos* 106a ד"ה אלא). Although the tenant leased this field before the calamity struck, he committed himself to pay the full rental only on the assumption that the field would remain suitable for crops for the duration of the lease; but should the field become unsuitable at any time during the term of the lease, he would be entitled to a reduction. (This principle was taught in the Mishnah on 103b, where we learned that if the lease was based on the presence of a water source, that source must remain viable for the duration of the lease, and if it does not, the tenant is entitled to a reduction of his rental.) Thus, if the field is devastated by wind or locusts, the tenant is entitled to a reduction (see further in next note).

Obviously, this Mishnah applies only to *chachirus*. In the case of *arisus,* where the landowner is paid with a percentage of the yield, they share whatever crops actually end up growing; there is thus no reason to deduct anything from the rental (*Rashi*; see *Rambam* ibid., see also *Maggid Mishneh* and *Lechem Mishneh* there).

33. Since the loss was localized, the landowner can claim that it is the farmer's ill fortune that is to blame for the loss (*Rashi*), not the landowner's. The landowner can therefore maintain that the conditions of the lease were fulfilled – since the field was in and of itself suitable for producing a crop, and the loss of the crop was due to an external factor. The tenant must therefore pay the rental to which he committed himself (see *Tosafos* 106a ד"ה אלא). [If, however, the calamity was a widespread one, it cannot be attributed to the tenant's ill fortune because it is evident that the Divine edict that decreed destruction upon the area was directed at the *place,* not the individual. This relates the

academy of R' Yannai referred? דְּתַנְיָא – **For it has been taught in a Baraisa:** הָיָה נוֹשֵׂא מַשָּׂאוֹ עַל רֹאשׁוֹ – If ONE WAS CARRYING A BURDEN ON HIS HEAD, וּתְפִילִּין בְּרֹאשׁוֹ – AND wearing TEFILLIN ON HIS HEAD,[13] – אִם הָיוּ תְּפִילִּין רוֹצְצוֹת אָסוּר – IF THE TEFILLIN WERE BEING CRUSHED by the burden, IT IS PROHIBITED for him to carry the burden on his head while wearing the tefillin; וְאִם לָאו מוּתָּר – BUT IF NOT, IT IS PERMITTED.[14] בְּאֵיזוֹ מַשָּׂאוֹ אָמְרוּ – WITH REGARD TO WHAT size BURDEN DID THEY SAY this?[15] בְּמַשָּׂאוֹ שֶׁל אַרְבַּעַת קַבִּין – WITH REGARD TO A BURDEN OF FOUR *KAVS.* R' Yannai's academy was referring to this ruling when it spoke of four *kavs* for tefillin.

The Gemara elaborates upon this aspect of tefillin law:

R' Chiya taught a Baraisa: תָּנֵי רַבִּי חִיָּיא – If ONE TAKES OUT COMPOST ON HIS HEAD הַמּוֹצִיא זֶבֶל עַל רֹאשׁוֹ – AND he is wearing TEFILLIN ON HIS HEAD,[16] וּתְפִילִּין בְּרֹאשׁוֹ – HE SHOULD NOT MOVE [THE TEFILLIN] TO THE SIDES of his head, הֲרֵי זֶה לֹא יְסַלְּקֵם לְצִדָּדִין – AND HE SHOULD NOT TIE THEM TO HIS WAIST, וְלֹא יִקְשְׁרֵם בְּמָתְנָיו – BECAUSE HE WOULD BE ACTING WITH THEM IN A DISRESPECTFUL MANNER. אֲבָל קוֹשְׁרָם עַל זְרוֹעוֹ בְּמָקוֹם תְּפִילִּין – RATHER, HE SHOULD TIE THEM TO HIS UPPER ARM AT THE PLACE OF TEFILLIN.[17]

The Gemara cites a dissenting view to those mentioned until here:

In the name of the academy of R' Shila **they said:** מִשּׁוּם דְּבֵי שִׁילָא אָמְרוּ – **Even the wrap of [the tefillin]**[18] אֲפִילּוּ מִטְפַּחַת שֶׁלָּהֶן – **may not be placed on a head on which there are tefillin.**[19] אָסוּר לְהָנִיחַ עַל הָרֹאשׁ שֶׁיֵּשׁ בּוֹ תְּפִילִּין

The Gemara inquires:

וְכַמָּה – According to this view, **how much** of a burden is prohibited?

The Gemara answers:

Abaye said: אָמַר אַבָּיֵי – **Even** something as light as **one-fourth of the quarter** *litra* **of Pumbedisa.**[20] אֲפִילּוּ רְבִיעָא דְּרִבְעָא דְּפוּמְבְּדִיתָא

The Gemara returns to its analysis of our Mishnah, which presented a dispute concerning when a sharecropper can refuse to work the landowner's field due to a poor crop. Having previously analyzed the position of the Tanna Kamma, the Gemara now elaborates upon the second view:

מַאי קְצָבָה בִּכְרִי – WHAT KIND OF MEASURE IS A HEAP? אָמַר ר' יְהוּדָה אָמַר – R' YEHUDAH SAID: אֶלָּא אִם יֵשׁ בּוֹ כְּדֵי נְפִילָה – RATHER, IF THERE IS ENOUGH FOR SOWING the field again, the sharecropper must continue to work there.

The Gemara seeks an explanation of this view:

And how much is enough for sowing the field again? וְכַמָּה כְּדֵי נְפִילָה

The Gemara presents two opinions:

R' Ami said in the name of R' Yochanan: ר' אַמִּי אָמַר רַבִּי יוֹחָנָן – **Four *se'ahs*** of produce in an area that normally produces **a *kor.*** This amount is enough to sow a field that size during the next season.[21] אַרְבָּעָה סְאִין לְכוֹר

R' Ami himself said: רַבִּי אַמִּי דִּילֵיהּ אָמַר – **Eight *se'ahs*** in an area that normally produces **a *kor.*** שְׁמוֹנַת סְאִין לְכוֹר

The Gemara explains that the two opinions are not in dispute:

A certain elder said to Rav Chama the son of Rabbah bar Avuha: אָמַר לֵיהּ הַהוּא סָבָא לְרַב חָמָא בְּרֵיהּ דְּרַבָּה בַּר אֲבוּהָ – **I will explain it to you:** אַסְבְּרֵהּ לָךְ – **In the years of R' Yochanan** בְּשִׁנֵּי דְּרַבִּי יוֹחָנָן – **the land was** more **fertile;** therefore, four *se'ahs* of seed was sufficient to produce a *kor* of produce. הֲוָה שְׁמִינָא אַרְעָא – But **in the years of R' Ami,** a generation later, בְּשִׁנֵּי דְּרַבִּי אַמִּי – **the land was depleted;** hence, it took eight *se'ahs* of seed to produce a *kor* in the same area.[22] הֲוָה בְּחִישָׁא אַרְעָא

Since R' Yehudah used the term כְּדֵי נְפִילָה in our Mishnah, the Gemara digresses to cite another Mishnah in which a similar term is used, although with a different meaning:

We learned in a Mishnah there:[23] תְּנַן הָתָם – If THE WIND SCATTERED THE SHEAVES over the *leket* הָעוֹמָרִין – הָרוּחַ שֶׁפִּיזְּרָה אֶת

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13. It is proper for a man to wear tefillin all day, even when he is at work (*Tur* and *Shulchan Aruch, Orach Chaim* 37:2; *Bach* there cites our Gemara as one of the sources for this ruling). Since it is difficult for most people to maintain the physical and mental standards required of someone who is wearing tefillin through the entire day, however, it is no longer customary for people to wear tefillin except when praying (ibid.).

14. That is, if the burden is light enough that it does not press the tefillin or it is not directly on top of the tefillin, it is permitted to keep the burden on his head (*Rashi*).

[Strictly speaking, a *kav* is a measure of volume rather than weight. See *Maadanei Yom Tov* to *Rosh, Berachos* 3:30, who discusses how the *kav* measure is converted from volume into weight.]

15. I.e. how heavy a burden qualifies as a "crushing" burden (*Rashi*).

16. Here the concern is for the repulsive nature of the burden, not its size (see *Meiri*). It is disrespectful to keep such a package next to tefillin.

17. I.e. he should tie his head-tefillin next to the tefillin he is wearing on his arm (*Rashi*). Tying the head-tefillin next to his arm-tefillin is more respectful than tying them to his right arm, which he uses to [fix and] unload the burden from his head (*Beis Yosef, Orach Chaim* §41).

18. In which the tefillin are wrapped at night (*Rashi*; cf. *Tosafos*).

19. That is, it is prohibited to carry even the tefillin wrapper on one's head while wearing tefillin (*Rashi*). However, something that is normally worn on the head, such as a hat, may be worn even over tefillin (see *Rambam, Hil. Tefillin* 4:23; *Shulchan Aruch, Orach Chaim* 41:1).

20. This is a negligible amount (*Rashi*), being the smallest-sized weight used in Pumbedisa (*Rashi* to *Gittin* 22a). Thus, according to R' Shila, it is forbidden to place any burden on the head while wearing tefillin because it is disrespectful to the tefillin. This prohibition is not dependent on the repulsiveness of the burden (e.g. compost) or whether the tefillin are being pressed by the burden (*Rabbeinu Yonah* to *Berachos* 23b).

We have explained the Gemara according to *Rashi* (ד"ה וכמה) and *Rambam* (*Hil. Tefillin* 4:23) who understand R' Shila to be disputing the opinions cited earlier. Other Rishonim disagree and are of the opinion that R' Shila's statement does not necessarily contradict those stated previously (see *Beis Yosef, Orach Chaim* §41 for various explanations of this view).

21. That is, the *aris* planted a field that normally yields a *kor* of produce, but the crop was abnormally small. R' Yochanan explains that if at least four *se'ahs* grew in that area, the *aris* may not refuse to work the field. R' Yehudah in our Mishnah calls this amount of four *se'ahs* "enough for sowing," because that is the amount needed to produce a *kor* in a field this size (*Tosafos*). [We have followed *Tosafos* in our explanation of the Gemara. *Rashi* apparently explains the Gemara to mean that the four *se'ahs* grew in a *beis kor*. This, however, is puzzling, since a *beis kor* is by definition an area in which a *kor* – thirty *se'ahs* – is sown. Thus, four *se'ahs* are certainly not enough to replant an area this size (see *Maharsha*).]

R' Yehudah prefers this limit to that of the Tanna Kamma because it is directly related to the size of the land planted. Thus, for an *aris* to be obligated to continue working a larger field, it must produce more than a smaller field (*Rashi*).

22. Both R' Yochanan and R' Ami agree that a field which normally produces a *kor* must yield enough to replant it the next year in order for the *aris* to be forced to continue working it. However, in R' Yochanan's times four *se'ahs* of seeds were enough to produce a *kor*, while in R' Ami's times eight *se'ahs* were needed to produce that amount (*Tosafos*).

23. *Pe'ah* 5:1. This Mishnah discusses the Biblical law of *leket* (gleanings). The Torah (*Leviticus* 19:9-10) states that if one or two stalks fall from the reaper's hand while he cuts a handful of grain, he is prohibited to retrieve them. Rather, they must be left for the poor to collect.

stalks,[24] אוֹמְדִים אוֹתָהּ כַּמָּה לָקֵט רְאוּיָה לַעֲשׂוֹת – WE ESTIMATE HOW MUCH *LEKET* [THE FIELD] WOULD NORMALLY YIELD, וְנוֹתֵן לָעֲנִיִּים – AND [THE LANDOWNER] GIVES that amount TO THE POOR.[25] רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר – RABBAN SHIMON BEN GAMLIEL SAYS: נוֹתֵן לָעֲנִיִּים כְּדֵי נְפִילָה – HE GIVES TO THE POOR THE AMOUNT THAT normally FALLS.[26]

The Gemara seeks an explanation of Rabban Shimon ben Gamliel's view:

וְכַמָּה כְּדֵי נְפִילָה – **And how much is the amount that** normally **falls?**

The Gemara answers:

כִּי אָתָא רַב דִּימִי – **When Rav Dimi came** from Eretz Yisrael to Babylonia אָמַר רִ' אֶלְעָזָר וְאִיתֵּימָא רִ' יוֹחָנָן – **he said in the name of R' Elazar, and some say it was** in the name of **R' Yochanan:** אַרְבַּעַת קַבִּין לְכוֹר – **Four *kavs*** of *leket* **per *kor*.**

The Gemara finds this answer ambiguous:

בָּעֵי רַבִּי יִרְמְיָה – **R' Yirmiyah inquired:** לְכוֹר זֶרַע אוֹ לְכוֹר תְּבוּאָה – Is that amount of *leket* assumed to be **per *kor* of seed** planted **or per *kor* of produce** yielded?[27] לְמַפּוֹלֶת יָד אוֹ לְמַפּוֹלֶת שְׁוָורִים – And if it is for a *kor* of seed, is it **for** seed **sown by hand or for** seed **sown by oxen?**[28]

The Gemara replies:

תָּא שְׁמַע – **Come, learn** the answer to the inquiry from the following statement: דְּכִי אָתֵי רָבִין – **For when Ravin came** from Eretz Yisrael to Babylonia אָמַר רַבִּי אֲבוּהּ אָמַר רַבִּי אֶלְעָזָר – **he said in the name of R' Avuha, who said** it **in the name of R' Elazar,** וְאָמְרֵי לָהּ אָמַר רִ' יוֹחָנָן – **and some say** that Ravin **said** it in the name of **R' Yochanan:** אַרְבַּעַת קַבִּין לְכוֹר זֶרַע – **Four *kavs*** of *leket* **per *kor* of seed.**

The Gemara notes:

וַעֲדַיִין תִּבְעֵי לָךְ – **But you must still inquire** whether it is לְמַפּוֹלֶת יָד אוֹ לְמַפּוֹלֶת שְׁוָורִים – **for** a *kor* of seed **sown by hand or for** a *kor* of seed **sown by oxen.**

The Gemara concludes:

תִּיקּוּ – **Let [the question] stand.**

Mishnah הַמְקַבֵּל שָׂדֶה מֵחֲבֵירוֹ – If **one leases a field from his fellow,**[29] וַאֲכָלָהּ חָגָב אוֹ נִשְׁדְּפָה – **and locusts devoured it** [i.e. ate up the crop] **or it was blasted by wind**[30] – אִם מַכַּת מְדִינָה הִיא – **if it is a general calamity,**[31] מְנַכֶּה לוֹ מִן חֲכוּרוֹ – **he may deduct from his rental;**[32] אִם אֵינָהּ מַכַּת מְדִינָה – **if it is not a general calamity,** אֵין מְנַכֶּה לוֹ מִן חֲכוּרוֹ – **he may not deduct from his rental.**[33] רִ' יְהוּדָה אוֹמֵר – R'

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24. That is, the wind blew the [unbound] sheaves that the reaper had collected over the scattered *leket* stalks that he had left behind. It was thus unknown which stalks on the bottom were *leket* and which belonged to the owner (*Rashi*).

25. The court estimates how much *leket* this field normally produces; that amount must be given to the poor (*Rashi*).

26. Rabban Shimon ben Gamliel claims that no estimate is needed, for a set formula determines how much fallen *leket* the owner is required to give to the poor. This will be explained next by the Gemara (*Rashi*; see *Rambam, Hil. Matnos Aniyim* 4:5, with *Kesef Mishneh*).

[The term כְּדֵי נְפִילָה in this Mishnah refers to the amount of *leket* that falls during the harvest. In our Mishnah, however, כְּדֵי נְפִילָה means the amount that one will have to cast on the ground when one next sows the field.]

27. Are there four *kavs* of *leket* found in a field where a *kor* of seed was planted, or are they found in a field that yields a *kor's* worth of produce [which is a much smaller-sized field]? (*Rashi*).

28. Literally: for [seed] cast by hand or for [seed] cast by oxen. If the answer to the first inquiry is that the ratio refers to a *kor* of seed sown, there is yet another question. Fields were sometimes sown by attaching a [small] wagon loaded with seed to the back of the plow. The wagon would thus be drawn over the freshly plowed furrow, and would drop seed on it through small holes in its floor. [Since the plow itself is drawn by oxen, this method of sowing is known as "sowing with oxen."] Otherwise, fields were sown by scattering the seed by hand. Since sowing with oxen uses more seed for a given area than sowing that same area by hand, the question arises as to whether the ratio of four *kavs* to a *kor* is based on a *kor* sown by hand or a *kor* sown by oxen (*Rashi*). When the concentration of seed per unit of land is greater, less grain will grow per measure of seed [since the seeds will be more tightly spaced and thus compete with each other. Thus, if a *kor* of seed is concentrated in three-quarters of a *beis kor*, for example, that *kor* of seed will produce less grain than a *kor* of seed spread over a full *beis kor*.] Accordingly, a *kor* of seed sown by oxen will produce less grain than a *kor* of seed sown by hand. The Gemara therefore inquires whether the ratio of four *kavs* to a *kor* applies to a *kor* sown by hand or by oxen (*Raavad* cited in *Shitah Mekubetzes*).

[*Maharshal* explains *Rashi* differently: When the Gemara speaks of four *kavs* for a *kor*, it means that four *kavs* of *leket* are assumed to fall in a field the size of a *beis kor* (see also *Rambam, Matnos Aniyim* 4:5; *Meiri*). Now, a *beis kor* normally refers to the area in which a *kor* of barley seed can be planted by hand (see Baraisa, *Arachin* 25a, regarding the size of a a *beis kor*). The Gemara is here inquiring, however, whether the ratio of four *kavs* to a *beis kor* mentioned above refers to a *beis kor* sown by hand or by oxen. When sowing with oxen, considerably more than a *kor* of seed is needed to sow a *beis kor* (since the seed falls in greater concentration). Thus, if the ratio refers to the amount of seed used to sow a *beis kor* with oxen, then one who sows his *beis kor* by hand will not need to give four *kavs* of *leket,* since he will have sown substantially less seed. Conversely, if the ratio refers to the amount of seed used to sow a *beis kor* by hand, one who sows his *beis kor* with oxen will have to give more than four *kavs* of *leket,* since he will have sown more seed and will thus have produced a larger crop in that *beis kor*. See *Maharsha* for yet another explanation.]

29. This Mishnah refers to *chachirus*, a fixed-rental lease, as will become evident below (see note 31).

30. The field was swept by strong winds, which blasted the standing crop (see *Rashi* to *Genesis* 41:6 and to *Deuteronomy* 28:22). The high winds blew the kernels out of the ears of grain (*Tiferes Yisrael*).

31. Literally: calamity of the province.

32. He may deduct the percentage of his rent corresponding to the percentage of destruction suffered by the field (see *Rambam, Sechirus* 8:5).

Since the whole area was stricken by this calamity, the field is considered unfit for crops. The *chocheir* may therefore reduce his rental payment accordingly (see *Tosafos* 106a ד"ה אלא). Although the tenant leased this field before the calamity struck, he committed himself to pay the full rental only on the assumption that the field would remain suitable for crops for the duration of the lease; but should the field become unsuitable at any time during the term of the lease, he would be entitled to a reduction. (This principle was taught in the Mishnah on 103b, where we learned that if the lease was based on the presence of a water source, that source must remain viable for the duration of the lease, and if it does not, the tenant is entitled to a reduction of his rental.) Thus, if the field is devastated by wind or locusts, the tenant is entitled to a reduction (see further in next note).

Obviously, this Mishnah applies only to *chachirus*. In the case of *arisus,* where the landowner is paid with a percentage of the yield, they share whatever crops actually end up growing; there is thus no reason to deduct anything from the rental (*Rashi*; see *Rambam* ibid., see also *Maggid Mishneh* and *Lechem Mishneh* there).

33. Since the loss was localized, the landowner can claim that it is the farmer's ill fortune that is to blame for the loss (*Rashi*), not the landowner's. The landowner can therefore maintain that the conditions of the lease were fulfilled – since the field was in and of itself suitable for producing a crop, and the loss of the crop was due to an external factor. The tenant must therefore pay the rental to which he committed himself (see *Tosafos* 106a ד"ה אלא). [If, however, the calamity was a widespread one, it cannot be attributed to the tenant's ill fortune because it is evident that the Divine edict that decreed destruction upon the area was directed at the *place,* not the individual. This relates the

Yehudah disagrees and **says:** אִם קִיבְּלָהּ הֵימֶנּוּ בְּמָעוֹת – **If he leased [the field] from him for money** rather than produce,[34] בֵּין כָּךְ וּבֵין כָּךְ – **in either case** [i.e. whether it was a general calamity or not], אֵינוֹ מְנַכֶּה לוֹ מֵחֲכוֹרוֹ – **he may not deduct from his rental.**[35]

Gemara The Gemara inquires how widespread the calamity must be for the farmer to reduce his rental payment:

הֵיכִי דָּמֵי מַכַּת מְדִינָה – **What is the case of a general calamity?**

The Gemara presents two opinions:

אָמַר רַב יְהוּדָה – **Rav Yehudah said:** כְּגוֹן דְּאִישְׁדּוּף רוּבָּא דְּבָאנָא – **For example, where most of the valley** in which this field is found **was windblasted.**[36] כְּגוֹן עוּלָּא אָמַר – **Ulla said:** שֶׁנִּשְׁתַּדְּפוּ אַרְבַּע שָׂדוֹת מֵאַרְבַּע רוּחוֹתֶיהָ – **For example, where the four fields along the four sides [of the leased field] were windblasted.**[37]

The Gemara inquires:

בָּעוּ בְּמַעֲרָבָא – **They inquired in the West** [Eretz Yisrael]: אָמַר עוּלָּא – **Ulla said:** נִשְׁדַּף תֵּלֶם אֶחָד עַל פְּנֵי כוּלָּהּ מַאי – If only **one row** of produce **along the whole [field] was windblasted, what** is the law?[38] נִשְׁתַּיֵּיר תֵּלֶם אֶחָד עַל פְּנֵי כוּלָּהּ מַהוּ – If **one row along the whole [field] was spared, what** is the law?[39] אַפְסִיקָא בֵּירָא מַאי – If **fallow fields separated** the leased field from the other devastated fields, **what** is the law?[40] אַסְפַּסְתָּא – If fields with undamaged ***aspasta*** crops separated the other devastated fields from the leased field,[41]

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calamity to the landowner, whose land it is, rather than to the tenant who is farming it.]

34. I.e. the rental was to be paid in money, not produce.

35. I.e. even if the devastation was widespread, the farmer cannot deduct anything from his rent. According to R' Yehudah, the Divine decree that brought the calamity upon this area was not directed against the money of this area's inhabitants, but against their crops. Since the rental agreement calls for the landowner to receive payment in cash and not crops, the landowner should not be considered the subject of the decree; rather, the farmer should be. Thus, the farmer must absorb the loss (*Rashi*; see slightly different reading of *Rashi's* comment in *Rashi* to *Rif* and in *Nimukei Yosef's* paraphrase of it).

36. *Rashi*; cf. *Rambam, Hil. Sechirus* 8:5, cited by *Hagahos HaGra.*

37. That is, even if only the four fields adjoining the leased field lost their crop to windblast, it is considered a general calamity and the *chocheir* may reduce his rental payment.

38. I.e. the fields adjacent to the landowner's were not affected except for one row of each that bordered his field (*Rashi*). [This question cited by Ulla, and all those that follow in this series except for the last one, are based on Ulla's own definition of a general calamity. According to Rav Yehudah, though, it is not considered a general calamity unless most of the valley was devastated (see *Rosh* and *Shitah Mekubetzes*).]

39. This refers to a case where the four fields adjacent to the landowner's field were devastated along with it, but there was one row of produce surrounding the leased field on each side that was not damaged. At issue is whether we should view the leased field and the other devastated fields as separate pockets of devastation [in which case we cannot classify the situation as a general calamity], or whether we should view the spared row as insignificant in comparison to the larger field, and the area as a whole, therefore, as one widespread area of devastation (*Rashi*).

40. Surrounding the leased field were four fields that were left fallow that year [and which therefore suffered no loss]. The fields beyond those four fields, however, were devastated along with the leased field. If we view the four adjacent fields as having been unaffected by the calamity, the interrupted pockets of devastation do not qualify as a general calamity. [In that case the *chocheir* would have to pay the complete rental since he could not blame his loss on a general calamity.] On the other hand, we should perhaps assume that had the adjacent fields been planted, they too would have become windblasted, and we should therefore not view them as dividing the areas of devastation into isolated pockets. Rather, we should consider the damage to the leased field as part of a general calamity (*Rashi*).

41. [*Aspasta* is a type of grain used for animal fodder (*Rashi* to *Bava Basra* 28b.] Surrounding the leased field were four fields that were planted with *aspasta* for animal fodder, and these fields were not devastated. However, the fields surrounding these four were devastated along with the leased field (*Rashi*).

מַאי – **what** is the law?[1] זֶרַע אַחֵר מַאי – If undamaged fields of **another** type of **crop** separated the leased field from other devastated fields, **what** is the law?[2] חִיטֵּי לְגַבֵּי שְׂעוֹרִים – And if the success of another type of crop does not prove anything, is **wheat in relation to barley** בְּזֶרַע אַחֵר דָּמֵי אוֹ לֹא – considered **like another** type of **crop or not?**[3]

The Gemara considers yet another question:

כָּל הָעוֹלָם כּוּלּוֹ בְּשַׁדְפוֹן וְשָׁלוּ בְּיֶרֶקוֹן – If **the entire world** [i.e. area] was struck **with windblast while his** leased field was struck **with yellowing,**[4] אִי נַמִּי כָּל הָעוֹלָם כּוּלּוֹ בְּיֶרֶקוֹן וְשָׁלוּ בְּשַׁדְפוֹן – **or the entire world** [area] was struck **with yellowing, while his** leased field was struck **with windblast,** מַאי – **what** is the law?[5]

The Gemara responds to all the previous inquiries:

תֵּיקוּ – **Let [the questions] stand** unresolved.

The Gemara begins a new series of inquires:

אָמַר לֵיהּ זְרַע חִיטֵּי – If **[the landowner] told [the tenant-farmer] to plant [the field]** with **wheat,** וְאָזַל הוּא וּזְרָעָהּ שַׂעֲרֵי – **but [the tenant-farmer] went and planted it** with **barley,** וְאִשְׁתַּדּוּף רוּבָּא דְּבָאגָא – **and most** of the fields **of the valley became windblasted,** וְאִשְׁתַּדּוּף נַמִּי הָנָךְ שַׂעֲרֵי דִּילֵיהּ – **and these barley** plants **of his also became windblasted,** מַאי – **what** is the law? מִי אָמְרִינַן – **Do we say** דְּאָמַר לֵיהּ – **that [the tenant-farmer] can say to [the landowner],** אִילּוּ זְרַעְתָּהּ חִיטֵּי הֲוָה נַמִּי מִשְׁתַּדְּפָא – **"If I had planted it** with **wheat, it would also have become windblasted";**[6] אוֹ דִלְמָא מָצֵי אָמַר לֵיהּ – **or perhaps [the landowner] can say to [the tenant],** אִילּוּ זְרַעְתָּהּ חִיטֵּי – **"If you had planted it** with **wheat,** הֲוָה מְקַיֵּים בִּי – the following Scriptural blessing **would have been fulfilled for me:** ,,וְתִגְזַר־אֹמֶר וְיָקָם לָךְ״ – ***You will make a plan and it shall succeed for you.***"[7] – ? –

The Gemara answers:

מִסְתַּבְרָא דְּאָמַר לֵיהּ – **It seems reasonable that [the landowner] can** indeed **say to him,** אִי זְרַעְתָּהּ חִיטֵּי – **"If you had planted it** with **wheat,** הֲוָה מְקַיֵּים בִּי – the following Scriptural blessing **would have been fulfilled for me:** ,,וְתִגְזַר־אֹמֶר וְיָקָם לָךְ וְעַל־דְּרָכֶיךָ נֶגַהּ אוֹר״ – ***You will make a plan and it shall succeed for you; and upon your paths light shall shine.***"[8]

The Gemara inquires further:

נִשְׁתַּדְּפוּ כָּל שְׂדוֹתָיו שֶׁל מַחְכִּיר – If **all the fields of the landowner became windblasted,**[9] וְאִשְׁתַּדּוּף נַמִּי הָא בַּהֲדֵיהוּ – **and this field** leased to the tenant-farmer **became windblasted along with them,** וְלֹא אִשְׁתַּדּוּף רוּבָּא דְּבָאגָא – **but most of the valley did not become windblasted,** מַאי – **what** is the law? מִי אָמְרִינַן כֵּינָן דְּלֹא אִשְׁתַּדּוּף רוּבָּא דְּבָאגָא – **Do we say that since most of the valley did not become windblasted,** לֹא מְנַכֵּי לֵיהּ – **the [tenant-farmer] may not reduce [his rental payment]?**[10] אוֹ דִלְמָא – **Or perhaps,** כֵּינָן דְּאִשְׁתַּדּוּף כּוּלְּהוּ אַרְעָתֵיהּ – **since all of [the landowner's] fields became windblasted,** מָצֵי אָמַר לֵיהּ – **[the tenant-farmer] can say to [the landowner],** הַאי מִשּׁוּם לַתָּךְ דִּידָךְ הוּא – **"This** damage to the leased field **is** evidently **due to your** bad **luck,** דְּהָא מִשְׁתַּדְּפוּ כָּל שְׂדוֹתָיךְ – **because all of your fields became windblasted."**[11] – ? –

The Gemara answers:

מִסְתַּבְרָא דְּאָמַר לֵיהּ – **It seems reasonable that [the landowner] can say to him,** אִי מִשּׁוּם לַתָּאי דִּידִי – **"If it were due to my** bad **luck,** הֲוָה מִשְׁתַּיֵּיר לִי פּוּרְתָּא – **a little** something **would have been spared me;** דִּכְתִיב ,,כִּי־נִשְׁאַרְנוּ מְעַט מֵהַרְבֵּה״ – **as it is written:** ***For we are left but a few out of many.***"[12]

NOTES

1. Do we say that since the surrounding fields were not affected, the devastation to the leased field cannot be blamed on a general calamity? Or do we say that the survival of the *aspasta* crop in the surrounding fields does not prove anything, for had those fields been planted with a crop fit for human consumption, they too would have been devastated? (*Rashi*).

2. This inquiry is based on the previous one. If we classify a calamity as general despite the fact that the *aspasta* fields immediately adjacent to the leased field remained unaffected, is it because we assume that the calamity affected only fields growing produce for human consumption? If so, then if the adjacent fields produced successful crops for human consumption, but of a different variety than the crop that was devastated on the leased field, the calamity would not be classified as general [and the tenant would have to absorb the loss] (*Rashi*). Or perhaps here too the success of other types of crops does not prove anything, for it is possible that the calamity affected only the type of crop growing in the leased field.

3. That is, even if we accept that a calamity affects only a single type of crop, so that a calamity affecting grain crops, for example, would be classified as general even though bean fields in the area were unaffected, what happens if the surrounding fields grew another type of *grain* and remained undamaged? (see *Maharshal, Kos HaYeshuos*).

4. I.e. a drought so intense that it causes the grain to wither and yellow (*Rashi* to *Deuteronomy* 28:22).

5. The question here is whether different types of disasters can be classified as a single general calamity. This last inquiry, unlike the previous ones, is applicable to both definitions of a general calamity (above, 105b). According to Rav Yehudah the question concerns a case where the rest of the valley was struck with a different type of disaster than that of the leased field; according to Ulla the question applies when the four adjacent fields suffered a different type of disaster (*Meiri*).

6. [Thus, the *chocheir* claims, the devastation of the leased field was the result of a general calamity for which he should be allowed to deduct.]

7. *Job* 22:28. The landowner counters that had the *chocheir* planted wheat, his field might have been spared in response to his prayers for the success of his crop. The landowner, however, prayed at the beginning of the year for a successful wheat crop, not barley crop. Hence, had the *chocheir* planted wheat, the leased field might have been spared (*Rashi*). [See *Kos HaYeshuos* for an explanation of why the Gemara chose this particular verse to demonstrate that a person's prayers are effective.]

8. Even if wheat fields in the area were also devastated, the *chocheir* may not deduct from his rental because the landowner can claim that his prayers for a successful wheat crop might have been answered for him specifically (*Meiri*). [Accordingly, the tenant must pay the rent to which he committed himself, since he cannot conclusively demonstrate – despite the extent of the calamity – that the decree was directed at the owner of the land and not himself. See above, 105b notes 32 and 33.]

However, if the landowner did not specify planting wheat, and the *chocheir* planted barley, the *chocheir* can reduce his rental and the landowner cannot claim that the crop might have been spared had the *chocheir* planted wheat (see *Nimukei Yosef*).

9. Even those in areas other than the one in which the leased field was located (*Rashi*).

10. Since most of the valley was not affected, the damage to the leased field cannot be blamed on a general calamity. The *chocheir* should therefore have to pay his entire rental.

11. Although the *chocheir* cannot claim that the field was devastated as part of a general calamity, he can perhaps claim that the damage to the field was the result of the landowner's bad luck [i.e. a Divine decree directed against him] and that he [the *chocheir*] should not suffer because of it.

12. *Jeremiah* 42:2. Although all the landowner's other fields were devastated, this does not prove that the loss of the leased field was due to a Heavenly decree against him, since it is God's way not to devastate a person utterly but to spare him enough to survive. Thus, the landowner can plausibly claim that had the judgment been based on his merits, the leased field would have been spared to provide for his needs. If it was not, it was because of a separate decree directed against the tenant. He must therefore pay the rent in full and absorb the loss (*Meiri*; see below, note 17).

The Gemara now inquires regarding the reverse situation:

נִשְׁתַּדְּפוּ כָּל שְׂדוֹתָיו שֶׁל חוֹכֵר – If **all the fields of the tenant-farmer became windblasted,**[13] וְאִשְׁתַּדּוּף רוּבָּא דְּבָאגָא – **and most** of the fields **of the valley became windblasted,** וְאִשְׁתַּדּוּף נַמִּי הָא בַּהֲדַיְיהוּ – **and this** leased field **became windblasted along with them,** מַאי – **what** is the law? מִי אָמְרִינַן – **Do we say** בֵּינָן דְּאִשְׁתַּדּוּף רוּבָּא דְּבָאגָא – **that since most of the valley became windblasted,** מְנַכֵּי לֵיהּ – **[the tenant-farmer] may reduce [his rental payment]?**[14] אוֹ דִלְמָא – **Or perhaps,** בֵּינָן דְּאִשְׁתַּדּוּף כּוּלְּהוּ אַרְעָתֵיהּ – **since all of [the tenant-farmer's] lands became windblasted,** מָצֵי אָמַר לֵיהּ – **[the landowner] can say to him,** מִשּׁוּם לַתָּךְ דִּידָךְ הוּא – **"This is** obviously **due to your** bad **luck,** דְּהָא מִשְׁתַּדְּפוּ כָּל שְׂדוֹתָיךְ – **since all your fields became windblasted."**[15] – ? –

The Gemara answers:

דְּאָמַר לֵיהּ מִשּׁוּם לַתָּאךְ הוּא – מִסְתַּבְּרָא – **It seems reasonable that [the landowner] can say to [the tenant-farmer], "This is due to your** bad **luck."**

The Gemara asks why the tenant-farmer cannot make the same claim that the landowner used in the previous case:

אַמַּאי – **Why** is that so? הָכָא נַמִּי נֵימָא לֵיהּ – **Here also, let [the tenant-farmer] say to [the landowner],** אִי מִשּׁוּם לַתַּאי דִּידִי הוּא – **"If it were due to my luck,** הֲוָה מְשַׁיֵּיר לִי פּוּרְתָּא – **a little** something **would have been spared me,** דַּהֲוָה מְקַיְּים בִּי – **for [this following verse] would have been fulfilled for me:** ״כִּי נִשְׁאַרְנוּ מְעַט מֵהַרְבֵּה״ – ***For we are left but a few out of many.***"[16]

The Gemara answers:

מִשּׁוּם דְּאָמַר לֵיהּ – This argument is not valid in the case of the tenant **because [the landowner] can say to him,** אִי הֲוָה חָזֵית לְאִישְׁתַּיּוּרֵי לָךְ מִידֵּי – **"Had you been worthy of having something left to you,** הֲוָה מְשַׁתַּיֵּיר לָךְ מִדְּנַפְשָׁךְ – something **of your own would have been left to you,** not a leased field."[17]

The Gemara questions the original definition of a general calamity:[18]

מֵיתִיבִי – **They challenged this from a Baraisa** that deals with the redemption of an ancestral field:[19] הָיְתָה שְׁנַת שִׁדָּפוֹן וְיֶרָקוֹן – If IT WAS A YEAR OF WINDBLAST OR YELLOWING, אוֹ שְׁבִיעִית – OR it was the *SHEVIIS* year; אוֹ שֶׁהָיוּ שָׁנִים כְּשָׁנֵי אֵלִיָּהוּ – OR THE YEARS WERE without rain LIKE THE YEARS in the time OF ELIJAH, when no rain fell for three years,[20] אֵינוֹ עוֹלֶה לוֹ מִן הַמִּנְיָן – IT IS NOT INCLUDED FOR HIM IN THE COUNT of years that must pass before an ancestral field may be redeemed.[21]

The Gemara now explains its question:

קָתָנֵי שִׁדָּפוֹן וְיֶרָקוֹן – **[This Baraisa] teaches** the law about **windblast and yellowing** דּוֹמְיָא דְּשָׁנִים כְּשָׁנֵי אֵלִיָּהוּ – together with, and thus as **comparable to,** the **years** of drought **such as** those **in the years of Elijah.** This leads to the following analogy: מַה שָּׁנֵי אֵלִיָּהוּ דְּלֹא הֲווֹ תְּבוּאָה כְּלָל – **Just as** in **the years of Elijah there was no produce at all,** אַף הָכָא נַמִּי דְּלֹא הֲווֹ תְּבוּאָה כְּלָל – **here also,** in the cases of windblast and yellowing, the Mishnah refers to **where there is no produce at all** throughout the land. אֲבָל דְּאִיכָּא תְּבוּאָה – **But where there is produce** in some places, סָלְקָא לֵיהּ – **[the year] counts for him** even though the entire area around the ancestral field was devastated, וְלָא קָאָמְרִינַן מַכַּת מְדִינָה הִיא – **and we do not say that it is a general calamity,** which should not be counted.[22] Similarly, in considering the law of a leased field, we should not classify the devastation of a small area as a general calamity as long as there is produce found elsewhere in the country. – ? –

The Gemara answers that the laws of ancestral fields are unique in this respect because of a Scriptural decree:

אָמַר רַב נַחְמָן בַּר יִצְחָק – **Rav Nachman bar Yitzchak said:** שַׁאנִי הָתָם – **There,** in the case of ancestral fields, **it is different,** דְּאָמַר קְרָא – **for the verse states:**[23] ״בְּמִסְפַּר שְׁנֵי־תְבוּאֹת יִמְכֹּר־לָךְ״ – ***According to the number of the crop years shall he***

NOTES

13. Even those in other valleys.

14. Because he can blame the devastation to the leased field on a general calamity.

15. The fact that the rest of the valley was devastated does not prove that the leased field was devastated as part of the general calamity. Rather, the landowner claims that if not for the *chocheir's* bad luck the leased field would have been spared.

16. *Tosefos HaRosh* points out that the *chocheir* apparently has even stronger grounds to make use of this claim than the landowner had in the previous case. There, the landowner made this claim to *collect* the full rental from the *chocheir*. Certainly then, the *chocheir* should be able to make this claim to *keep* some of his money by reducing his rental payment.

17. In this case, even were the landowner to free the *chocheir* of any rental payment, the *chocheir* would still not have earned anything with which to support himself, since the leased field was totally devastated. He therefore cannot disprove the landowner's claim that the field was devastated because of the *chocheir's* bad luck, and he is thus forced to honor his commitment to pay the rent. However, in the previous case, where all of the landowner's fields were devastated, the landowner can claim that the full rental payment itself is the "little" that was spared him out of all his property. Thus, he can counter the *chocheir's* claim and maintain that the Divine decree was directed against the *chocheir*, not himself. The *chocheir* must therefore pay the entire rental (*Tosafos*).

18. The Gemara above (105b) presented two definitions of a general calamity. According to both, a disaster could be considered general even though only the local area was devastated. The Gemara now attempts to prove that a calamity should not be considered general if any fields in the entire country were spared.

19. [This Baraisa closely parallels the Mishnah in *Arachin* 29b.] This Baraisa deals with the law for selling and redeeming a field during times when the laws of *yovel* are in effect. [It refers specifically to the sale of a שְׂדֵה אֲחוּזָּה, *ancestral field,* land passed down by inheritance from the original division of Eretz Yisrael in the days of Joshua. Ancestral land cannot be sold permanently; even after being sold, it reverts back to its hereditary owner (or his heirs) at *yovel.* Moreover, even before *yovel*, the hereditary owner has the right to buy the field back from the buyer.] The Mishnah in *Arachin* teaches that it is nonetheless prohibited to redeem an ancestral field for two years after it has been sold (*Rashi*). This is true even if the buyer wants to sell the field back; the seller is not permitted to reacquire it within those two years (*Meiri* from Gemara, *Arachin* 29b).

20. See *I Kings* 17:1, 18:1.

21. If one of the two years during which the field must remain in the possession of the buyer was a year in which the field was not productive for any of the reasons mentioned here, it does not count towards the two years that the seller must wait to be permitted to redeem his ancestral field from the buyer (*Rashi*).

22. Even though the entire valley was devastated by windblast, we do not attribute the damage on this particular field to a general calamity, but rather to the bad luck of the buyer. The year thus counts as one of the two needed to redeem a field. Moreover, when the original owner redeems the field, he may subtract that year from his redemption price as if it were a productive year (*Rashi*; see *Rashash*). [When redeeming an ancestral field, a deduction is made from the original price for each year the field remained in the buyer's possession.] Therefore, with regard to the laws of *chachirus* as well, we should not classify the damage to the leased field as part of a general calamity even if the entire valley was devastated, as long as produce grew anywhere else in the province. Rather, the term מַכַּת מְדִינָה used in our Mishnah should be interpreted literally, as a calamity that befell the entire province (מְדִינָה). This would make it similar to the famine during Elijah's times, which struck the entire kingdom of Israel (*Raavad* in *Shitah Mekubetzes*).

23. *Leviticus* 25:15.

sell it to you, שָׁנִים שֶׁיֵּשׁ בָּהֶן תְּבוּאָה בָּעוֹלָם – which teaches that in order to be counted, the years must be **years in which there are crops in the world.**[24] Therefore, even if we classify the devastation that year as general, the year is still considered a crop year as long as there are crops to be found elsewhere.

The Gemara objects:

אָמַר לֵיהּ רַב אַשִׁי לְרַב כַּהֲנָא – **Rav Ashi said to Rav Kahana:** אֶלָּא מֵעַתָּה – **But now** that you say that even years in which general calamities strike count towards the years needed to redeem an ancestral field, שְׁבִיעִית תַּעֲלֶה לוֹ מִן הַמִּנְיָן – a *sheviis* year **should** also **be included for him in the count,** דְּהָא אִיכָּא תְּבוּאָה בְּחוּצָה לָאָרֶץ – **because there is produce outside the Land** of Israel.[25] – ? –

The Gemara answers:

אָמַר לֵיהּ – **[Rav Kahana] replied to him:** שְׁבִיעִית אַפְקְעָתְא דְּמַלְכָּא הִיא – *Sheviis* **is a suspension by the King** [God]; a *sheviis* year is therefore disregarded.[26]

The Gemara raises another objection:

אָמַר לֵיהּ מַר זוּטְרָא בְּרֵיהּ דְּרַב מָרִי לְרָבִינָא – **Mar Zutra the son of Rav Mari said to Ravina:** אֶלָּא מֵעַתָּה – **But now** that you say that *sheviis* is disregarded, שְׁבִיעִית לֹא תַּעֲלֶה לוֹ מִן הַגִּירוּעַ – a *sheviis* year **should not be included for [an owner] in the deduction** he takes when he redeems his ancestral field from the Temple treasury.[27] אַלָּמָּה תְּנַן – **Why** then **did we learn in a Mishnah** to the contrary: נוֹתֵן סֶלַע וּפוּנְדְּיוֹן לְשָׁנָה – HE GIVES A *SELA* AND A *PUNDYON* PER YEAR?[28]

The Gemara answers:

אָמַר לֵיהּ – **[Ravina] said to him:** שָׁאנִי הָתָם – **There,** with regard to calculating the redemption price per year, **it is different,** דְּחַזְיָא לְמִישְׁטְחָא בָּהּ פֵּירֵי – **because [the field] is fit to spread fruits on it** to dry even during the *sheviis* year.[29]

The Gemara qualifies our Mishnah, which allowed a tenant-farmer to reduce his rental payments in times of general calamity:

אָמַר שְׁמוּאֵל – **Shmuel said:** לֹא שָׁנוּ אֶלָּא שֶׁזָּרְעָה וְצָמְחָה – **This** law **was taught only when [the tenant-farmer] planted [the field] and it sprouted** וַאֲכָלָהּ חָגָב – **and locusts** then **devoured [the crop];** אֲבָל לֹא זָרְעָה כְּלָל – **but if he did not plant [the field] at all,** לֹא – he may **not** reduce his rental, even though most of the valley was devastated. דְּאָמַר לֵיהּ – **For [the landowner] can tell him,** אִילּוּ זָרַעְתָּה – **"If you had planted [the field],** הָוָה מְקַיְּים בִּי – the following Scriptural blessing **would have been fulfilled for me:** ״לֹא־יֵבֹשׁוּ בְּעֵת רָעָה, וּבִימֵי רְעָבוֹן יִשְׂבָּעוּ״ – ***They will not be shamed in time of calamity; in days of famine they will be satisfied.***"[30]

The Gemara objects to Shmuel's ruling:

מָתִיב רַב שֵׁשֶׁת – **Rav Sheishess challenged** this **from a Baraisa:** וְהִנִּיחַ רוֹעֶה שֶׁהָיָה רוֹעֶה – IF A SHEPHERD WAS TENDING his flock, עֶדְרוֹ וּבָא לָעִיר – AND HE LEFT HIS FLOCK AND WENT INTO TOWN, וּבָא זְאֵב וְטָרַף – AND A WOLF CAME in his absence AND TORE one of the animals and carried it off, וּבָא אֲרִי וְדָרַס – OR A LION CAME AND CLAWED one of the animals and ate it,[31] אֵין אוֹמְרִים אִילּוּ הָיָה שָׁם הָיָה מַצִּיל – WE DO NOT SAY as a matter of principle THAT HAD [THE SHEPHERD] BEEN THERE, HE WOULD HAVE SAVED the animal. אֶלָּא אוֹמְדִין אוֹתוֹ – RATHER, WE EVALUATE HIM: אִם יָכוֹל לְהַצִּיל – IF HE WOULD HAVE in fact BEEN ABLE TO SAVE the animal, חַיָּיב – HE IS LIABLE for it; וְאִם לַאו – BUT IF he could NOT have saved the animal, פָּטוּר – HE IS NOT LIABLE, for such an attack is considered an unavoidable mishap.[32]

Rav Sheishess now explains his objection:

וְאַמַּאי – **But why** should the shepherd ever be free from liability?

NOTES

24. [In regard to the redemption of ancestral fields, the Torah defines the crop requirement in terms of the year (*crop years*), not the field. Therefore, as long as there were areas that produced crops, the year qualifies as a "crop year." In regard to the law of *chachirus,* however, the issue is only whether the calamity is general enough for the tenant to claim that he received an unsuitable field. Hence, with regard to the laws of *chachirus,* even if the damage is limited to the area around the leased field, it is considered a general calamity and the leased field is considered unfit (see *Tosafos* ד״ה אלא מעתה).

25. The Mishnah in *Arachin* states that if one of the years after the sale was the *sheviis* year, that year does not count towards the two, since the land may not be farmed that year. But there are no restrictions against planting outside of Eretz Yisrael during that year. Hence, if we derive from the Biblical decree that a year may be considered a crop year in regard to ancestral fields as long as produce grows somewhere, the *sheviis* year should also count – for there is produce growing outside of Eretz Yisrael even during that year (see *Tosafos*).

26. That is, God prohibits us to plant in Eretz Yisrael during the *sheviis* year. Therefore, this year is not considered a crop year for Jews [living in Eretz Yisrael, where the laws of ancestral fields apply], for we view it as if the year does not even exist (see *Rashi* and *Raavad* (cited in *Shitah Mekubetzes*; cf. *Toras Chaim*).

27. Ancestral land can be consecrated to the Temple treasury. The treasury sells such properties and uses the proceeds to pay for the repair of the Temple (בֶּדֶק הַבַּיִת). However, consecrated ancestral lands are not redeemed from the Temple treasury at true market value, but at a fixed rate based on their size. The rate set by the Torah (see *Leviticus* 27:16) is fifty silver *shekels* per *chomer* [i.e. per *beis kor*, an area of 75,000 square *amos* – see above, 104a note 5]. The Torah further states that the redemption price of fifty *shekel* per *beis kor* applies only to a field consecrated and redeemed in the first year of the *yovel* cycle, when forty-nine years remain until the following *yovel*. Should the property be redeemed later in the cycle, the redemption price must be adjusted downward to reflect the years that have already elapsed. To calculate this, we divide the fifty-*shekel* redemption price by the forty-nine years of the *yovel* cycle, and thus arrive at a price per year of one *sela* and one *pundyon* [the equivalent of 1/48 of a *sela*] per year (*Rashi*; see *Bechoros* 50a). Thus, for example, when one redeems a consecrated field of this size 24 years before *yovel,* he pays 24½ *selaim* (24 *selas* and 24 *pundyons*).

28. *Arachin* 25a. As stated in the previous note, this figure is calculated by dividing the fifty *shekels* mentioned by the Torah by the forty-nine years of the *yovel* cycle. This indicates that the seven *sheviis* years of each *yovel* cycle are included in the calculation, for if they were excluded, the fifty *shekels* would be divided by only forty-two, and the cost per year would come to almost a *sela* and *dinar* [1¼ *sela*] (*Rashi*).

29. The Torah does not state anywhere in regard to the laws of redeeming a consecrated field that only "crop years" are counted. Therefore, since even in *sheviis* years fields are fit for some purpose, those years are also included in the calculation (*Rashi*). But in regard to how many years a person must wait before redeeming a field that he sold, the Torah does specify "crop years." Therefore, a *sheviis* year does not count towards that number.

30. *Psalms* 37:19. It is thus possible that the landowner's field would have been spared had the *chocheir* planted it.

31. A lion devours its prey in the field, without fear. A wolf, however, only tears its prey in the field, since it is afraid of other creatures; it then drags the torn animal to its lair, kills it and consumes it there (see *Rashi* above, 93b, and to *Taanis* 8a; see also *Rashi* to *Bava Kamma* 16b).

32. A shepherd is a paid custodian (שׁוֹמֵר שָׂכָר) and he is therefore not liable for unavoidable mishaps (אוֹנְסִים). Had the shepherd been able to save the animal, however, the loss of the animal would not be considered an unavoidable mishap, and he would therefore have paid for its loss.

[Although a custodian is liable for negligence (possibly even when his negligence is followed by an unavoidable mishap – see Gemara above, 93b), the fact that this shepherd abandoned the flock before the attack is not regarded as negligence on his part, for the Gemara speaks of a case where he left the flock and entered the town at the time of day when it is customary for shepherds to do so. Alternatively, we are discussing a case where the shepherd left his flock out of fear when he heard the roar of a lion; leaving under such circumstances does not constitute negligence (see Gemara ibid.).]

נֵימָא לֵיהּ — Let [the owner of the sheep] say to him, אִי הֲוִית — "Had you been there, הָתָם — [the following verse] would have been fulfilled for me: הֲוָה מְקַיֵּים בִּי גַּם אֶת־הָאֲרִי, גַּם־(אֶת) הַדֹּב הִכָּה עַבְדֶּךָ" — *Both the lion, and also the bear, your servant smote.*"[33] That is, if a landowner can claim that his field would have been miraculously spared from a locust plague, in the Baraisa's case the owner of the sheep should be able to claim that if the shepherd had been there, he would have miraculously been able to save the sheep.

The Gemara answers:

מִשּׁוּם דְּאָמַר לֵיהּ — The argument is not valid because he can reply to [the owner]: אִי הֲוִית חֲזֵית לְאִיתְרַחוּשֵׁי לָךְ נִיסָּא — "Had you deserved to have a miracle occur for you, הֲוָה אִיתְרַחֵישׁ לָךְ נִיסָּא כְּרַבִּי חֲנִינָא בֶּן דּוֹסָא — a miracle would have occurred for you like the one that happened for **R' Chanina ben Dosa, דְּמַתְיִין עִיזֵּי דּוּבֵּי בְּקַרְנַיְיהוּ — where his goats brought in wolves**[34] **on their horns."**[35]

The Gemara objects to that answer:

וְנֵימָא לֵיהּ — But let [the owner] say to [the shepherd], נְהִי דְּלָנִיסָּא רַבָּה לֹא הֲוָה חֲזֵינָא — "Granted that I did not deserve a great miracle [of the animal protecting itself], **לְנִיסָּא זוּטָא — a lesser miracle** [of the shepherd saving the animal]

NOTES

33. *I Samuel* 17:36, referring to King David.

34. See *Rashi* to *Taanis* 25a ד"ה רובים and *Sotah* 49a ד"ה אנשי מעשה which states clearly that דובי refers to wolves.

35. This incident is recounted in *Taanis* 25a (*Rashi;* see below). The shepherd can thus reply to the owner that his leaving the flock did not prevent a miracle from occurring. If the owner deserved to be saved by a miracle, his animal would have killed the wolf or lion by itself.

[R' Chanina ben Dosa had been accused of having goats that grazed on other people's crops. R' Chanina ben Dosa responded that if his goats had done such a thing, they should be devoured by wolves, but if they had not, each of them should return that night from the pasture with a wolf on its horns. That night, each goat came back carrying a dead wolf on its horns.]

חֲזִינָא – **I did deserve."**[1] – ? –

The Gemara concedes:

קַשְׁיָא – **This is** indeed **a difficulty.**

The Gemara cites apparently contradictory Baraisos concerning the reduction of rental payments for general calamity:

תָּנֵי חֲדָא – **One Baraisa taught:** פַּעַם רִאשׁוֹנָה וּשְׁנִיָּה זוֹרֵעַ – HE MUST PLANT [THE FIELD] A FIRST AND SECOND TIME before he may reduce his payment;[2] וּשְׁלִישִׁית אֵינוֹ זוֹרֵעַ – BUT HE NEED NOT PLANT IT A THIRD TIME.[3] וְתַנְיָא אִידָךְ – **However, it was taught in another Baraisa:** שְׁלִישִׁית זוֹרֵעַ – HE MUST PLANT [THE FIELD] A THIRD TIME; רְבִיעִית אֵינוֹ זוֹרֵעַ – but HE NEED NOT PLANT IT A FOURTH TIME. – ? –

The Gemara resolves the contradiction:

לָא קַשְׁיָא – **This is not a difficulty.** הָא כְּרַבִּי – **This** first Baraisa **is in accordance with** the view of **Rebbi,** הָא כְּרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל – while **this** second Baraisa **is in accordance with** the view of **Rabban Shimon ben Gamliel.**[4]

The Gemara elaborates:

הָא כְּרַבִּי – **This** first Baraisa **is in accordance with** the view of **Rebbi** דְּאָמַר בִּתְרֵי זִימְנֵי הֲוֵי חֲזָקָה – **who says that a *chazakah* is** established **with two occurrences;** therefore, the tenant-farmer need not attempt a third crop. הָא כְּרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל – **This** second Baraisa, however, **is in accordance with** the view of **Rabban Shimon ben Gamliel** דְּאָמַר בִּתְלַת זִימְנֵי הֲוֵי חֲזָקָה – **who says that a *chazakah* is** established only **with three occurrences;** the tenant-farmer must therefore attempt a third crop before he can reduce his rental payment.[5]

The Gemara qualifies the previous rulings requiring the tenant-farmer to plant the field only two or three times:[6]

אָמַר רֵישׁ לָקִישׁ – **Reish Lakish said:** לָא שָׁנוּ אֶלָּא שֶׁזָּרְעָה וְצָמְחָה – **This** ruling **was taught only when [the tenant-farmer] planted [the field] and something grew,** וְאַכָּלָהּ חָגָב – **but** then **locusts devoured [the crop];** אֲבָל זָרְעָה וְלֹא צָמְחָה – **however,** if **he planted [the field] and nothing grew,** מְצִי אָמַר לֵיהּ בַּעַל הַקַּרְקַע – **the landowner can say to [the tenant-farmer],** כָּל יְמֵי זֶרַע – "For **all the days of** the **planting** season זְרַע לָהּ וְאָזֵיל – you must **continue to plant it."**[7]

The Gemara seeks a clarification:

וְעַד אֵימַת – **And until when** is it considered the planting season?

The Gemara replies:

אָמַר רַב פָּפָּא – **Rav Pappa said:** עַד דְּאָתוּ אָרִיסֵי מִדַּבְרָא – **Until the** season when **sharecroppers come in from the field,** וְקִימָא כִּימָה אַרֵישַׁיְיהוּ – **and** the constellation ***Kimah* is over their heads.**[8]

NOTES

1. It is thus apparent that a person cannot make a claim based on the possibility that a miracle would have occurred for him. How then can the landowner claim in our case that his field would have been miraculously spared from the calamity that affected every other field in the area?

[We learned above (106a) that if the farmer disobeyed the landowner's instructions (e.g. planting barley instead of wheat), he cannot claim a reduction for a general calamity because the landowner can argue that had the farmer planted what he agreed to plant, the field might have been spared in response to the landowner's prayers for the success of that crop. This does not constitute claiming that a miracle might have happened, since God does answer the specific prayers of people. Shmuel, however, speaks of a case in which the landowner gave the farmer permission to plant any crop he wished. The landowner's beginning-of-the-year prayer in such a case could only have been for the success of whatever the farmer would later do. Such a prayer is far less likely to be answered than a prayer for a specific endeavor, and it is tantamount to asking to succeed miraculously even if all others in the vicinity fail (see *Tosafos* 106a ד"ה לניסא וזטא).]

2. That is, if the *chocheir* planted once and the field was devastated by locusts or windblast, he must plant again. If he does not make a second planting [that season], he may not deduct from his rental even though the entire area was devastated by a general calamity (*Rashi*; cf. *Shitah Mekubetzes*). Since under those circumstances it is customary for farmers to attempt another crop, the *chocheir* must also do so before he can demand a deduction (*Rashba* in *Shitah Mekubetzes,* in explanation of *Rashi*; see there for an alternative explanation of this Gemara).

3. If two crops were already damaged, we can assume that further planting in this field will not be successful this year. The *chocheir* may therefore claim a deduction without having to attempt a third crop.

4. The Gemara in *Yevamos* (64b) records a dispute between Rebbi and his father, Rabban Shimon ben Gamliel, concerning the number of occurrences required to create a *chazakah*, or presumptive legal status. At issue there is the status of a woman who marries and then becomes widowed. According to Rebbi, if this happens twice, a *chazakah* has been established that men who marry this woman die. Hence, she may not marry a third time because we are concerned that a third husband, too, would die. Rabban Shimon ben Gamliel allows the woman to marry a third time; according to him, only after three husbands die has a *chazakah* been established (see *Rashi*).

5. Thus, according to Rebbi, after two crops have been damaged we can presume that no crops will be successful in this field this year, and the *chocheir* can now reduce his rental accordingly. According to Rabban Shimon ben Gamliel, though, we cannot make any presumptions until a third crop has been damaged.

6. *Rashba* in explanation of *Rashi*; cf. *Rosh.*

7. That is, during the entire planting season the landowner can tell the *chocheir* to sow the field, because perhaps the time [for a successful crop] has not yet arrived (*Rashi*). Therefore, even though the other fields in the area were planted and did not produce, it can be argued that if they would be replanted now, they too might produce (*Tos. HaRosh*).

This case differs from the previous case where a crop did grow but was later devastated. In that case, the *chocheir* may deduct from his rental even though there is still time left in the growing season, because the two or three disasters establish a *chazakah* that any crop that grows that year will be devastated. But where nothing at all grew, the *chocheir* may not reduce his payments because it is possible that the previous attempts were merely made too early in the planting season. Those unsuccessful attempts thus tell us nothing about the possibility of success for planting made later in the season (*Rashba*).

8. An *aris* usually leaves the field at the end of the tenth hour of the day. If the constellation *Kimah* stands overhead in the middle of the sky at that time, it is still considered the planting season (*Rashi*). This time corresponds to the month of Adar, as follows:

As the earth moves in its yearly orbit, it is on different sides of the sun. As a result, the star background against which the sun appears is constantly changing. Thus, the sun is said to move through the stars during the course of the year. By plotting where among the stars the sun rises each morning, we can map out a great circle along the celestial sphere. This circle is known as the *ecliptic,* the path of the sun through the stars. The stars immediately above and below the ecliptic form a band known as the *zodiac.* This band is divided into twelve equal sections, with a number of the stars in each section being grouped in a *constellation* (מַזָּל). In the course of a year, the sun makes a complete revolution through the zodiac. Thus, during each of the twelve months, the sun is seen as rising in a different constellation. Below is a chart of these twelve constellations (מַזָּלוֹת) with their corresponding months:

HEBREW NAME	ASTRONOMICAL NAME	MONTH
טָלֶה / RAM OR LAMB	ARIES (THE RAM)	NISSAN
שׁוֹר / BULL	TAURUS (THE BULL)	IYAR
תְּאוֹמִים / TWINS	GEMINI (THE TWINS)	SIVAN
סַרְטָן / CRAB	CANCER (THE CRAB)	TAMMUZ
אַרְיֵה / LION	LEO (THE LION)	AV
בְּתוּלָה / MAIDEN	VIRGO (THE VIRGIN)	ELUL
מֹאזְנַיִם / SCALES	LIBRA (THE SCALES)	TISHREI
עַקְרָב / SCORPION	SCORPIO (THE SCORPION)	CHESHVAN
קֶשֶׁת / ARCHER	SAGITTARIUS (THE ARCHER)	KISLEV
גְּדִי / GOAT OR KID	CAPRICORN (THE GOAT)	TEVES
דְּלִי / BUCKET	AQUARIUS (THE WATER BEARER)	SHEVAT
דָּגִים / FISH	PISCES (THE FISH)	ADAR

The Gemara objects to this definition:

מֵיתִיבִי – **They challenged** this **from a Baraisa:**[9] רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל מְשׁוּם רַבִּי מֵאִיר אוֹמֵר – RABBAN SHIMON BEN GAMLIEL SAYS IN THE NAME OF R' MEIR, וְכֵן הָיָה רַבִּי שִׁמְעוֹן בֶּן מְנַסְיָא אוֹמֵר כִּדְבָרָיו – AND SO WOULD R' SHIMON BEN MENASYA SAY LIKE HIS WORDS AS WELL: חֲצִי תִּשְׁרֵי מַרְחֶשְׁוָן וַחֲצִי כִּסְלֵיו – The second HALF OF TISHREI, MARCHESHVAN AND the first HALF OF KISLEV זֶרַע – is the PLANTING season;[10] חֲצִי כִּסְלֵיו טֵבֵת וַחֲצִי שְׁבָט – the second HALF OF KISLEV, TEVES AND the first HALF OF SHEVAT חוֹרֶף – is the WINTER season;[11] חֲצִי שְׁבָט אֲדָר וַחֲצִי נִיסָן – the second HALF OF SHEVAT, ADAR AND the first HALF OF NISSAN קוֹר – is the COLD season;[12] חֲצִי נִיסָן אִיָּר וַחֲצִי סִיוָן – the second HALF OF NISSAN, IYAR AND the first HALF OF SIVAN קָצִיר – is the HARVEST season;[13] חֲצִי סִיוָן תַּמּוּז וַחֲצִי אָב – the second HALF OF SIVAN, TAMMUZ AND the first HALF OF AV קַיִץ – is the SUMMER season;[14] חֲצִי אָב אֱלוּל וַחֲצִי תִּשְׁרֵי – the second HALF OF AV, ELUL AND the first HALF OF TISHREI חוֹם – is the HOT season.[15] רַבִּי יְהוּדָה מוֹנֶה מִתִּשְׁרֵי – R' YEHUDAH COUNTS the seasons FROM the beginning of TISHREI,[16] רַבִּי שִׁמְעוֹן מוֹנֶה מִמַּרְחֶשְׁוָן – while R' SHIMON COUNTS them FROM MARCHESHVAN.[17]

The Gemara now explains its question:

מַאן מֵיקֵל בְּכוּלְּהוּ – **Who is the most lenient of all of them?**[18] ר' שִׁמְעוֹן – **R' Shimon.** וְכוּלֵּי הַאי לֹא קָאָמַר – **Yet** even **he did not say** that the planting season extends **this much** – i.e. as late as Adar![19] – ? –

The Gemara answers:

לֹא קַשְׁיָא – **This is not a difficulty.** הָא דְּקִבְּלָהּ מִינַּיהּ בְּחָרְפֵּי – **This** Baraisa **is** referring to a case **where [the tenant-farmer] leased [the field] from [the landowner] for early** crops;[20] הָא דְּקִבְּלָהּ מִינַּיהּ בְּאָפֵלֵי – while **this** ruling of Rav Pappa **is** referring to a case **where [the tenant-farmer] leased it from him for late** crops.[21]

The Gemara discusses the view of the next Tanna of our Mishnah:

רַבִּי יְהוּדָה אוֹמֵר – R' YEHUDAH disagrees and SAYS: אִם קִבְּלָהּ מִמֶּנּוּ בְּמָעוֹת – IF [THE TENANT] LEASED [THE FIELD] FROM [THE LANDOWNER] FOR MONEY, he may not deduct from the rental even in cases of general calamity.[22]

The Gemara cites a ruling:

דְּקִבֵּיל אַרְעָא לְמִיזְרְעָהּ – There was **a certain man** הַהוּא גַּבְרָא – **who leased a field to plant garlic** אַגּוּדָּא דְּנַהַר מַלְכָּא – **along the banks of the Malka Sava River** בִּזְוּזֵי – **for money**; i.e. the rental was to be paid in money rather than crops. אִיסְתַּכַּר נַהַר מַלְכָּא סָבָא – **The Malka Sava River** then **became blocked,** having been diverted by the people living upstream. The tenant could therefore no longer water the field properly.[23]

NOTES

As the earth rotates on its axis, stars in the west set, while new stars rise in the east. [This is the same phenomenon that causes the sun to rise and set every day.] At midnight, the stars that were on the eastern horizon at sunset are directly overhead; at sunrise the following morning, they are on the western horizon. During the course of twenty-four hours, each of the twelve constellations appears on the horizon, one every two hours – six constellations by day and the other six by night. [Of course, the stars that appear during the day are not visible because they are lost in the glare of the sun. Nevertheless, it can easily be calculated which constellation is overhead.] Consequently, the constellations not only signal the particular month of the year [caused by the earth's annual revolution around the sun], but also indicate the time of each day [caused by earth's daily rotation on its axis].

The constellation corresponding to the first month of the year, Nissan, is the Lamb (Aries). During that month, the Lamb appears on the horizon at daybreak while the seventh constellation, the Scales (Libra), sets. During the month of Iyar the next constellation, the Bull (Taurus), rises first in the morning, and so on... until the month of Adar, when the twelfth constellation, the Fish (Pisces), appears at daybreak. After two hours the Lamb rises, followed by the Bull at the fourth hour of the day. After the sixth hour of the day the Twins (Gemini) rise, followed by the Crab (Cancer) at the beginning of the ninth hour. At that time, the head of the Lamb is directly overhead since six hours (or half a day) have passed since it first rose. During the next two hours, the Lamb continues to move across the sky until the end of the constellation, or its "tail," is directly overhead towards the end of the tenth hour. *Kimah* is a minor constellation located in the tail of the Lamb, so that *Kimah* is directly overhead at that time. Rav Pappa thus states that the planting season lasts until the month of *Adar* (*Rashi*). [The names used above are a translation of the Hebrew names of the constellations; the names appearing in parentheses are the common names of the constellations, which derive from Latin but mean approximately the same as the Hebrew names.]

[*Tosafos* object to *Rashi's* explanation and offer an alternative explanation. See *Radvaz,* cited by *Shitah Mekubetzes,* for a possible defense of *Rashi.*

The reason Rav Pappa does not simply identify the end of the planting season as Adar may be because the months of the Jewish calendar (which are based on the orbit of the moon) do not correlate exactly each year with the months of the solar calendar (which are based on the orbit of the earth). (It is for this reason that the Jewish months and holidays fall sometimes earlier and sometimes later in their respective seasons.) Since the agricultural seasons are more directly related to the astronomical seasons, Rav Pappa gives an astronomical sign by which to fix the part of Adar in which the planting season ends.]

9. The six seasons mentioned in this Baraisa are mentioned in God's promise to Noah [*Genesis* 8:22] that the seasons of the year would never cease (*Rashi*).

10. This is the beginning of the rainy season (*Rashi*).

11. That is, when the winter season is at its strongest and coldest (*Rashi*).

12. The end of the winter (*Rashi*).

13. The harvest season, the first part of summer, parallels the planting season, the first part of winter (*Rashi*).

14. The peak of summer, when it is [hottest and] driest. This season is called קַיִץ because it is when figs and dates are left out to dry in the sun, and dried fruits are known as קַיִץ [see *II Samuel* 16:2] (*Rashi*).

15. I.e. the end of summer; corresponding to קוֹר, the cold season, which is the end of winter (*Rashi*).

16. According to R' Yehudah, the six seasons, each lasting two months, start at the beginning of Tishrei (*Rashi*), not from the middle of Tishrei as the first Tanna maintained.

17. That is, the six seasons start at the beginning of Marcheshvan.

18. I.e. who is the Tanna who allows for the longest delay in planting? (*Rashi*; see *Raavad* in *Shitah Mekubetzes*).

19. According to R' Shimon the two planting months are Marcheshvan and Kislev (*Rashi*). But even R' Shimon agrees that the planting season is over by the end of Kislev. Why, then, does Rav Pappa say that the planting season lasts through Adar?

20. The Baraisa refers to wheat and rye, which are planted at the beginning of the winter (*Rashi*).

21. Rav Pappa refers to barley and beans, which are planted as late as Adar (*Rashi*; see *Maharsha*).

22. R' Yehudah maintains that the Divine edict decreeing the loss was not directed against the money of this area's inhabitants, but against their crops. Since the rental agreement called for payment in cash, not crops, R' Yehudah sees the decree as directed at the farmer and not the landowner (*Rashi* to the Mishnah; see notes 32,34 there). The Tanna Kamma, though, does not make such a distinction, but rules that even if the payment was fixed in cash, the farmer may deduct from his payment if a general calamity strikes.

23. The farmers upstream diverted the river away from this field. Since moist soil is needed to grow herbs, the tenant could not produce a successful garlic crop (*Rashi*). [I.e. though he could still water it from a well, he could not keep the land sufficiently wet to produce a successful garlic crop.]

אָתָא לְקַמֵּיהּ דְּרָבָא – **He came before Rava** to inquire if he could deduct from his rental payment. אָמַר לֵיהּ – **[Rava] replied to him:** נְהַר מַלְכָּא סָכָא לֹא עֲבִיד דְּמִיסְכַּר – **It is uncommon for the Malka Sava River to be blocked,** מַכַּת מְדִינָה הִיא – **and it is** also **a general calamity.** זִיל נַכֵּי לֵיהּ – Therefore, you may **go** and **deduct from** your rental payment to **him.**[24]

Rava is challenged:

הָא אֵנַן תְּנַן – **The Rabbis said to Rava:** אָמְרוּ לֵיהּ לְרַבָּא – **But we learned in our Mishnah:** ר' יְהוּדָה אוֹמֵר – R' YEHUDAH SAYS: אִם קִבְּלָהּ הֵימֶנּוּ בְּמָעוֹת – IF HE LEASED IT FROM HIM FOR MONEY, בֵּין כָּךְ וּבֵין כָּךְ – IN EITHER CASE [i.e. whether it was a widespread calamity or not], אֵינוֹ מְנַכֶּה לוֹ מִן חֲכוֹרוֹ – HE MAY NOT DEDUCT FROM HIS RENTAL. Since the lease in this case was for money, why may the tenant reduce his payment?

Rava replies:

אָמַר לָהֶם – **He said to them:** לֵית דְּחָשׁ לָהּ לִדְר' יְהוּדָה – **There is no one who is concerned for this** view **of R' Yehudah.**[25]

Mishnah הַמְקַבֵּל שָׂדֶה מֵחֲבֵירוֹ – If **one leased a field from his fellow** בַּעֲשָׂרָה כּוֹר חִטִּים לְשָׁנָה – **for ten *kors* of wheat per year,**[26] וְלָקְתָה – **and [the crop] was stunted,**[27] נוֹתֵן לוֹ מִתּוֹכָהּ – **he may give** [the landowner] his rental **out of [that crop].**[28] הָיוּ חִטָּיהָ יָפוֹת – If **the wheat of [that crop] was superior,** לֹא יֹאמַר לוֹ – **[the tenant] cannot say to [the landowner],** הֲרִינִי לוֹקֵחַ מִן הַשּׁוּק – **"I will buy** wheat of average quality **from the market** with which to pay the rental." אֶלָּא נוֹתֵן לוֹ מִתּוֹכָהּ – **Rather, [the tenant] must give [the landowner]** his payment **out of [that produce].**

Gemara The Gemara elaborates upon our Mishnah:

דְּקִבֵּיל – **There was a certain man** הַהוּא גַּבְרָא – **who leased a field to** plant ***aspasta*** בְּכוֹרֵי אַרְעָא לְאַסְפַּסְתָּא – **for** a rental to be paid in ***kors* of barley.**[29] דְּשַׁעֲרֵי עָבְדָא – **[The land] produced** a crop of ***aspasta*,** וַחֲרָשָׁה אַסְפַּסְתָּא – **after which [the tenant] plowed [the field] and planted it** with **barley,** instead of planting another *aspasta* crop.[30] וְלָקוּ הָנֵי שַׁעֲרֵי – **These barley** plants, **however, grew stunted.**

This incident led to the following question:

שְׁלָחָהּ רַב חֲבִיבָא מְסוּרָא דִּפְרָת לְקַמֵּיהּ דְּרָבִינָא – **Rav Chaviva of Sura by the Euphrates sent [this inquiry] to Ravina:** כִּי הַאי גַּוְנָא מַאי – **What is** the law **in such a case?** כִּי לָקְתָה נוֹתֵן לוֹ מִתּוֹכָהּ דְּמִי – **Is this comparable to** the case of our Mishnah where if **[the crop] was stunted, [the tenant] may pay [the landowner] out of [that produce]?**[31] אוֹ לֹא – **Or** is this case **not comparable to that** case **of the Mishnah?**

Ravina responds:

אָמַר לֵיהּ – **He said to him:** מִי דְּמֵי – **Are [the two cases] comparable?** הָתָם לֹא עָבְדָא אַרְעָא שְׁלִיחוּתָא דְּמָרָהּ – **There** in the case of the Mishnah **the land did not carry out the "commission" of its owner** when it produced an inferior crop. הָכָא עָבְדָא אַרְעָא שְׁלִיחוּתָא דְּמָרָהּ – But **here** in your case **the land did carry out the "commission" of its owner;** it is the farmer who was at fault, for he planted barley instead of another *aspasta* crop. Thus, he can certainly not pay his rent with this stunted barley.[32]

The Gemara examines a similar case:

דְּקִבֵּל פַּרְדֵּס מֵחֲבֵרְיהּ – **There was a certain man** הַהוּא גַּבְרָא – **who leased a vineyard from his fellow** בְּעֶשֶׂר דֵּנֵי חֲמָרָא – **for ten barrels of wine.**[33] תַּקִּיף הַהוּא חֲמָרָא – **The wine** produced from this vineyard **soured.** סָבַר רַב כַּהֲנָא לְמֵימַר – **Rav Kahana thought to say:** הֵיינוּ מַתְנִיתִין – **This is** similar to the ruling in **our Mishnah,** which stated: לָקְתָה נוֹתֵן לוֹ מִתּוֹכָהּ – If [THE CROP] WAS STUNTED, HE PAYS [THE LANDOWNER] OUT OF [THAT PRODUCE]. The landowner must therefore take the sour wine as his payment.

The Gemara presents a dissenting view:

אָמַר לֵיהּ רַב אַשִׁי לְרַב כַּהֲנָא – **Rav Ashi said to [Rav Kahana]:** מִי דְּמֵי – **Are [the two cases] comparable?** הָתָם לֹא עָבְדָא אַרְעָא שְׁלִיחוּתָא – **There** in the Mishnah **the land did not carry out** its **"commission"** when it produced an inferior crop. הָכָא עָבְדָא אַרְעָא שְׁלִיחוּתָא – However, **here the land did carry out** its **"commission";** it is only after the grapes were processed into wine that the wine spoiled.[34] The tenant must therefore pay his rental with good wine bought from the market.

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24. Since the diversion of the river affects all of the farmers downstream, it can be classified as a general calamity. Moreover, since this river is not usually dammed, the tenant had no reason to suspect that such a disaster would occur (*Rashi*). He may therefore deduct from his rental.

If, however, it was common for the river to be diverted, the tenant could not reduce his payments, even though the diversion is considered a general calamity. Since the disaster was predictable, the tenant should have stipulated in advance that he was agreeing to the fixed rental only if he would have use of the river. By omitting such a stipulation, the tenant in effect accepted any loss upon himself (*Raavad* in *Shitah Mekubetzes*; see also *Yad David*).

25. I.e. no one accepts R' Yehudah's view as halachah. Thus, there is no legal difference whether the tenant is supposed to pay his fixed rental in produce or in money.

26. This was the fixed amount the *chocheir* agreed to pay.

27. That is, the wheat was blasted by wind, which stunted the plants and reduced the quality of the crop (*Rashi;* see *Nimukei Yosef*).

28. [He may pay the landowner with the windblasted wheat of this field and the owner may not demand better wheat.] This ruling obviously refers to a *chocheir,* since it goes without saying that an *aris* (sharecropper) shares the crop with the owner regardless of its quality (*Rashi*).

29. That is, this *chocheir* agreed to plant *aspasta* on the landowner's field and pay the landowner one *kor* of barley bought from the market (see *Rosh* and *Hagahos Chavos Yair* to *Rif*).

30. A new *aspasta* crop can be planted and harvested every thirty days (see *Bava Basra* 28b). But instead of planting a second *aspasta* crop, the *chocheir* planted barley (*Rashi*).

31. That is, may the *chocheir* pay the landowner with the barley that grew on the landowner's field, even though it is of inferior quality?

32. In the Mishnah's case it is the land that did not perform according to the expectations of its owner. The landowner is therefore forced to take his payment from whatever grew there. But in this case, had the *chocheir* planted only *aspasta,* as agreed, the crop might have been successful. The *chocheir* must therefore buy barley of good quality to pay the landowner, as he had initially planned (*Rashi*).

This would have been the ruling even if the *chocheir* had not already planted a successful *aspasta* crop, since the landowner's claim would have been just as valid in that case. It just so happens that in the incident under discussion the *chocheir* had first planted an *aspasta* crop before he planted the barley (*Tosafos*).

33. This is a typical case of *chachirus*, where the *chocheir* agreed to pay the landowner a fixed amount of wine as rental for the lease of the vineyard. If nothing at all grew, the *chocheir* would have to pay the landowner with wine bought from the market (see *Sma, Choshen Mishpat* 323:3).

34. That is, there was nothing wrong with the grapes. It is only after they were made into wine in the tenant's barrels that the wine turned sour. We therefore attribute the spoilage of the wine to the *chocheir's* bad luck (*Rashi,* based on *Bava Basra* 96b; see *Maayanei HaChochmah*).

The Gemara concludes:

וּמוֹדֶה רַב אַשִׁי – **But Rav Ashi agrees** that the tenant may pay with the inferior produce of the field בְּעִינְבֵי דְּכַדּוּם – **in the case** of **grapes that became infested with worms,**[35] וּבְשָׁדֶה שֶׁלָּקְתָה בְּעוֹמָרֶיהָ – **and in** the case of a grain **field whose** crop **was damaged** while still **in its sheaves.**[36]

Mishnah הַמְקַבֵּל שָׂדֶה מֵחֲבֵירוֹ לִזְרָעָהּ שְׂעוֹרִים – If **one leased a field from his fellow to plant it** with **barley,**[37] לֹא יִזְרָענָּהּ חִטִּים – **he may not plant it** with **wheat;**[38] חִטִּים יִזְרָענָּהּ שְׂעוֹרִים – but if he leased the field to plant **wheat** in it, **he may plant it** with **barley.**[39] רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹסֵר – **Rabban Shimon ben Gamliel,** however, **prohibits** making any change.[40] תְּבוּאָה לֹא יִזְרָענָּהּ קִטְנִית – If someone leased a field to plant **grain, he may not plant it** with **beans;**[41] קִטְנִית יִזְרָענָּהּ תְּבוּאָה – but if he leased the field to plant **beans, he may plant it** with **grain.** וְרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹסֵר – **Rabban Shimon ben Gamliel, however, prohibits** making any change.[42]

Gemara The Gemara analyzes the view of Rabban Shimon ben Gamliel:

אָמַר רַב חִסְדָּא – **Rav Chisda said:** מַאי טַעְמָא דְּרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל – **What is the reason of Rabban Shimon ben Gamliel?** דִּכְתִיב – **For it is written:**[43] ,,שְׁאֵרִית יִשְׂרָאֵל לֹא־יַעֲשׂוּ עַוְלָה וְלֹא־יְדַבְּרוּ כָזָב – ***The remnant of Israel shall not do iniquity, nor speak lies;*** וְלֹא־יִמָּצֵא בְּפִיהֶם לְשׁוֹן תַּרְמִית״ – ***neither shall a deceitful tongue be found in their mouth.*** Therefore, a tenant may not make any changes from that which he agreed to do, even if it is to the apparent benefit of the landowner.

The Gemara rejects this explanation:

מִיתֵיבִי – **They challenged** this **from a Baraisa:** מַגְבִּית פּוּרִים – THE COLLECTION OF PURIM IS exclusively FOR PURIM,[44] לְפוּרִים – AND WE DO NOT INVESTIGATE THE MATTER.[45] וְאֵין מְדַקְדְּקִין בַּדָּבָר – AND THE POOR PERSON IS NOT PERMITTED TO BUY A STRAP FOR HIS SANDAL FROM [THIS MONEY] וְאֵין הֶעָנִי רַשַּׁאי לִיקַּח מֵהֶן רְצוּעָה לְסַנְדָּלוֹ – UNLESS HE STIPULATED IN THE PRESENCE OF THE PEOPLE OF THE TOWN to be allowed to do so. אֶלָּא אִם כֵּן הִתְנָה בְּמַעֲמַד אַנְשֵׁי הָעִיר – These are THE WORDS OF R' YAAKOV, WHO SAID them IN THE NAME OF R' MEIR. דִּבְרֵי רַבִּי יַעֲקֹב מְשׁוּם רַבִּי מֵאִיר – RABBAN SHIMON BEN GAMLIEL, however, רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל –

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35. That is, the grapes became infested after the harvest, before they could be brought to the press to make wine (*Rashi*).

36. I.e. while the crops were spread out in the field during the summer months to dry. Produce needs to be left on the land a certain amount of time before it can be processed (*Rashi*).

Since in both of these cases the crop had to be left in the field, the damage is attributable to the field not performing as it should have. Rav Ashi therefore agrees that the *chocheir* may in this case pay the landowner with the produce of his field. The *chocheir* can be held accountable only if he delayed more than the customary amount of time before taking the grapes to the press or removing the grain from the field (*Rashi*).

37. This Mishnah too refers to *chachirus* (see next note). The tenant agreed to pay the landowner his rental either with a fixed amount of produce or with money (*Rashi*).

38. The tenant may not subsequently sow the field with wheat, because wheat depletes the soil more than barley does (*Rashi*). [Thus, he is using the field to a greater degree than the rental agreement allowed, which he may not do without the owner's permission.]

This ruling applies only to *chachirus*. In the case of *arisus*, however, where the landowner takes a percentage of the yield, the *aris* may deviate from the agreement even without the landowner's permission. Since the change will bring the landowner a greater profit as well, we assume that he prefers to have his land become impoverished rather than to become impoverished himself (*Rashi*, based on Gemara above, 104b, see note 20 there; cf. *Ramban* cited by *Maggid Mishneh, Hil. Sechirus* 8:9).

39. Since barley depletes the land less than wheat does, the owner loses nothing by this change, and in fact benefits by receiving the same rental [wheat bought at the market] with less depletion of his field. [It must also be assumed that the landowner prefers the additional value of his land over the prerogative of receiving wheat grown on his own field (see *Taz, Choshen Mishpat* 324).]

40. The Gemara will explain the view of Rabban Shimon ben Gamliel.

41. Because beans impoverish the land more than grain does (*Rashi*).

42. The Gemara will explain this view.

43. *Zephaniah* 3:13.

44. Any money collected from the townspeople to distribute to the poor for the Purim meal must be used for that purpose (*Rashi* above, 78b).

45. To see if the poor can make due with less for their Purim meal, allowing the extra money to be diverted to other charitable endeavors (*Rashi* above, 78b).

מֵיקַל – RULES LENIENTLY, allowing the money to be used by the poor for a different purpose even without a stipulation. Why then, according to Rabban Shimon ben Gamliel, may the tenant not plant a different type of crop?[1]

The Gemara therefore presents another explanation of Rabban Shimon ben Gamliel's ruling in our Mishnah:

אָמַר אַבָּיֵי – **Abaye said:** טַעֲמָא דְּרַבָּן שִׁמְעוֹן כִּדְמַר – **The reason of Rabban Shimon** ben Gamliel **is in accordance with** a statement of **the master,** Rabbah bar Nachmeini.[2] דְּאָמַר מַר – **For the master said:** הַאי מַאן דְּנִיחָא לֵיהּ דְּתִתְבּוֹר אַרְעֵיהּ – **The one who wishes to make his land barren** לִיזְרְעֵהּ שַׁתָּא חִטֵּי וְשַׁתָּא שַׂעֲרֵי – **should plant it** one **year** with **wheat and** the next **year** with **barley;** שַׁתָּא שְׁתֵּי וְשַׁתָּא עֵרֶב – or one **year lengthwise and** the next **year crosswise.**[3] The farmer may therefore not change the crop so as not to cause damage to the landowner's field.[4]

The Gemara qualifies the statement that changing crops from one year to the next will harm the field:

וְלֹא אֲמָרָן אֶלָּא דְּלֹא כָּרִיב וְתָנֵי – **And this was said only when he does not plow** after the harvest **and repeat** the plowing before planting the next crop;[5] אֲבָל כָּרִיב וְתָנֵי – **but if he plows and repeats** the plowing, לֵית לָן בָּהּ – **we have no** concern **about it.**[6]

The Gemara analyzes the next section of the Mishnah, which stated:

תְּבוּאָה לֹא יִזְרָעֶנָּה קִטְנִית [וכו'] – If he leased a field to plant GRAIN, HE MAY NOT PLANT IT with BEANS **[etc.].**

The Gemara presents a statement that apparently conflicts with our version of the Mishnah:

מַתְנֵי לֵיהּ רַב יְהוּדָה לְרָבִין – **Rav Yehudah taught the Mishnah to Ravin** in the following way:[7] תְּבוּאָה יִזְרָעֶנָּה קִטְנִית – If he leased a field to plant GRAIN, HE MAY PLANT IT with BEANS.

Ravin challenges this ruling:

אָמַר לֵיהּ – **[Ravin] said to him:** וְהָא אֲנַן תְּנַן – **But we learned in our Mishnah:** תְּבוּאָה לֹא יִזְרָעֶנָּה קִטְנִית – If he leased a field to plant GRAIN, HE MAY NOT PLANT IT with BEANS. – ? –

Rav Yehudah replies:

אָמַר לֵיהּ – **He said to [Ravin]:** לֹא קַשְׁיָא – **This is not a difficulty:** הָא לָן וְהָא לְהוּ – **This** statement of mine applies **to us** in Babylonia; while **this** Mishnah applies **to them,** the people of Eretz Yisrael.[8]

The Gemara digresses to cite another ruling that Rav Yehudah taught Ravin:[9]

אָמַר לֵיהּ רַב יְהוּדָה לְרָבִין בַּר רַב נַחְמָן – **Rav Yehudah said to Ravin bar Rav Nachman:** רָבִין אָחִי – **Ravin, my brother,**[10] חֲגֵי תַּחְלֵי דְּבֵי כִּתְנָא – **these** wild **cresses** that grow **among the flax** אֵין בָּהֶן מִשּׁוּם גֵּזֶל – **are not subject to** the prohibition of **theft,** because the cress is damaging to the flax. It is therefore permitted to pick them.[11] עוֹמְדוֹת עַל גְּבוּלִין – But **those** cress plants **standing along the border** of the rows of flax יֵשׁ בָּהֶן מִשּׁוּם גֵּזֶל – **are subject to** the prohibition of **theft,** and one is forbidden to take them without the owner's permission.[12] וְאִם הוּקְשׁוּ לִזְרַע – **However, if** the stalks of **[the cress]** plants **became hard** enough **for the seeds** to have ripened,[13] אֲפִילּוּ דְּבֵי כִּתְנָא נַמִּי – **even those among the flax** יֵשׁ בָּהֶם מִשּׁוּם גֵּזֶל – **are subject to** the prohibition of **theft.** מַאי טַעְמָא – **What is the reason?** מַאי דְּאַפְסִיד אַפְסִיד – Because **whatever he** stands to **lose he has** already **lost.**[14]

The Gemara cites another ruling that Rav Yehudah taught Ravin:

אָמַר לֵיהּ רַב יְהוּדָה לְרָבִין בַּר רַב נַחְמָן – **Rav Yehudah said to**

NOTES

1. It is evident from Rabban Shimon ben Gamliel's ruling about the Purim money that one may unilaterally make a change in an agreement when that change does not cause a loss to the other party. This is because we assume that the other party does not mind the change (*Rashi*). Why then may the *chocheir* not plant a crop other than the one agreed upon? Since he will give the landowner the same rental payment in any case, the landowner should not mind the change.

2. Abaye's teacher, who raised him [after he was orphaned] (*Rashi*).

3. Either of these changes diminishes the field's ability to produce crops (*Rashi*; see next note).

4. For example, if the landowner had instructed the *chocheir* to plant wheat, that might be because the land produced wheat in the previous year. Were the *chocheir* to plant barley now, he would damage the field (*Rashi*).

Tosafos object to *Rashi's* explanation because it is generally considered beneficial to a field to rotate its crops from year to year (see *Bava Basra* 56b). They therefore understand Rabbah bar Nachmeini to be advising how to care for a field without resorting to leaving it fallow for a year of rest. His advice is to plant different crops each year – one year wheat and the next year barley. [According to *Tosafos,* the phrase דְּתִתְבּוֹר אַרְעֵיהּ should be translated: *to make his field fallow* i.e. to benefit his field in the same way that leaving it fallow would).] Accordingly, the concern about the *chocheir* changing crops is the opposite of that stated by *Rashi*. That is, the *chocheir* may not change the crop because this might result in planting the *same* crop as the one planted the previous year, thereby harming the field.

5. *Rashi*; cf. *Rashash.*

6. Therefore, in such a case Rabban Shimon ben Gamliel would not prohibit the farmer from planting a crop other than the one stipulated by the landowner (see *Tosafos*).

7. This follows *Rashash's* understanding of *Rashi.* See there for an alternative explanation of our Gemara.

8. The Mishnah refers to Eretz Yisrael, which is a mountainous country, and where the concern for soil depletion is consequently greater. Rav Yehudah, however, notes that in Babylonia this is not a problem, because the low-lying land there is [periodically] submerged in marsh water [which replenishes the soil]. Consequently, the slightly greater depletion of the soil caused by planting beans rather than grain is not a concern, and the Tanna Kamma would therefore permit a *chocheir* in Babylonia to change even from grain to beans. Rabban Shimon ben Gamliel would still disagree, because planting the wrong crop could damage the fertility of the field even in Babylonia, as just explained (*Rashi*).

[According to this explanation, Rav Yehudah would apparently hold the same about the Tanna Kamma's first ruling prohibiting a *chocheir* to switch from barley to wheat. According to Rav Yehudah this is forbidden only in Eretz Yisrael but not in Babylonia (see *Lechem Mishneh, Hil. Sechirus* 8:9; *Rashash*).]

9. This begins a series of digressions. The Gemara will not return to the topic of leasing fields until it begins its explanation of the next Mishnah on 109a.

10. This expression is meant figuratively. Ravin bar Rav Nachman could not have been Rav Yehudah's brother, since Rav Yehudah's father's name was Yechezkel. It may be for this reason that the Gemara mentions the name of Ravin's father in this case, though it did not do so in the previous case (*Kos HaYeshuos*).

11. Cress causes more damage to flax than the cress plants are worth. Hence, one who takes these plants away is benefiting the owner [and it may therefore be assumed that the owner is agreeable to having them removed]. Thus, there is no prohibition against taking them (*Rashi*; see *Choshen Mishpat* 273:17). This also assumes that the damage caused by walking on the field does not exceed the damage to the flax caused by the cress (*Meiri*).

12. If the cress plants grow along the edges of the flax field, but not among the flax itself, they do not harm the flax. Taking the cress is therefore prohibited as theft [since there is no reason for the owner to allow them to be taken] (*Rashi*).

13. [Based on *Rashi* to *Eruvin* 28a.] That is, the cress plants were fully grown (*Rashi*).

14. Once the cress plants mature, the damage to the flax is already done.

Ravin bar Rav Nachman: רָבִין אָחִי – **Ravin, my brother,** הֲנֵי דִּילֵי דִּילָךְ – the fruits of some of **these** trees **of mine are** actually **yours,** וְדִילָךְ דִּילֵי – **and** the fruits of some **of your** trees **are** actually **mine.**[15] נָהוּג בְּנֵי מְצָרָא – This is because **it is the custom of people who share a boundary** אִילָן הַנּוֹטֶה לְכָאן לְכָאן – to treat the fruits of **a tree** whose roots are **turned** entirely **to this side** as belonging **to this side,** וְהַנּוֹטֶה לְכָאן לְכָאן – **and** to treat the fruits of **[a tree]** whose roots are **turned** entirely **to that side** as belonging **to that side.**[16]

The source of this ruling is presented:

דְּאִיתְּמַר – **For it was taught:** אִילָן הָעוֹמֵד עַל הַמֵּיצַר – Regarding **a tree that stands on the boundary** between two fields, אָמַר רַב – **Rav said:** הַנּוֹטֶה לְכָאן לְכָאן – **[The tree]** whose roots are **turned to this side,** its fruits belong **to this side,** וְהַנּוֹטֶה לְכָאן לְכָאן – while **[the tree]** whose roots are **turned to that side,** its fruits belong **to that side.** וּשְׁמוּאֵל אָמַר חוֹלְקִין – **But Shmuel said: They divide** the fruits evenly.[17]

The Gemara objects to the ruling of Rav:

מֵיתִיבִי – **They challenged** this **from a Baraisa:** אִילָן הָעוֹמֵד עַל הַמֵּיצַר – If A TREE IS STANDING ON THE BOUNDARY between two fields, יַחְלוֹקוּ – THEY SHOULD DIVIDE the fruits evenly. But according to Rav, ownership of the fruits should depend on where the roots are found! תְּיוּבְתָּא דְּרַב – **This** would seem to be **a refutation of Rav.** – ? –

The Gemara defends Rav:

תַּרְגְּמָא שְׁמוּאֵל אַלִּיבָּא דְּרַב – **Shmuel interpreted** this Baraisa **according to Rav's** view as referring to a case בִּמְמַלֵּא כָּל הַמֵּיצַר כּוּלּוֹ – **where [the tree] fills the entire boundary completely,** with the roots growing into both fields.[18]

The Gemara questions this explanation:

אִי הָכִי – **If this is so,** מַאי לְמֵימְרָא – **what** need **is** there **to state** this ruling? It is obvious! – ? –

The Gemara answers:

לֹא צְרִיכָא דְּתָלֵי טוּנְיֵהּ לְחַד גִּיסָא – **[The Baraisa] is needed only** to teach the law in a case **where the load** of fruit **is hanging to one side.**[19]

The Gemara asks that this too is obvious:

וְאַבַּתְּי מַאי לְמֵימְרָא – **But still, what** need **is** there for the Baraisa **to say** this ruling?[20]

The Gemara answers:

דְּאָמַר לֵיהּ פְּלוֹג הָכִי – **You might have thought** מַהוּ דְּתֵימָא – **that he** [the owner with the fruits hanging on his side] **can say to [his neighbor], "Divide** the fruits **like this,"** i.e. along the line of the border.[21] קָא מַשְׁמַע לָן – **[The Baraisa]** therefore **informs us** דְּאָמַר לֵיהּ – **that [the other owner] can reply to him,** מַאי חָזֵית דְּפָלְגַתְּ הָכִי – **"What** reason **do you see to divide** it **this way,** along the line of the border, so that you receive most of the fruits? פְּלוֹג הָכִי – Let us rather **divide** the tree **that way,"** by drawing a line through the tree perpendicular to the border, so that the portions will be equal.[22]

The Gemara cites yet another statement that Rav Yehudah made to Ravin:

אָמַר לֵיהּ רַב יְהוּדָה לְרָבִין בַּר רַב נַחְמָן – **Rav Yehudah said to Ravin bar Rav Nachman:** רָבִין אָחִי – **Ravin, my brother,** לֹא תִּזְבִּין אַרְעָא דְּסָמִיכָא לְמָתָא – **do not buy a field that is close to town** because crops in such a field are prone to being damaged.[23] דְּאָמַר רַבִּי אַבָּהוּ אָמַר רַב הוּנָא אָמַר רַב – **For R' Abahu said in the name of Rav Huna, who said in the name of Rav:** אָסוּר לוֹ לְאָדָם שֶׁיַּעֲמוֹד עַל שְׂדֵה חֲבֵירוֹ בְּשָׁעָה שֶׁעוֹמֶדֶת – **It is forbidden for a person to stand at his fellow's field during the time it displays a standing crop,** בְּקָמוֹתֶיהָ – so that one should not cast an evil eye upon it.[24] Since gazing enviously at a successful crop can cause it to be damaged by an evil eye, it is inadvisable to buy a field near a town, where passersby are more common.

NOTES

Since there is no longer any benefit to the owner in uprooting the cress, if someone takes it he is guilty of stealing (*Rashi*).

15. The fields of Rav Yehudah and Ravin were adjacent to one another, with a raised border marking the boundary between them. Trees grew out of the top of the raised boundary and [it could be seen that] the roots of some of the trees had grown entirely into the land on one side of the border, while the roots of others had grown entirely into the land on the other side of the border. [Presumably, the fact that the border was elevated contributed to this phenomenon, since the narrowness of the elevated border prevented the roots from radiating out horizontally in their customary manner. In growing down, the roots of some trees ended up entirely to one side of the border or the other.] Rav Yehudah explained to Ravin that any fruits growing on such a tree actually belong to the owner of the field from which the tree receives its nourishment – even if the trunk of the tree stands entirely on the other neighbor's half of the elevated border (*Rashi*). [We have explained *Rashi* as it is cited by *Tosefos HaRosh and Shitah Mekubetzes. Tosafos,* however, understand *Rashi* to mean that the trees are growing entirely in one field or the other, not on the border. *Tosafos* dispute *Rashi's* interpretation and explain the Gemara in an entirely different manner.]

16. Thus, the fruits belong to the owner of the field in which the roots are found (*Rashi*).

The Gemara in *Bava Basra* (27b) states that when Joshua distributed the Land of Israel to the Jewish people he instituted that the fruits of a tree whose roots extend into another field should be considered as belonging entirely to the field in which the tree stands. This does not contradict the Gemara here, because the Gemara there refers to a case where the tree has many roots in the field in which it stands, but some roots extend into the neighboring field. Where *all* the roots grow into another field, Joshua's enactment does not apply, and the fruit is considered to belong to the field from which its roots draw their sustenance (*Rashash* there in explanation of *Rashi*).

17. Rav Yehudah thus followed the local custom in ruling in accordance with Rav's view (see *Bach, Choshen Mishpat* 167:2). According to Shmuel, though, the placement of the roots is irrelevant. Rather, the elevated boundary is viewed as a jointly owned property, and the neighbors who share it therefore divide the fruits between them (*Gidulei Shmuel*).

18. *Rashi.* Since the tree is nourished by both fields, the owners divide the fruits equally even according to Rav.

19. [Most of] the tree's branches and fruits hang over one of the fields (*Rashi*). It could therefore be thought that the owner of that field should have an advantage over the other owner. The Baraisa must therefore teach that the owners divide the fruits equally.

20. [In this case it should also be obvious that the two owners divide the fruits equally, since the tree still receives its nourishment from both fields equally.]

21. [That is, since the tree draws nourishment from both fields, it should be divided along the line dividing the two fields.] Thus, each owner should receive the fruit hanging over his own field (*Rashi*).

22. [The fact that the tree draws its nourishment from both fields makes the two neighbors partners in the tree but it does not dictate that the tree should be divided along the line of their common border. The rights to the fruit derive not from the location of the tree but from the sources of its sustenance, and there is therefore no more reason to divide the fruit along the line of the border than along a line perpendicular to the border.]

23. When a field is close to a town, the townspeople constantly walk by the field (*Rashi*). Since this is not conducive to a good crop, as Rav Yehudah now explains, it is not advisable to buy such a field.

24. By casting an evil eye (*ayin hara*) on the field, one can cause it to suffer a loss (*Rashi;* see above, 84a note 16). Thus, if one purchases a field near a town, he subjects himself to the increased possibility of having people look at his field with an evil eye.

The Gemara objects:

אינִי – **Is this** indeed **so?** וְהָא אַשְׁכַּחִינְהוּ רַבִּי אַבָּא לְתַלְמִידֵיהּ דְּרַב – **But R' Abba** once **encountered the disciples of Rav.** אָמַר לְהוּ – **He said to them:** מַאי אָמַר רַב בַּהֲנֵי קְרָאֵי – **What did Rav say about these** following two **verses:** ״בָּרוּךְ אַתָּה בָּעִיר וּבָרוּךְ אַתָּה בַּשָּׂדֶה״ – ***Blessed shall you be in the city, blessed shall you be in the field;*** ״בָּרוּךְ אַתָּה בְּבֹאֶךָ וּבָרוּךְ אַתָּה בְּצֵאתֶךָ״ – ***blessed shall you be when you come in, blessed shall you be when you go out?***[25] וְאָמְרוּ לֵיהּ הָכִי אָמַר רַב – **And [the disciples] replied to [R' Abba]: This is what Rav said:** ״בָּרוּךְ אַתָּה בָּעִיר״ – ***Blessed shall you be in the city*** – שֶׁיְּהֵא בֵּיתְךָ סָמוּךְ לְבֵית הַכְּנֶסֶת – **that your house will be close to a synagogue.**[26] ״בָּרוּךְ אַתָּה בַּשָּׂדֶה״ – ***Blessed shall you be in the field*** – שֶׁיִּהוּ נְכָסֶיךָ קְרוֹבִים לָעִיר – **that your property will be close to the city.**[27] ״בָּרוּךְ אַתָּה בְּבֹאֶךָ״ – ***Blessed shall you be when you come in*** – שֶׁלֹּא תִּמְצָא אִשְׁתְּךָ סָפֵק נִדָּה בְּשָׁעַת בִּיאָתְךָ מִן הַדֶּרֶךְ – **that you will not find your wife a possible *niddah* when you come** home **from the road.**[28] ״בָּרוּךְ אַתָּה בְּצֵאתֶךָ״ – ***Blessed shall you be when you go out*** – שֶׁיִּהוּ צֶאֱצָאֶיךָ מֵעֶיךָ כְּמוֹתְךָ – **that your offspring will be like you.**[29] We see from Rav's exposition of the first verse that it is considered a blessing for one's fields to be located near the city. Why then did Rav Yehudah advise against buying a field near the city?

Before reconciling the contradiction, the Gemara concludes the narrative of the encounter between R' Abba and the disciples of Rav:

וְאָמַר לְהוּ – **And [R' Abba] said to [the disciples]:** רִ' יוֹחָנָן לֹא אָמַר הָכִי – **R' Yochanan did not interpret** the verses **in this manner.** אֶלָּא – **Rather,** he interpreted them as follows: ״בָּרוּךְ אַתָּה בָּעִיר״ – ***Blessed shall you be in the city*** – שֶׁיְּהֵא בֵּית הַכִּסֵּא סָמוּךְ לְשׁוּלְחָנְךָ – **that there will be a privy close to your** home and **table.**[30] אֲבָל בֵּית הַכְּנֶסֶת לֹא – **But** according to R' Yochanan, **a synagogue** near one's home is **not** a blessing. וְרַבִּי יוֹחָנָן לְטַעֲמֵיהּ דְּאָמַר שְׂכַר פְּסִיעוֹת יֵשׁ – **And** in this **R' Yochanan is following his** own **reasoning,** which he stated elsewhere; **for he said that there is reward for the steps** that one takes to go to the synagogue.[31] Therefore, it is in a person's best interest that the synagogue not be too close to his home. ״בָּרוּךְ אַתָּה בַּשָּׂדֶה״ – R' Yochanan interpreted the continuation of the verse as follows: ***Blessed shall you be in the field*** – שֶׁיִּהוּ נְכָסֶיךָ מְשׁוּלָּשִׁין – **that your property will be divided in thirds:** שְׁלִישׁ בְּתִבּוּאָה שְׁלִישׁ בְּזֵיתִים וּשְׁלִישׁ בְּגֶפָנִים – **a third in grain, a third in olives, and a third in vines.**[32] ״בָּרוּךְ אַתָּה בְּבֹאֶךָ וּבָרוּךְ אַתָּה בְּצֵאתֶךָ״ – The second verse – ***Blessed shall you be when you come in, blessed shall you be when you go out*** – R' Yochanan interpreted as follows: שֶׁתְּהֵא יְצִיאָתְךָ מִן הָעוֹלָם כְּבִיאָתְךָ לָעוֹלָם – **That your departure from the world will be like your arrival in the world:** מַה בִּיאָתְךָ לָעוֹלָם בְּלֹא חֵטְא – **Just as your arrival in the world** was **without sin,** אַף יְצִיאָתְךָ מִן הָעוֹלָם בְּלֹא חֵטְא – **so your departure from the world** shall be **without sin.**[33]

NOTES

25. *Deuteronomy* 28:3,6. This section describes the blessings that will come to the Jewish nation when they follow God's commandments. The blessings mentioned in this passage cover all aspects of life. R' Abba therefore asks what the generalized blessings found in these two verses add to the other more specific ones (*Maharsha*).

26. [I.e. you will be blessed by having a synagogue nearby.] Most synagogues in ancient times were located outside the town. It is therefore a special benefit to live in a town that contains a synagogue within its borders (*Maharsha*).

27. I.e. your fields will be located close to the city, so that it will not be too much trouble to bring in the produce (*Rashi*). This apparently contradicts the statement made by Rav Yehudah above: For here Rav considers it a blessing to own a field close to the town, while Rav Yehudah previously recommended – based on a ruling of Rav – that people not purchase a field close to town. Before addressing this problem, the Gemara first completes Rav's exposition of these verses.

28. [I.e. that you will return from a journey and find your wife permitted to you.] This blessing obviously includes that you will not find your wife to be a certain *niddah* (*Rashi*; see *Yad David*). *Rashi* to *Sanhedrin* (103a), however, understands this blessing to be referring specifically to a doubtful *niddah*. It is more difficult for a person to reconcile himself to his wife being a doubtful *niddah* than to her being a certain *niddah* because when her status is only doubtful, the husband feels that he may be abstaining from his wife needlessly (see also *Tos. HaRosh* and *Maharshal* here).

29. Literally: the ones that go out from your innards. *Maharsha* notes that a similar blessing is found in Tractate *Taanis* (6a), where Rav Yitzchak said to Rav Nachman, "With what shall I bless you? Shall I bless you with knowledge of Torah? Why, you already have knowledge of Torah. With wealth? Why, you already have wealth. With children? Why, you already have children. Therefore, this is my blessing: יְהִי רָצוֹן שֶׁיִּהוּ צֶאֱצָאֶיךָ מֵעֶיךָ כְּמוֹתְךָ, *May it be the will [of God] that your offspring will be like you.*"

30. Although the blessing is actually to have a privy close to the house (not table), R' Yochanan's mention of "table" alludes to the importance of a person having a privy at hand to be able to relieve himself just before and after eating. The Gemara in *Shabbos* (41a) advises against eating when one needs to relieve himself. Also, it often happens that the food ingested in a meal creates pressure on the intestinal tract and causes a person to have to relieve himself immediately afterwards. The strain of having to wait until one reaches a distant outhouse can harm a person (*Rashi*).

31. This refers to an incident in Tractate *Sotah* (22a) where R' Yochanan quotes a certain widow who preferred to come and pray in his study hall rather than the synagogue close by her home in order to receive reward for walking the additional distance (*Rashi*). Thus, having to walk further to reach a synagogue increases one's merit and reward.

32. This is advisable because some years are bad for vines and olive trees but not for grain, and vice versa. Thus, diversifying the crop ensures that there will always be food to eat (*Rashi*; cf. *Maharsha*).

33. This is derived from the sequence of the blessing. Normally a person leaves his house first and then returns. It would therefore have been more appropriate for the verse to reverse the order and bless the Jews when they go out and then when they return. Because of this, R' Yochanan interprets the blessing to refer not to the daily comings and goings, but to the great coming and going of life itself (*Mizrachi*, cited by *Maharsha*).

The Gemara reconciles the two statements of Rav:

לֹא קַשְׁיָא – **This is not a difficulty:** הָא דְּמְהַדַּר לֵיהּ שׁוּרָא וְרִתְקָא – **This** statement of Rav regarding the benefit of owning a field near a town **is** referring to a case **where [the owner] surrounds [his field] with a wall and a hedge** to keep people from seeing in; הָא דְּלָא מְהַדַּר לֵיהּ שׁוּרָא וְרִתְקָא – whereas **this** statement of Rav Yehudah advising not to buy a field near a town **is** referring to a case **where [the owner] does not** intend to **surround [the field] with a wall and a hedge.**[1]

The Gemara digresses to discuss another statement of Rav about the danger of an evil eye:

וְהֵסִיר ה׳ מִמְּךָ כָּל־חֹלִי״ – The verse states: ***HASHEM will remove from you all illness.***[2] אָמַר רַב – **Rav said** in explanation: זוּ עַיִן – **This** refers to **the** evil **eye,** which is the source of all illness.[3] רַב לְטַעְמֵיהּ – **Rav** said this **in accordance with his own opinion,** which he stated elsewhere. דְּרַב סָלִיק לְבֵי קְבָרֵי – **For Rav** once **went up to a cemetery,** עָבַד מַאי דְּעָבַד – where **he did whatever he did**[4] and discovered the cause of death of each person buried there. אָמַר תִּשְׁעִין וְתִשְׁעָה בְּעַיִן רָעָה – After completing his investigation, **he stated that ninety-nine** out of a hundred die **from an evil eye,** וְאֶחָד בְּדֶרֶךְ אֶרֶץ – **and** only **one from natural causes.**[5]

The Gemara cites another explanation of the verse:

וּשְׁמוּאֵל אָמַר – **But Shmuel said:** זֶה הָרוּחַ – **This** verse refers to **wind,** which is the source of all illness.[6] שְׁמוּאֵל לְטַעְמֵיהּ – And **Shmuel is consistent with his opinion** stated elsewhere. דְּאָמַר שְׁמוּאֵל – **For Shmuel said:** הַכֹּל בָּרוּחַ – **All** sickness and death come about **through the wind.**

Shmuel's statement is questioned:

וְלִשְׁמוּאֵל – **Now, according to Shmuel,** is it true that all deaths result from wind? הָא אִיכָּא הֲרוּגֵי מַלְכוּת – **But there are those who are killed by the government!**[7] – ? –

The Gemara answers:

הָנָךְ נַמִּי – For **these as well,** אִי לָאו זִיקָא – **if not for the wind** that blows on the wound, עָבְדֵי לְהוּ סַמָּא וְחָיֵי – **they could apply a medicine to it and it would heal.**[8]

The Gemara presents an alternative interpretation of the blessing of the verse:

רַבִּי חֲנִינָא אָמַר – **R' Chanina said:** זוּ צִינָּה – **This** verse refers to **the cold.** דְּאָמַר רַבִּי חֲנִינָא – **For R' Chanina said:** הַכֹּל בִּידֵי חוּץ מִצִּנִּים פְּחִים שָׁמַיִם – **Everything is in the hands of Heaven – except for cold drafts;**[9] שֶׁנֶּאֱמַר – **for it is stated:** ״צִנִּים פַּחִים בְּדֶרֶךְ עִקֵּשׁ שׁוֹמֵר נַפְשׁוֹ יִרְחַק מֵהֶם״ – ***Cold drafts [blow] in the path of a crooked person; one who guards his soul will distance [himself] from them.***[10]

The Gemara presents yet another interpretation of the verse:

רַבִּי יוֹסִי בַּר חֲנִינָא אָמַר – **R' Yose bar Chanina said:** זוּ צוֹאָה – **This** refers to excessive **bodily secretions.** דְּאָמַר מָר – **For the master said:** צוֹאַת הַחוֹטֶם וְצוֹאַת הָאוֹזֶן – **Secretions of the nose and secretions of the ear,** רוּבָן קָשֶׁה – **an excess of them is hard** on a person, וּמִיעוּטָן יָפֶה – **but a small amount of them is beneficial.** Thus, God's promise to remove *all* illness is a promise to remove even these minor illnesses.

The Gemara presents one last interpretation of the verse:

רַבִּי אֶלְעָזָר אָמַר – **R' Elazar said:** זוּ מָרָה – **This is** referring to **the gall bladder.** God will protect against the many diseases caused by the excess of bile secreted by the gall bladder.[11]

The Gemara proves that the gall bladder is associated with all types of illness:

תַּנְיָא נַמִּי הָכִי – **This was taught in a Baraisa as well:** ״מַחֲלָה״ – The Torah states that God will remove ***SICKNESS.***[12] זוּ מָרָה – THIS IS referring to the bile of THE GALL BLADDER. וְלָמָּה נִקְרָא שְׁמָהּ מַחֲלָה – AND WHY IS IT CALLED "SICKNESS"? שֶׁהֲיֵא מַחֲלָה כָּל גּוּפוֹ שֶׁל אָדָם – BECAUSE IT MAKES THE ENTIRE BODY OF A PERSON SICK. דָּבָר אַחֵר – ANOTHER INTERPRETATION: מַחֲלָה – It

NOTES

1. If the person builds a wall around his field, a field close to town is advantageous, since he has the benefit of being able to easily transport the produce to town without the danger of an evil eye, since no one can see the grain growing in the field. But if the person does not plan on closing off the field from view, it is not advisable that he buy near town, because the danger of an evil eye outweighs the benefit of easy transportation. [See responsum of *Rambam* to the Sages of Lunel, cited by *Migdal Oz* to *Hil. Shecheinim* 2:16.]

2. *Deuteronomy* 7:15.

3. Rav understands the terms כָּל־חֹלִי to mean that God will rid us of the source of all illness – i.e. the evil eye (*Rashi*; cf. *Toras Chaim*).

4. Rav knew an incantation that enabled him to stand over a grave and discern the cause of the person's death. He thereby determined how many people had lived a full life and how many died early as a result of an evil eye (*Rashi*). Others explain that Rav inquired in a dream regarding the cause of each person's death (see *Aruch,* cited in the margin of our Gemara). [See *Maharal, Be'er HaGolah* 2, for a discussion of why Rav's investigation was not forbidden as a form of כִּישּׁוּף, *sorcery*.]

[The Gemara states that Rav "went up" to the cemetery because cemeteries were usually established on high ground to allow for proper drainage (*Ben Yehoyada*).]

5. Literally: the way of the land. [For a discussion of the "evil eye," see above, 84a note 16.]

6. According to Shmuel, illnesss and death are the result of different winds to which people are susceptible at certain times, according to their natures (*Rashi*).

7. And these people are killed by sword (*Rashi*). How can their deaths be attributed to wind?

[This poses no difficulty to Rav's interpretation, though, because Rav admits that a small percentage of people die from causes other than an evil eye. But Shmuel said that *everyone* dies from the wind (see *Yad David*). According to the second explanation of the "evil eye" cited in 84a note 16, this question poses no difficulty for Rav because people may indeed die of a variety of physical causes, but the evil eye is the spiritual factor that brought about their downfall.]

8. Certain herbs can cause cut flesh to grow back together (see *Bava Basra* 74b). If not for the effects of the wind on the wound, the person could be healed with the proper herbs (*Rashi*).

9. *Rashi*; cf. *Rashi* to *Kesubos* 30a and *Avodah Zara* 3b, and *Tosafos* here. Any sickness or pain that befalls a person is decreed by Heaven. But someone can become sick from a cold wind by carelessly exposing himself to it (*Rashi* to *Kesubos* ibid; cf. *Tosafos* there). Unlike Shmuel, who previously stated that any wind can cause illness, R' Chanina is of the opinion that only a cold wind is harmful (*Rashi*). According to him, the blessing in *Deuteronomy* means that God will remove even this source of illness.

10. *Proverbs* 22:5. Since the verse advises one who takes care of his health to stay away from a cold wind, it is apparent that protection from the cold is in the hands of a person, as R' Chanina stated.

[It is important to note that R' Chanina is not interpreting the verse in *Deuteronomy* as Rav and Shmuel did. They understood the phrase כָּל־חֹלִי to mean that God will remove the source of *all* illness – whether the evil eye or the wind. R' Chanina, however, clearly does not consider cold draughts to be the source of all illness. Accordingly, he must be explaining the verse to mean that God will protect the Jews *even* from cold draughts, which is something they should really do for themselves. He will remove this source of sickness by assuring that it does not get cold enough to be dangerous (see *Tosafos* to *Kesubos* 30a and *Maharsha* here).]

11. When the gall bladder produces an excess of bile, it spreads throughout the body, making the person ill (*Rashi*; see also *Rashi* to *Sotah* 5a ד״ה אדם).

12. *Exodus* 23:25. The Gemara will cite this verse below.

is called *"MACHALAH,"* which has a numerical value of eighty-three,[13] שֶׁשְּׁמוֹנִים וּשְׁלֹשָׁה חֳלָאִים תְּלוּיִן בַּמָּרָה – BECAUSE EIGHTY-THREE SICKNESSES ARE ASSOCIATED WITH THE GALL BLADDER. וְכוּלָּן – AND for ALL OF THEM, פַּת שַׁחֲרִית בְּמֶלַח – eating MORNING BREAD WITH SALT[14] וְקִיתּוֹן שֶׁל מַיִם – AND drinking A PITCHER OF WATER[15] מְבַטֵּלְתָּן – serves to NEUTRALIZE THEM.

The Gemara digresses further, stating other advantages of eating bread in the morning:

תָּנוּ רַבָּנָן – **The Rabbis taught in a Baraisa:** שְׁלֹשָׁה עָשָׂר דְּבָרִים נֶאֱמְרוּ בְּפַת שַׁחֲרִית – THIRTEEN THINGS WERE SAID ABOUT eating MORNING BREAD: מַצֶּלֶת מִן הַחַמָּה וּמִן הַצִּנָּה – IT SAVES a person FROM HEAT AND FROM COLD,[16] וּמִן הַזִּיקִין וּמִן הַמַּזִּיקִין – FROM WINDS[17] AND FROM DEMONS;[18] וּמַחְכִּימַת פֶּתִי – IT MAKES WISE THE FOOLISH;[19] וְזוֹכָה בַּדִּין – it MAKES ONE SUCCESSFUL IN LITIGATION;[20] לִלְמוֹד תּוֹרָה וּלְלַמֵּד – it helps one TO STUDY TORAH AND TO TEACH it;[21] וּדְבָרָיו נִשְׁמָעִין – ONE'S WORDS ARE HEARD;[22] וְתַלְמוּדוֹ מִתְקַיֵּים בְּיָדוֹ – HIS LEARNING REMAINS WITH HIM;[23] וְאֵין בְּשָׂרוֹ מַעֲלֶה הֶבֶל – HIS FLESH DOES NOT PRODUCE excessive SWEAT;[24] וְנִזְקָק לְאִשְׁתּוֹ וְאֵינוֹ מִתְאַוֶּה לְאִשָּׁה אַחֶרֶת – HE JOINS WITH HIS WIFE AND thereby DOES NOT DESIRE ANOTHER WOMAN;[25] וְהוֹרֶגֶת כִּינָּה שֶׁבִּבְנֵי מֵעַיִם – AND [THE BREAD] KILLS WORMS[26] IN THE INTESTINES. וְיֵשׁ אוֹמְרִים – AND SOME SAY that אַף מוֹצִיא אֶת הַקְּנָאָה וּמַכְנִיס אֶת הָאַהֲבָה – [MORNING BREAD] ALSO helps to EXPEL JEALOUSY AND BRING IN FRIENDLINESS.[27]

The Gemara seeks a Biblical source for the virtues of eating morning bread:

אָמַר לֵיהּ רַבָּה לְרָבָא בַּר מָרִי – **Rabbah said to Rava bar Mari:** מְנָא הָא מִילְתָא דְּאָמְרִי אִינָשֵׁי – **From where** in Scripture can we learn **this saying of people:** שִׁיתִּין רָהִיטֵי רָהוּט – **"Sixty runners ran** וְלֹא מָטוּ לְגַבְרָא דְּמִצְּפְּרָא כָּרֵךְ – **but did not catch the person who broke bread in the morning";** וְאָמְרִי רַבָּנָן – **and** that which **the Rabbis said** in a similar vein:[28] הַשְׁכֵּם וְאֱכוֹל בַּקַּיִץ מִפְּנֵי הַחַמָּה – **"Eat early in the day**[29] **in the summer because of the heat,** וּבַחוֹרֶף מִפְּנֵי הַצִּינָּה – **and in the winter because of the cold"?**

Rava bar Mari replies:

אָמַר לֵיהּ – **He said to [Rabbah]:** דִּכְתִיב – **For it is written:** ״לֹא יִרְעֲבוּ וְלֹא יִצְמָאוּ וְלֹא־יַכֵּם שָׁרָב וְשָׁמֶשׁ״ – ***They shall not hunger nor thirst; and the heat and sun shall not strike them;***[30] לֹא יַכֵּם שָׁרָב וְשָׁמֶשׁ – **the heat and sun shall not strike them,** בֵּינָן דְּלֹא יִרְעֲבוּ וְלֹא יִצְמְאוּ – **because they will not hunger nor thirst,** having eaten bread and water in the morning.[31]

Rabbah suggests another source:

אָמַר לֵיהּ – **He said to [Rava bar Mari]:** אַתְּ אֲמַרְתְּ לִי מֵהָתָם – **You have told me** a source **from there,** וַאֲנָא אֲמִינָא לָךְ מֵהָכָא – **and I will tell you** a source **from here:** ״וַעֲבַדְתֶּם אֵת ה׳ אֱלֹהֵיכֶם וּבֵרַךְ אֶת־לַחְמְךָ וְאֶת־מֵימֶיךָ״ – ***You shall serve HASHEM your God, and He will bless your bread and your water.***[32] This passage is interpreted as follows: ״וַעֲבַדְתֶּם אֵת ה׳ אֱלֹהֵיכֶם״ – ***You shall serve HASHEM your God,*** זוּ קְרִיאַת שְׁמַע וּתְפִלָּה – **this** refers to **the recitation of *Shema*** and to prayer;[33] ״וּבֵרַךְ אֶת־לַחְמְךָ וְאֶת־מֵימֶיךָ״ – ***and He will bless your bread and your water,*** זוּ פַּת בְּמֶלַח וְקִיתּוֹן שֶׁל מַיִם – **this** refers to **bread with salt and a pitcher of water.** מִכָּאן וְאֵילָךְ – **From here on** the conclusion of the verse applies: ״וְהַסַרְתִּי מַחֲלָה מִקִּרְבֶּךָ״ – ***I will remove illness from your midst.***[34]

The Gemara turns to the discussion of properties alongside a river or canal:

אָמַר לֵיהּ רַב יְהוּדָה לְרַב אַדָּא מְשׁוֹחֲאָה – **Rav Yehudah said to Rav Adda the surveyor:**[35] לֹא תְּזַלְזֵל בְּמִשְׁחָתָא – **Do not treat** your **surveying lightly,** דְּכָל פּוּרְתָּא וּפוּרְתָּא חָזֵי לְבוּרְכְּמָא רֵישְׁקָא –

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13. The numerical value of the word מַחֲלָה is equivalent to eighty-three [מ=40, ח=8, ל=30, ה=5] (see parallel Gemara in *Bava Kamma* 92b).

14. I.e. eating bread in the morning along with salt, and drinking a pitcher of water. [The Gemara below will state a Biblical source for the advantage of eating bread in the morning.] Salt is needed only for bread in which salt is not an ingredient. But if salt has already been added, the bread need not be eaten with salt to gain the benefits of this practice (*Kaf HaChaim* 155:23). See also *Pri Megadim* (*Orach Chaim* §155) for a discussion of whether eating a cooked dish of grain (e.g. oatmeal) suffices or whether it is necessary to eat bread specifically.

15. I.e. for someone who does not have wine to drink (*Rashi*). Wine, however, would be even more beneficial. See *Maharsha* and *Mitzpeh Eisan.*

16. I.e. it fortifies a person against the heat or cold.

17. The wind is harmful, as Shmuel stated above (*Rashi*). Eating bread in the morning fortifies a person's body against the ill effects of the wind.

18. Demons harm a person more easily when he is weak.

19. Since he is not afflicted with hunger, his mind will be settled (*Rashi*; see *Bava Basra* 12b).

20. Since his mind is settled, he can present his arguments to the court in their best light (*Rashi*). Of course, if both litigants ate bread in the morning, both will present their arguments well (*Chidushei Yaavetz*).

21. That is, with a settled mind (*Rashi*).

22. People will accept his statements because he will have the energy to explain them properly (*Rashi*).

23. Literally: his learning is preserved in his hand; i.e. he will not forget the Torah he has learned.

24. I.e. he does not sweat unnecessarily and produce body odor (*Rashi*).

25. If he is a person who is easily affected by the sight of other women, he will engage in conjugal relations with his wife in the morning before going out and thereby quiet his desire during the day. Eating a little in the morning improves a person's mood and puts him in a proper frame of mind to approach his wife (*Rashi*).

26. Literally: louse. Our translation follows *Rashi*.

27. When one is not in good spirits, he becomes easily angered (*Rashi*). By eating bread in the morning, a person's spirits are improved, lessening the chance of his becoming angry at other people and jealous of them.

28. This is among the things that R' Akiva commanded his son on his deathbed (*Rashi*, from *Pesachim* 112a).

29. Literally: arise early and eat.

30. *Isaiah* 49:10.

31. The verse does not promise that there will *not be* heat or sun, only that the heat and sun will not harm them in any way. It is thus interpreted to mean that the heat will not harm them because they will be free of hunger and thirst (*Toras Chaim*).

This verse apparently proves only that the heat will not harm someone who eats in the morning. What proof is there that eating protects from the cold as well? *Maharsha* answers that the term "sun" in this verse actually refers to the winter sun [i.e. sun without heat; since the verse has already listed heat, the "sun" to which the verse refers must represent an affliction other than heat]. The winter day is at its coldest when the sun first appears at sunrise. The verse thus teaches that neither the heat (שָׁרָב) nor the cold (represented by שֶׁמֶשׁ, *the sun*) will harm this person.

32. *Exodus* 23:25.

33. Prayer is called the service of the heart (*Maharsha,* from *Taanis* 2a).

34. [Since the verse speaks of bread and water in the same context as the recitation of *Shema,* it is understood to refer to morning bread, which one eats after praying in the morning. The verse is expounded to mean that if you arise in the morning and serve *Hashem* with *Shema* and prayer, he will bless the bread and water you eat afterwards, and He will thereby remove illness from your midst.]

35. Literally: the measurer. Rav Adda would measure land for the purpose of sales and divisions of estates and partnerships (*Rashi*).

because each and every small parcel of land **is fit for** growing **garden saffron.**[36]

Rav Yehudah gives another ruling about surveying:

אָמַר לֵיהּ רַב יְהוּדָה לְרַב אַדָּא מְשׂוֹחֲאָה – **Rav Yehudah said to Rav Adda the surveyor:** אַרְבַּע אַמּוֹת דְּאַגְּיוּגְרָא זַלְזֵל בְּהוּ – **The four *amos* on the sides of the irrigation canal you should treat lightly;**[37] דְּאַנַּהֲרָא לָא תְּמַשְׁחֵנְהוּ כְּלָל – whereas the four *amos* on the sides **of the river** itself **you should not measure at all.**[38]

The Gemara explains the reason for this ruling:

רַב יְהוּדָה לְטַעְמֵיהּ – **Rav Yehudah follows his reasoning** which he stated elsewhere. דְּאָמַר רַב יְהוּדָה – **For Rav Yehudah said:** אַרְבַּע אַמּוֹת דְּאַגְּיוּגְרָא – Planting **the four *amos*** along the sides **of the irrigation canal** לִבְנֵי אַגְּיוּגְרָא – is harmful only **to the people** who make use **of the irrigation canal;** דְּאַנַּהֲרָא – however, planting the four *amos* along the sides **of the river** דְּכוּלֵּי עָלְמָא – is harmful **to everyone.** The river must therefore be more carefully protected than the irrigation canal.[39]

The Gemara offers another ruling about river banks:

מַכְרִיז רַבִּי אַמִּי – **R' Ami proclaimed:** מְלֹא כִּתְפֵּי נַגָּדֵי – A strip **the width of the bargemen's shoulders**[40] בִּתְרֵי עֲבָרֵי נַהֲרָא – **along both sides of the river** קוֹצוּ – you may **clear** of trees.[41]

The Gemara cites a case illustrative of this ruling:

רַב נָתָן בַּר הוֹשַׁעְיָא קָץ שִׁיתְסַר אַמְּתָא – **Rav Nassan bar Hoshaya** permitted bargemen to **cut down** trees within **sixteen *amos*** of the river.[42] אָתוּ עֲלֵיהּ בְּנֵי מַשְׁרוֹנְיָא דַּפְּנוּהוּ – **The people of Mashronya,** who owned the forest, **came and struck him.**

The Gemara explains the issue:

הוּא סָבַר בִּרְשׁוּת הָרַבִּים – **[Rav Nassan] held** that this area deserves the same width **as a public thoroughfare;** therefore sixteen *amos* must be left clear. וְלָא הִיא – **But this is not so** for the following reason: הָתָם בְּעֵינָן כּוּלֵּי הַאי – **There we need that much** space, to allow the passage of people and vehicles through the public thoroughfares. הָכָא מִשּׁוּם אַמְתּוּחֵי אַשְׁלַיְּיהוּ הוּא – **Here,** however, the need for space along the banks of the river **is on account of** the bargemen **pulling their ropes;** כְּמַלֵּא כִּתְפֵּי נַגָּדֵי סַגִּי – for this, **the width of the bargemen's shoulders suffices.**[43]

The Gemara cites a related incident:

רַבָּה בַּר רַב הוּנָא אַבָּא הֲוָה לֵיהּ הַהוּא אַגּוּדָּא דְּנַהֲרָא – **Rabbah bar Rav Huna had this forest along the banks of a river.** אָמְרוּ לֵיהּ – **[The bargemen] said to him,** נִיקּוֹץ מַר – **"Let the master cut down** the trees." אָמַר לְהוּ – **He replied to them,** קוֹצוּ עִילָּאֵי וְתַתָּאֵי – **"Let those above** me **and below** me **cut down** their trees first, וְהָדַר נִיקּוֹץ אֲנָא – **and then I will cut down** mine."[44]

The Gemara questions Rabbah's conduct:

הֵיכִי עָבִיד הָכִי – **How could he act like this,** וְהָכְתִיב ,,הַתְקוֹשְׁשׁוּ וְקוֹשׁוּ'' – **when it is written: *Search within yourself, and search [others];***[45] וְאָמַר רֵישׁ לָקִישׁ – **and Reish Lakish explained** this to mean: קְשׁוֹט עַצְמְךָ וְאַחַר כָּךְ קְשׁוֹט אֲחֵרִים – First **correct yourself and then correct others.** Rabbah bar Rav Huna should therefore have cut down his trees before requiring others to do so. – ? –

The Gemara answers:

הָתָם אַגָּא דְּבֵי פַּרְזַק רוּפִילָא הֲוָה – **There, the forest** that surrounded the property of Rabbah bar Rav Huna **belonged to the house of Parzak the governor.**[46] וְאָמַר אִי קָיְיצוּ קָיְיצְנָא – **[Rabbah bar Rav Huna]** therefore **said: If they** [the governor's people] **cut down** their trees, **I will cut down** mine, וְאִי לָא קָיְיצוּ – **but if they do not cut down** theirs, אֲמַאי אֵיקּוֹץ – **why should I cut down** mine?[47] דְּאִי מִמַּתְחֵי לְהוּ אַשְׁלַיְּיהוּ – For **if [the bargemen] can pull their ropes** on this side of the river מִסְתַּגִּי לְהוּ – **they will walk** there;[48]

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36. This type is the most valuable species of saffron (*Rashi*). Thus, even the few extra plants that can be grown in a few extra inches of land can generate a modest profit for the owner. Rav Yehudah uses this example to demonstrate how even the smallest parcel of land is important and how exact a surveyor should be in his measurements so as not to cause a loss to one of the parties.

37. This refers to an irrigation canal that extends from the river to the fields in a valley. The owners of the fields through which the canal passes agree not to plant within four *amos* of the canal, so as not to damage its sides. A surveyor would therefore be hired to mark this border along the entire length of the canal. Rav Yehudah states that this strip need not be measured exactly to insure that it is wide enough (*Rashi*; cf. *Tosafos* with *Kos HaYeshuos*).

38. Rather, estimate a strip of land so wide that it will be clearly visible as wide enough to prevent any damage (*Rashi*).

39. The irrigation canal is [a private resource] used by a limited number of people, and they can forgive any damage that results from slight encroachments (*Rashi*). [Consequently, the surveyor does not have to measure the area so carefully.] The river, though, is a public resource and there is no one to forgive damage to the river on behalf of the public (*Rashi*). Accordingly, a surveyor must make sure that the areas on both sides of the river are clearly wide enough to prevent damage to the river.

40. Literally: those that pull (see above, 79b). Barges were pulled upriver with ropes by men walking along the banks of the river (see *Rashi* below ד"ה אי ממתחי).

41. Barge operators are granted the right to clear any trees that impede their ability to pull the barges up the river. Since there are times when they must use one side of the bank or the other, they have a right to clear a strip along both sides of the river (*Rashi*).

42. This is the area granted for a public thoroughfare (*Rashi,* from *Bava Basra* 99b).

43. To avoid being pulled into the river, bargemen pull the ropes at a slight angle to the river with their shoulders bent away from the river rather than parallel to it. They therefore have the right to clear an area the width of their shoulders [in this position] (see *Rashi*).

44. That is, the people who lived upriver and downriver should cut down their trees first (*Rashi*). As long as those areas had not been cleared, Rabbah bar Rav Huna's trees did not impede the path of the bargemen.

45. *Zephaniah* 2:1.

46. Parzak was the Persian governor who owned the forest upriver and downriver of Rabbah bar Rav Huna's property. The bargemen could not cut down those trees, since this governor was not subject to the Jewish law requiring such an action, and it was understood that he would not agree to cut down the trees voluntarily (*Rashi*).

47. Cutting down just the trees of Rabbah bar Rav Huna would accomplish nothing (*Rashi*).

48. That is, the bargemen will use this side of the bank only if they have an unobstructed path (see *Rashi*).

וְאִי לָא – **and if** they are **not** able to pull their ropes on my side of the river because of the governor's trees, לָא מִיסְתַּגִּי לְהוּ – **they will not walk** on my side anyway.[1] Thus, unless the governor agreed to clear his trees, there was no reason for Rabbah bar Rav Huna to cut down his trees.

The Gemara relates the outcome of Rabbah bar Rav Huna's decision:

רַבָּה בַּר רַב נַחְמָן הֲוָה קָא אָזִיל בְּאַרְבָּא – **Rabbah bar Rav Nachman was traveling on a boat.** חָזָא הַהוּא אַבָּא דְּקָאֵי אַגּוּדָּא דִּנְהָרָא – **He saw this forest that was standing along the bank of the river.**[2] אָמַר לְהוּ – **He asked [the bargemen],** דְּמַאן – **"Whose** property is this?" אָמְרוּ לֵיהּ – **They answered him,** דְּרַבָּה בַּר רַב הוּנָא – "It is the property **of Rabbah bar Rav Huna."** אָמַר – **[Rabbah bar Rav Nachman] quoted** this verse with reference to Rabbah bar Rav Huna: ,,וְיַד הַשָּׂרִים וְהַסְּגָנִים הָיְתָה בְּמַעַל הַזֹּה רִאשׁוֹנָה'' – ***Indeed, the hand of the princes and rulers has been first in this faithlessness.***[3] אָמַר לְהוּ קוֹצוּ – **He** then **said to [the bargemen], "Cut down** the trees." קוֹצוּ – **They cut** them **down.**

Rabbah bar Rav Huna reacts:

אַשְׁכְּחֵיהּ אֲתָא רַבָּה בַּר רַב הוּנָא – **Rabbah bar Rav Huna came,** דְּקַיְּיץ – and **he found that [his trees] had been cut down.** אָמַר – **He said:** מַאן קַצֵּייהּ תְּקוֹץ עַנְפֵּיהּ – **Whoever cut them down – may his branches be cut down.**[4] אָמְרִי – **They said:** כּוּלְּהוּ שְׁנֵי דְּרַבָּה בַּר רַב הוּנָא – During **all the years of Rabbah bar Rav Huna** לֹא אִקְּיְּים לֵיהּ זַרְעָא לְרַבָּה בַּר רַב נַחְמָן – **no child of Rabbah bar Rav Nachman's remained** alive.

The Gemara introduces a new topic of discussion:[5]

אָמַר רַב יְהוּדָה – **Rav Yehudah said:** הַכֹּל לְאֵיגְלֵי גַּפָּא – **Everyone** is obligated to contribute **towards the** installation of **gates for the enclosure** of the city;[6] וְאַפִּילּוּ מִיַּתְמֵי – **and** we collect this tax **even from orphans,** for they also need protection, אֲבָל רַבָּנָן לָא – **but not** from **rabbis.** מַאי טַעְמָא – **What is the reason?** רַבָּנָן לָא צְרִיכֵי נְטִירוּתָא – Because **rabbis do not need** human **protection,** since they are protected by the merits of their study of Torah.[7] לְבַרְיָא דְּפַתְיָא – However, everyone is obligated to contribute **towards the digging of a well,**[8] וַאֲפִילּוּ מֵרַבָּנָן – **and** we collect this **even from rabbis,** for they also require drinking water.

Rav Yehudah qualifies this second ruling:

דְּלָא נְפְקָא בְּאוּכְלוֹסָא וְלָא אָמְרָן אֶלָּא – **And** this **was said only when [the townspeople] do not go out in** work **battalions**[9] to dig the well themselves, but hire workers to dig it. In such a case, the rabbis must help bear the expense of the project. אֲבָל לְאוּכְלוֹסָא לָא – **But** if the townspeople go out **in** work **battalions** to dig the well themselves, the rabbis need **not** join, דְּרַבָּנָן לָאו בְּנֵי מִיפַּק בְּאוּכְלוֹסָא נִינְהוּ – **for rabbis are not subject to going out in** work **battalions** to perform manual labor.[10]

The Gemara cites another of Rav Yehudah's rulings about communal responsibility:

אָמַר רַב יְהוּדָה – **Rav Yehudah said:** לְבַרְיָא דְּנַהֲרָא – **For digging out a river** to clear it,[11] תַּתָּאֵי מְסַיְּיעֵי עִילָּאֵי – **the ones downriver must help the ones upriver**[12] clear their section, עִילָּאֵי לָא מְסַיְּיעֵי תַּתָּאֵי – but **the ones upriver need not help the ones downriver** clear out that section of the river.[13] וְחִילּוּפָא בְּמַיָּא דְּמִיטְרָא – **And the opposite** is true **with** regard to cleaning out the drainage ditches that carry away **rainwater.** The residents at the higher end must help the residents at the lower end, while the residents at the lower end do not have to help the residents above them.[14]

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1. Instead, they will use the other, unobstructed side. And since they have to walk on the other side of the river past Parzak's lands, there is no reason for them to cross the river when they reach my property, since Parzak's trees will once again block their path once they pass my property (*Rashi*).

2. This happened to be Rabbah bar Rav Huna's property. Since the governor would not cut down his trees, Rabbah bar Rav Huna left his trees standing (*Rashi*).

3. *Ezra* 9:2. The verse refers to the problem of intermarriage that Ezra found among the first wave of returnees to Israel when he arrived there some twenty-four years after them.

[Rabbah bar Rav Nachman thought that Rabbah bar Rav Huna, who was a leading Rabbinic figure, had not been faithful to Rabbinic law, allowing his trees to grow near the river.] Rabbah bar Rav Nachman did not realize that the property above and below those trees belonged to Parzak the governor (*Rashi*; see *Yad David*).

4. I.e. his children should die (*Rashi*). Since Rabbah bar Rav Huna was not at fault for leaving his trees, he was angered by their unjustifiable destruction (see *Tosafos*). His linkage of the loss of the trees to the loss of progeny was based on the Torah's analogy of the destruction of fruit trees to the loss of life (see *Deuteronomy* 20:19). Thus, Rabbah bar Rav Huna responded that whoever destroyed his trees so wantonly should have his own branches destroyed (*Iyun Yaakov*). [From *Iyun Yaakov* it seems that at least some of these were fruit-bearing trees. The destruction of such life-sustaining trees is considered a grave sin and can be the cause of a person's premature death (see *Bava Kamma* 91b, *Bava Basra* 26a). Accordingly, Rabbah bar Rav Huna was merely articulating the Heavenly view of such matters, not authoring a terrible curse against the person who had wronged him.]

5. This will lead to a discussion of laws concerning people owning land next to rivers.

6. אֵיגְלֵי means *gates* [see *Berachos* 28a], and גַּפָּא means *closure* [see above, 25b]. Everyone must participate to complete the enclosure of the city's walls by installing gates in order to prevent a hostile army from entering the city (*Rashi*; cf. *Rashi's* commentary printed with *Rif*, with *Hagahos Chavas Yair* there).

7. The Torah that one studies protects him, for it is stated (*Proverbs* 6:22): *When you lie down, it will watch over you.* Hence, Torah scholars do not need human protection (*Rashi*).

8. The word פַּתְיָא actually means *drinking cup*. It is used here in a borrowed sense (*Rashi*) [to emphasize the universal need for a well; i.e. everyone must contribute to digging the city's "drinking cup"].

9. Literally: a large force of people. This translation follows *Aruch,* cited in the margin of our Gemara. *Rashi* here also apparently understands the term this way. However, in *Bava Basra* (8a) *Rashi* appears to understand the term as being related to הַכְרָזָה, *public announcement.* See also *Rashi's* commentary printed with *Rif,* and *Nimukei Yosef.*

10. It is not respectful to the Torah for rabbis to dig ditches and wells in public view (*Meiri*). The rabbis are therefore completely exempt and not even required to hire others to go in their stead (see *Nimukei Yosef*; *Yoreh Deah* 243:1).

11. At times the flow of the river is impeded by the buildup of sediment or stones. It is therefore necessary to clear out the river to remove the obstructions (*Rashi*).

12. Literally: the lower ones help the upper ones.

13. When the residents upriver are cleaning out their section of the river, the residents downriver must help because they too benefit from this action, since obstructions upriver prevent the water from flowing properly downriver. Those living upriver, however, do not benefit from the river flowing properly once it passes their fields. In fact, removal of the obstructions downriver is even detrimental to their interests, since it causes the water to flow downriver more quickly, thereby lowering the water level upriver. Thus, the residents upriver have no reason to assist in clearing the lower riverbed (*Rashi*).

14. This refers to a town where the accumulation of rainwater muddies the roads and makes them impassable. To keep the roads functional, the residents dig a ditch to carry the water downhill and outside the town. Therefore, if it becomes necessary to clean the lower section of the ditch, the people higher up must help because it is to their benefit to help the water flow through the ditch and out of the city and not allow it to back up into the higher parts of the town where it would ruin the roads. If, however, the upper section of the drainage ditch becomes

The Gemara supports these two rulings:

תַּנְיָא נַמִּי הָכִי — **This was taught in a Baraisa as well:** חָמֵשׁ גִּנּוֹת הַמְסֻתְּפְקוֹת מַיִם מִמַּעְיָן אֶחָד — If **FIVE GARDENS ARE SUPPLIED WITH WATER FROM ONE STREAM,** וְנִתְקַלְקֵל הַמַּעְיָן — **AND THE STREAM WAS DAMAGED,** so that the water no longer flows from the stream to the gardens downstream, בּוּלָּם מִתְקַנּוֹת עִם הָעֶלְיוֹנָה — the owners of **ALL** the gardens **MUST REPAIR** the damage together **WITH** the owner of **THE UPPER** garden if the damage is located near his garden.[15] נִמְצֵאת הַתַּחְתּוֹנָה מִתְקֶנֶת עִם בּוּלָּן — **IT EMERGES** from this logic **THAT** the owner of **THE LOWEST** garden **MUST REPAIR** damage to the stream together **WITH** the owners of **ANY OF THE [OTHER GARDENS],** וּמִתְקֶנֶת לְעַצְמָהּ — **WHILE** the owner of **[THAT GARDEN] MUST REPAIR BY HIMSELF** any damage affecting just his garden.[16]

וְכֵן חָמֵשׁ חֲצֵרוֹת שֶׁהָיוּ מְקַלְּחוֹת מַיִם לְבִיב אֶחָד — **AND SO** it is with **FIVE COURTYARDS THAT HAD** their rain **WATER RUN OFF INTO ONE DRAINAGE DITCH,** וְנִתְקַלְקֵל הַבִּיב — **AND THE DRAINAGE DITCH BECAME DAMAGED.** בּוּלָּן מִתְקַנּוֹת עִם הַתַּחְתּוֹנָה — The law is that **THEY MUST ALL REPAIR** the damage to the drainage ditch together **WITH** the owner of **THE LOWER** courtyard, if the obstruction is located there.[17] נִמְצֵאת הָעֶלְיוֹנָה מִתְקֶנֶת עִם בּוּלָּן — **IT EMERGES THAT** the owner of **THE UPPER** courtyard **MUST REPAIR** the ditch together **WITH** the owner of **ANY OF THE [OTHER COURTYARDS],** וּמִתְקֶנֶת לְעַצְמָהּ — **WHILE** the owner of **[THAT COURTYARD] MUST REPAIR FOR HIMSELF** any problems affecting just his courtyard.[18]

The Gemara presents another ruling about land ownership near rivers:

אָמַר שְׁמוּאֵל — **Shmuel said:** הַאי מַאן דְּאַחֲזִיק בִּרְקָתָא דְּנַהֲרָא — **One who takes possession** of land **along the banks of a river**[19] חֲצִיפָא הֲוֵי — **is an impudent** person, because he harms the public, סָלּוּקֵי לָא מְסַלְּקִינַן לֵיהּ — but **we do not remove him** from the property.[20] וְהָאִידְנָא דִּקָא כָּתְבִי פָּרְסָאֵי — **However, now that the Persians write** to those taking possession of fields alongside a river, קְנֵי לָךְ עַד מְלֵי צַוָּארֵי סוּסְיָא מַיָּא — **"Acquire for yourself** land into the river **until the water reaches the height of a horse's neck,"** סָלּוּקֵי נַמִּי מְסַלְּקִינַן לֵיהּ — **we** can **even remove one** who later attempts to take possession of the area immediately along the bank, since it has already become the property of the one who earlier paid the tax and received title to it from the Persian authorities.[21]

The Gemara digresses to discuss a related issue:

אָמַר רַב יְהוּדָה אָמַר רַב — **Rav Yehudah said in the name of Rav:** הַאי מַאן דְּאַחֲזִיק בֵּינֵי אַחֵי וּבֵינֵי שׁוּתָּפֵי — **A person who takes possession** of a property located **between** properties owned by **brothers or between** properties owned by **partners** חֲצִיפָא הֲוֵי — **is an impudent** person; סָלּוּקֵי לָא מְסַלְּקִינַן לֵיהּ — but **we do not remove him from** there.[22]

The Gemara cites a dissenting view:

וְרַב נַחְמָן אָמַר — **However, Rav Nachman said:** נַמִּי מְסַלְּקִינַן — **We even remove him** from the land.[23] וְאִי מִשּׁוּם דִּינָא דְּבַר מֶצְרָא — **But if it is** only a claim **based on the right of the adjoining property holder,**[24] לָא מְסַלְּקִינַן לֵיהּ — **we do not remove him.**[25]

The Gemara cites a dissenting view:

אֲפִילּוּ מִשּׁוּם דִּינָא דְּבַר מֶצְרָא — **The Nehardeans say:** נְהַרְדְּעֵי אָמְרֵי — **Even** if his claim is **based on the right of the**

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clogged, those living downhill from the obstruction are not obligated to help repair it, for if the ditch remains clogged in the elevated sections of town, it benefits the people at the bottom by damming the water so it will not reach them (*Rashi*).

15. In this case, the stream benefits the upper fields first and then those below it. Therefore, if the stream becomes blocked above, the owners of all the gardens below must help repair it.

16. If the path from the stream is blocked only at the lowermost garden, that owner must unblock it himself, since the other owners do not benefit from this work (*Rashi*). But if the stream is blocked near any of the upper gardens, the owners of all the lower gardens must assist in the repairs, since they benefit from the unblocking of the stream. This case proves Rav Yehudah's ruling about the clogged river.

17. This ditch carried dirty rainwater out of the courtyards (*Rashi*). Therefore, if it is blocked below, all of the courtyards suffer because the water backs up into them. All the owners must therefore help the residents of the lowermost courtyard repair any blockage there.

18. The person on top must assist in unclogging the ditch wherever the problem arises. However, if it is clogged only at the top, the residents located there have to repair it themselves since they are the only ones who benefit from the unclogging. This case proves Rav Yehudah's second ruling.

19. In Talmudic times, Babylonia was ruled by the Persians (Sassanians, who came to power in Shmuel's lifetime). Under their rule, land was considered ownerless until someone took possession of it and paid the king a land tax [see above, 73b]. Shmuel's statement concerns someone who seized land alongside the edge of the river, in an area used as a wharf (*Rashi*).

20. It is an impudent act for someone to take this land to build upon it or to plant there, because a very wide area along the bank is needed by the public to load and unload barges that travel the river. However, there are no legal means to force him to leave (*Rashi*) [since the government decree is effective, as explained above, 73b note 16].

21. According to this new Persian law anyone who takes land alongside a river acquires land into the river itself, up to the point where the water level is as high as the neck of a horse. However, those who acquired such property generally built their fences some distance back from the river's edge so as not to block the public's ability to use the bank to unload cargo from river barges. Therefore, if someone did take control of the land along the riverbank, and he recessed his fence to allow the public to use the riverfront area as a wharf, should someone else now attempt to seize the land between the fence and the river, we [have the legal means to] evict him, since that land is already owned [even under Persian law] by the first person to take possession of it (*Rashi*; cf. *Tosafos*).

22. Here too, the land in question was available to anyone willing to pay the tax on it. Nevertheless, if the field was located between the properties of two brothers or partners (*Rashi*), it is not proper to grab that field, since they are presumably planning to acquire it for themselves [so as to have their properties adjoin]. Although they delayed doing so until now, this may be only because they felt sure that nobody would have the audacity to try and take the field away from them (*Nimukei Yosef*; cf. *Tosafos* and *Tos. HaRosh*). However, if someone does take the land, we have no legal grounds to remove him.

23. It is considered so despicable to seize a property between the holdings of brothers or partners that we may remove a person that does so from that property (*Tosafos*). This is based on the Torah's injunction (cited below) that people act decently. Where the deviation from the norms of decency is so outrageous, the courts step in and deprive the offender of the property (*Nimukei Yosef*).

24. [Literally: the law of the person of the boundary.] That is, if the case was not one in which a person seized a field that lies between the lands owned by two brothers or partners, but rather one in which the owner of one of the adjoining fields claims that he was planning on taking the land for himself since it is more advantageous for him to buy an adjoining property than one farther away (*Rashi*). Thus, he claims the right of a property holder to be given the first opportunity to acquire any property along his borders.

25. Rav Nachman does not subscribe to the principle that the immediate neighbor has first claim over the land adjoining his field (*Rashi*). Thus, according to Rav Nachman, if someone either seized a field being sold for the land tax, or he purchased a field from a neighbor, the neighboring property holder cannot have him removed to buy the field in his place.

[*Tosafos* disagree with *Rashi's* explanation that Rav Nachman disputes the right of first purchase by the immediate neighbor, because Rav Nachman himself adds a detail about this law in the Gemara below (at the bottom of this *amud*). *Tosafos* therefore explain that Rav Nachman's ruling is applicable only to the particular case under

adjoining property holder we remove one who takes a field next to that of a neighbor who wishes to obtain it, מִשּׁוּם שֶׁנֶּאֱמַר **– because it is stated:** ״וְעָשִׂיתָ הַיָּשָׁר וְהַטּוֹב בְּעֵינֵי ה׳״ – ***You shall do what is right and good in the eyes of HASHEM.***[26]

The Gemara now begins a lengthy discussion of the right of the adjoining property holder:

אָתָא אִימְלִיךְ בֵּיהּ – If **the [prospective buyer] came** and **consulted [the owner of the adjoining property],** אָמַר לֵיהּ אֵיזִיל אֵיזְבּוֹן – and **said to him, "May I go buy** the adjoining field?" וְאָמַר לֵיהּ זִיל זְבוֹן – **and he replied, "Go buy** it,"[27] צָרִיךְ לְמִיקְנָא מִינֵּיהּ אוֹ לָא – **does [the buyer] need to** formally **acquire** the neighbor's first right **from him** to prevent him from later claiming the field **or not?**[28]

The Gemara presents conflicting views:

רָבִינָא אָמַר – **Ravina says:** לָא צָרִיךְ לְמִיקְנָא מִינֵּיהּ – **[The prospective buyer] does not need to acquire** the neighbor's right **from him,** and his oral waiver suffices. נְהַרְדָּעֵי אָמְרִי – **The Nehardeans say:** צָרִיךְ לְמִיקְנָא מִינֵּיהּ – **[The buyer] does need to acquire** the neighbor's right **from him** to prevent him from later claiming the field.[29]

The Gemara rules:

וְהִלְכְתָא צָרִיךְ לְמִיקְנָא מִינֵּיהּ – **The law is that [the buyer] needs to acquire** the neighbor's right **from him** in order to be assured of keeping the field.[30]

The Gemara adds:

הַשְׁתָּא דְּאָמְרַתְּ צָרִיךְ לְמִיקְנָא מִינֵּיהּ – **Now that you have said that [the buyer] needs to** formally **acquire** the right **from [the neighbor],** אִי לָא קָנוּ מִינֵּיהּ – **if he did not acquire** the right **from him,** אִיזְיְקוּר וְזוּל בְּרְשׁוּתֵיהּ – any **increase in** the **value** of the property **or decrease in** its **value** occurs **in the "possession" of [the neighbor].**[31]

More about the right of the adjoining property holder:

זְבַן בְּמֵאָה – If **[the outsider] bought [the land] for one hundred** *zuz,* וְשָׁוֵי מָאתַיִן – **but it is worth two hundred** *zuz,*

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discussion here, where an ownerless field was sold for the land tax. In that case Rav Nachman holds that since the neighbor knew that the adjoining property was for sale by the government, the fact that he did not immediately go and acquire it for himself demonstrates that he was not (at the time) interested in the land. However, in the case of a sale, where the neighbor suddenly discovers that the adjoining field has been sold, even Rav Nachman would agree that he can compel the buyer to sell it to him, since it may very well be that this neighbor had no idea that the field was for sale. (See also *Tos. HaRosh*.)

26. *Deuteronomy* 6:18. This verse teaches that one should go beyond the letter of the law if he will not suffer any significant loss by doing so. Based on this verse, the Sages instituted the laws of בַּר מְצָרָא, *the adjoining property holder*, requiring a potential buyer to forgo his purchase in favor of the neighbor who owns an adjoining field (see *Rosh*). Their reasoning was that the outsider can find other fields to acquire and does not suffer any significant loss by giving up a field to an immediate neighbor who wishes to purchase it. The neighbor, however, gains significantly from being able to buy the adjoining field, since it is a bother to a person to own properties in different locations, and an advantage to have them all together (*Rashi*). In such a case, it is only right to demand that the outsider go elsewhere to make his purchase. And if an outsider does come and take the field, we remove him and sell the property to the neighbor, if he wishes to purchase it.

[Actually, the earlier law that a person may not buy a field between two brothers or partners is also based on the principle stated in this verse, as explained in note 23.] The Nehardeans cite the verse here to make the point that it applies *even* to the case of buying property that a mere neighbor would prefer to buy [where the obligation to defer is not as clear-cut as it is in the case of brothers] (*Ramban*).

27. That is, a field bordering this neighbor's field was put up for sale. An outsider asked the neighbor for permission to purchase the field, and permission was granted orally (*Rashi*).

28. I.e. does the buyer need to perform a *kinyan* to acquire the neighbor's claim to the field in order to prevent that neighbor from later reneging and exercising the right to buy the land.

29. According to the Nehardeans, if no transaction is made, the neighbor can claim that he was not serious [i.e. he did not mean to waive his rights] when he granted the buyer permission to purchase the land. The neighbor may claim that he told the outsider to purchase the land only because the outsider could obtain the field from the owner at its true market value, whereas if the neighbor would approach the owner directly to purchase the field, the owner would likely raise the price, realizing that the field was worth more than the normal market value to the neighbor. He never meant, however, to forgo his right to purchase the property but intended to exercise his right by reimbursing the outsider and taking the field from him (*Rashi*). To prevent the neighbor from making such a claim, the outside buyer must formally acquire from him – through an act of *kinyan* – all rights that he has to purchase this land (see next note).

[See *Rosh* for a discussion of whether there is a time limit on the neighbor's right to make the claim.]

30. [We learned above that the basis of the right of the neighboring property holder to buy the adjoining field is the Biblical injunction to do what *is right and good in the eyes of Hashem.* The law that allows the neighbor to displace an outsider who buys a field adjoining his property is a Rabbinic enactment based on this Biblical principle. Seemingly, once the outsider receives permission from the neighbor to purchase the field there is nothing wrong or bad about his subsequent purchase of it – even if the neighbor claims that he was never serious about giving that permission! And since the outsider acted in accordance with the dictates of righteouness and goodness, why should the neighbor be able to displace him based on a claim that his permission was merely a ploy?

It is evident from this that the Rabbinic enactment regarding adjoining property does not merely regulate the behavior of the outside buyer but actually grants certain legal rights to the neighbor. According to *Nimukei Yosef,* the Rabbinic enactment granting the neighbor the right to claim an adjoining property from an outsider who purchased it in effect views the neighbor as possessing certain rights to the adjoining property even before it is sold. Thus, unless the outsider acquires these rights from him, the neighbor can renege and lay claim to the field.]

31. Since the halachah requires the outsider to acquire the neighbor's right by means of a *kinyan*, if he did not do so, his purchase of the field is considered totally ineffective in acquiring the field for himself (*Rashi*). Instead, the outsider's purchase of the field is viewed as having been made on behalf of the neighbor, with the outsider serving as the neighbor's agent [שָׁלִיחַ] (*Rosh, Ran, Nimukei Yosef*). [I.e. the law granting the neighbor the right to pay the outsider for the adjoining field and take it from him is not merely a penalty requiring the outsider to resell the field to the neighbor. Rather, the Rabbinic enactment decrees the buyer's *inability* to acquire the field for himself (as long as the neighbor has an interest in it), and declares the buyer's purchase of the land to be an acquisition on behalf of the neighbor.

Rosh compares this to one who buys a field on behalf of a friend without the latter's knowledge. Should the friend want the field, he need not make any *kinyan* to acquire it, for the original purchase was made for him. Only if the friend declines the field does it become the buyer's property. Cf. *Gra* to *Choshen Mishpat* 175:18.]

Accordingly, if the land rises in value (between the time the outsider bought it and the time the neighbor claims it for himself), the buyer cannot demand that the neighbor give him the current market value to gain the land. Rather, the profit belongs to the neighbor, and he gives the buyer only the amount that the buyer paid for the field. Similarly, if the land dropped in value, it is considered the neighbor's loss, and to claim the field he must give the buyer the full amount that he paid for the land (*Rashi*).

Actually, the Gemara could have made this point according to all opinions, in a case where the outsider bought the field without asking the neighbor's permission. But having cited the dispute and halachah regarding the need for a *kinyan* where permission was granted orally, the Gemara taught the rule for appreciation and depreciation according to the halachically accepted view that a *kinyan* is necessary. In essence, however, the rule is true according to all opinions wherever the neighbor has the right to displace the outside buyer (*Tos. HaRosh,* cf. *Maharshal*).

חֲזִינָא – we must see why the seller discounted the price: אִי לְכוּלֵי עָלְמָא קָא מְוַזֵּילָא וּמְזַבֵּין – If [the seller] normally discounts the price for everyone when he sells, יָהֵיב לֵיהּ מֵאָה וְשָׁקִיל לֵיהּ – [the neighbor] gives [the outsider] only one hundred *zuz* and takes [the land]; וְאִי לָא – but if the owner does not normally discount the price for other people, יָהֵיב לֵיהּ מָאתָן וְשָׁקִיל לֵיהּ – [the neighbor] must give [the outsider] two hundred *zuz* and he may then take [the land].[32]

The Gemara discusses the opposite situation:

זָבַן בְּמָאתָן וְשָׁוְיָא מֵאָה – If [the outsider] bought [the land] for two hundred *zuz,* but it is worth only one hundred, סָבוּר מִינָּהּ – they [the students of the academy] concluded from that ruling above[33] מָצֵי אָמַר לֵיהּ – that [the neighbor] can say to [the buyer], לְתַקּוּנֵי שְׁדַרְתִּיךְ וְלֹא לְעַוּוּתֵי – "I sent you to help me, not to harm me."[34] The neighbor can thus render the sale between the owner and the buyer null and void and thereby make it possible for the buyer to return the field and obtain a refund.

The Gemara rejects this view:

אָמַר לֵיהּ מַר קְשִׁישָׁא בְּרֵיהּ דְּרַב חִסְדָּא לְרַב אַשִׁי – Mar Keshisha the son of Rav Chisda said to Rav Ashi: הָכִי אָמְרִי נְהַרְדָּעֵי מִשּׁוּם דְּרַב נַחְמָן – So said the Nehardeans in the name of Rav Nachman: אֵין אוֹנָאָה לְקַרְקָעוֹת – The rules governing price fraud do not apply to land.[35] The sale therefore stands.

Another ruling about the right of an adjoining property holder:

זַבִּין לֵיהּ גְּרִיבָא דְּאַרְעָא בְּמִיצְעָא נִכְסֵיהּ – If [the seller] sold him a measure of land[36] in the middle of his properties, חֲזִינָן – we see what type of land it is: אִי עִידִּית הִיא אִי זִיבּוּרִית הִיא – If it is prime land or poor land, i.e. it is better or worse than the seller's other properties, זְבִינֵיהּ זְבִינֵי – his sale is valid;[37]

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32. Since he does not generally discount his prices, we assume that he did so in this case only as a favor to this particular buyer (*Rashi*), because he was his relative or friend (*Meiri*). Consequently, even though the outsider is viewed as having bought the land for the neighbor as his agent, the neighbor does not receive the benefit of the reduced price. That reduction is considered a gift from the seller to the buyer. See also *Tos. HaRosh.*

33. [The ruling above that any change of price accrues to the neighbor, from which we learn that the outsider is considered to have bought the land as the agent of the neighbor.]

34. This argument nullifies the action of any agent who chooses a course of action that is detrimental to the person who commissioned him [see, for example, *Kiddushin* 42b]. Therefore, in our case, where the buyer is considered to be acting as the agent of the neighbor, if the adjoining neighbor does not want to pay the outside buyer two hundred *zuz* for the field, he should be able to nullify the outsider's purchase of the field on the grounds that he acted irresponsibly by overpaying for it. This would nullify the sale and allow the buyer to get his money back (*Rosh*).

This case is different from the case where the outsider did not overpay. In that case, the neighbor has no claim to nullify the sale; his only right is to take the field from the outsider and pay him for it. Therefore, if he waives his right to claim the field, the field belongs to the buyer as a result of his purchase. But in this case, the neighbor does wish to buy the field, albeit at its true price. Thus, the outsider's purchase of the field is viewed as having been done on behalf of the neighbor. The neighbor, however, claims that the agency was executed in a faulty manner. Consequently, he may nullify the sale and allow the buyer to reclaim his money.

[If, however, the outside buyer wished to keep the field for two hundred *zuz,* he would be allowed to do so. The right of the adjoining owner of the field does not require the seller to forgo the sale for the good of the owner of the field (see below, 108b). Since the neighbor is unwilling to pay the inflated price, the outsider would be allowed to purchase it for that price (see *Perishah* 175:14).]

35. [According to the Biblical law of אוֹנָאָה, *fraud,* if someone overcharges for a certain item by more than one-sixth, the sale is null and void. Rav Nachman states that this law does not apply to real estate, because people are sometimes willing to pay far more than market value for a particular property.]

Since the outsider intended to buy the field for himself, and the law of price fraud does not apply to real estate, the adjoining neighbor cannot nullify the sale on the grounds that the "commission" was executed in a faulty manner (*Rosh*). This is because the buyer's role cannot be considered entirely that of an agent (*Nimukei Yosef*), since he did not intend to act as an agent. Thus, if the buyer could not invalidate the transaction on the grounds of overpayment on his own account – because the law of *onaah* (fraud) does not apply to real estate – the transaction cannot be invalidated solely by claiming that he acted as the neighbor's agent (*Derishah, Choshen Mishpat* 175:14). To do so would be to place the rights of the adjoining neighbor *ahead* of the rights of the seller, since if the buyer were not classified an agent, he would not be able to nullify the sale. It is not "right and good" to classify the buyer an agent for the sole purpose of nullifying the sale (*Perishah* ibid.).

Accordingly, if the adjoining neighbor waives his right to claim the field for himself at the inflated price, the sale stands and the field remains the buyer's.

36. [The term גְּרִיבָא, *measure,* generally refers to a *se'ah* (see *Rashi* 108b ד"ה ואי לא).]

37. Since this field is unlike the others, it can reasonably be argued that the seller intended to sell just this one field in the middle. The people owning land adjoining the borders of the seller's property therefore have no grounds to claim the field from the buyer, because the seller's other fields separate their fields from this one in the middle (*Rashi*). See 108b note 1.

וְאִי לֹא – **but if** the middle field is **not** any different from the others, אִיעֲרוּמֵי קָא מְעָרִים – **[the buyer] is practicing a deception** by buying a non-adjoining field so as to establish his right to buy the adjoining fields.[1]

The Gemara now lists a series of cases in which the owner of the adjoining property does not have any claim:

מַתָּנָה לֵית בָּהּ מִשּׁוּם דִּינָא דְּבַר מְצָרָא – **A gift is not subject to the right of the adjoining property holder.**[2]

The Gemara qualifies this ruling:

אָמַר אֲמֵימַר – **Ameimar said:** אִי כָּתַב לֵיהּ אַחֲרָיוּת – **If [the benefactor] wrote** and gave **to [the recipient] a guarantee** for the land, אִית בָּהּ מִשּׁוּם דִּינָא דְּבַר מְצָרָא – **it is** then **subject to the right of the adjoining property holder.**[3]

Other cases in which the owner of the adjoining property does not have any claim:

מָכַר כָּל נְכָסָיו לְאֶחָד – If **[the seller] sold all his possessions to one** person, לֵית בָּהּ מִשּׁוּם דִּינָא דְּבַר מְצָרָא – **[the sale] is not subject to the right of the adjoining property holder.**[4]

לַבְּעָלִים הָרִאשׁוֹנִים – If the current owner sold a property back **to the original owner,** לֵית בָּהּ מִשּׁוּם דִּינָא דְּבַר מְצָרָא – **it is not subject to the right of the adjoining property holder.**[5] זָבַן וְזַבִּין מֵעַכּוּ״ם – If **one purchased** a property **from an idolater, or he sold** it **to an idolater,** לֵית בָּהּ מִשּׁוּם דִּינָא דְּבַר מְצָרָא – **[the sale] is not subject to the right of the adjoining property holder.**

The Gemara explains the last two rulings:

זָבַן מֵעַכּוּ״ם – When **one purchased** the land **from an idolater** he may keep it דְּאָמַר לֵיהּ – because **he can say to [the neighbor],** אֲנִי אַבְרְחֵי לָךְ מִמְּצָרָא – **"I** did you a favor and **chased a 'lion' away from** your **border."**[6] זַבִּין לְעַכּוּ״ם – If **[the owner] sold** the land **to an idolater,** the neighbor has no claim to the land עַכּוּ״ם וַדַּאי לַאו בַּר ,,וְעָשִׂיתָ הַיָּשָׁר וְהַטּוֹב״ הוּא – because **an idolater is certainly not subject to** the obligations of the verse, ***You shall do what is right and good***, that is the basis for the law regarding the adjoining property holder.[7] שְׁמוּתֵי וַדַּאי מְשַׂמְתִּינַן לֵיהּ עַד דְּמִקַּבֵּל עֲלֵיהּ כָּל אוֹנְסֵי דְּאָתֵי לֵיהּ מֵחֲמָתֵיהּ – However, **we certainly** place a **ban on [the seller] until he accepts upon himself** to compensate his former neighbor for **any losses that he suffers as a result of [the new owner].**[8]

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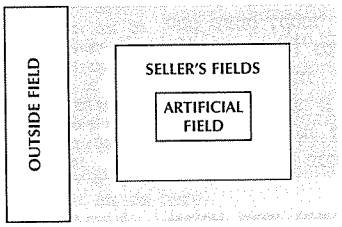
1. That is, we assume that the outside buyer actually wants to purchase the fields, that adjoin the fields of the neighbors. However, the buyer knows that if he buys such a field outright, the neighbors can displace him and take the field under the law of the adjoining property holder. He therefore attempts to buy an artificial "field" in the middle of the seller's property – which the neighbors cannot protest since their fields do not adjoin it – and then use that field to establish himself as a "neighbor" to the fields adjoining the original neighbors. [See diagram.] On this basis he could then purchase all the seller's fields. To prevent this subterfuge, the Rabbis allowed the true neighbors to displace the buyer as soon as he buys the artificial "field" in the middle (*Rashi*).



2. This is so because the enactment giving the immediate neighbor first claim over the adjoining property is based on the verse cited above (108a), which enjoins people to act properly. This requires a prospective buyer to forgo purchasing such a property in favor of the neighbor inasmuch as the buyer can purchase another field elsewhere. However, one is not obligated to defer if he will suffer a loss as a result. This is the situation here, where the recipient obtained the field as a present; one cannot be expected to find someone else to give him a present. The neighbor therefore has no claim to the field (see *Tos. HaRosh* 108a).

[This ruling apparently contradicts the ruling stated above (108a) in the case in which the buyer purchased land worth two hundred *zuz* for only one hundred *zuz*. In that case, the Gemara ruled that if the owner did not favor this particular buyer over others, the neighbor may exercise the right of the adjoining property holder and claim the field for one hundred *zuz*. Seemingly, though, the buyer should be allowed to keep the land there too, claiming that he will not likely find someone else to sell him a field at such a discounted price. To resolve this difficulty, *Tos. HaRosh* proposes that when the Rabbis instituted the law of the adjoining property holder with regard to sales, they chose to simplify the law by formulating it without exceptions [לא פְּלוּג]. They therefore granted the neighbor first claim over *all* sales. Since this seller would have accepted a below-market offer from any prospective buyer, this transaction is considered a sale, not a gift. It therefore falls under the Rabbinic ordinance.]

3. If the original owner guarantees the gift [i.e. he obligates himself to compensate the recipient in case the field is taken away from him by a creditor of the benefactor], this indicates that he was actually selling the field, not giving it as a gift, because people do not customarily guarantee gifts (*Rashi*). Therefore, even though the document transferring the field to this outsider states that the transaction is a gift, we assume that it is really a sale and that it was written up as a gift merely to circumvent the right of the adjoining property holder. The owner of the adjoining property can therefore claim the land by paying the "recipient" the market value of the field (*Rambam, Hil. Shecheinim* 13:1).

4. Although the Sages required the outsider to defer to the neighbor, they did not want this to be at the expense of the seller. That is a likely possibility here, since the buyer may refuse to purchase all of the seller's other properties if he must relinquish this one field. The buyer may therefore go ahead with his purchase of all of the seller's property (*Rashi*; see below, note 23).

[There is a difference of opinion whether the neighbor can displace the buyer by agreeing to buy all of the seller's property; see *Rosh, Hagahos HaAshri, Meiri*.]

5. Since this buyer originally owned the land, it is fitting that he regain it. The seller, in a certain sense, is merely returning "lost" property to him. [I.e. here the dictate of "doing what is good and right" argues in favor of allowing the buyer to repurchase the property that was once his.] Consequently, the neighbor may not claim that land (*Meiri*).

However, the rights of the original owner are limited to a case where the field has not yet been sold. But if the field has already been sold to a neighbor – or even to a third person – the claim of the original owner is not strong enough to reverse the sale (*Meiri*).

6. Since the purpose of the law of adjoining property is to protect the interests of the neighbor, this buyer can claim he was doing just that by purchasing the land from the idolater (*Rashi*; see *Tos. HaRosh* and *Shitah Mekubetzes*). [Idolaters are considered bad neighbors because their practices are often offensive to Jewish sensibilities, and their behavior cannot be regulated by Jewish courts, since they are not subject to Torah law.]

The neighbor cannot contend that he too could have rid the adjoining property of its unwanted owner by purchasing the land himself, because it is possible that had this outsider refrained from buying the land and given the neighbor a chance to buy it, it would have been sold to another idolater in the interim (*Nimukei Yosef*; see also *Tos. HaRosh* and *Shitah Mekubetzes*).

7. [An idolater is not obligated to keep the Rabbinic law of adjoining property; he may therefore buy the property.]

Even though the seller is a Jew, the neighbor has no claim against him. The law of adjoining property does not place any obligation upon the seller, because he does not harm his neighbor by selling his field to another party; the neighbor is no worse off than if the field had not been sold, since either way he would not own adjoining fields. The obligations of this law fall only upon the buyer, who must forgo his purchase of the field for the sake of the neighbor (*Rashi*). In this case, though, where the buyer is an idolater, the neighbor has no claim to the land.

8. This ban applies only in cases where a Jew was willing to match the offer of the idolater. The owner is not required to sell his property to a Jew for less money (*Tosafos*).

However, if it is apparent that the idolater is intent on harming the interests of the neighborhood (e.g. by buying into an area where there are no other idolaters), the judges apply the law according to the facts of the situation (*Rosh*).

The Gemara resumes its list of cases where the neighbor does not have any claim on the adjoining land:

מַשְׁכַּנְתָּא – A property that is **a security** for a loan לֵית בָּהּ מִשּׁוּם דִּינָא דְּבַר מְצָרָא – **is not subject to the right of adjoining property holder** if the borrower chooses to sell it to the lender who is holding it. דְּאָמַר רַב אַשִׁי – **For Rav Ashi said:** אָמְרוּ לִי סָבֵי דְּמָתָא מְחַסְיָא – **The elders of the City of Machasya told me:** מַאי מַשְׁכַּנְתָּא – **What is** the reason a security is called a ***"mashkanta"***? דְּשָׁכְנָה גַּבֵּיהּ – **Because it "dwells" with [the lender].**[9] מַאי נַפְקָא מִינָּהּ – And **what** practical difference **emerges from this** insight? לְדִינָא דְּבַר מְצָרָא – Its significance is **for the right of the adjoining property holder.** The lender, with whom the property "dwells," is considered the closest neighbor.[10]

The Gemara lists still more cases in which the neighbor does not have any claim to the adjoining property:

לְמִכּוֹר בְּרָחוֹק וְלִגְאוֹל בְּקָרוֹב – If the owner wants **to sell** a property **far away in order to buy** a property **close by** that is now available, בְּרַע וְלִגְאוֹל בְּיָפָה – or he wants to sell **an inferior** property **in order to buy a superior** one, לֵית בָּהּ מִשּׁוּם דִּינָא דְּבַר מְצָרָא – **[the sale] is not subject to the right of the adjoining property holder.**[11] לְבַרְגָּא וְלִמְזוֹנֵי וְלִקְבוּרָה – If the owner is selling his land to pay **for** the **head-tax, for food** to support his wife and daughters, **or for burial** expenses,[12] לֵית בָּהּ מִשּׁוּם דִּינָא דְּבַר מְצָרָא – **it is not subject to the right of the adjoining property holder.**

The Gemara supports this last ruling by demonstrating the importance of providing for those needs without delay:

דְּאָמְרֵי נְהַרְדְּעָא – **For the Nehardeans say:** לְבַרְגָּא לְמִזוֹנֵי וְלִקְבוּרָה – **For** the **head-tax, for food** to support a widow and daughters, **and for burial** expenses, מְזַבְּנִינַן בְּלָא אַכְרָזָתָא – **we sell** the property of orphans **without an announcement.**[13] Similarly, the law of adjoining property does not apply in any of these cases.[14]

The Gemara completes its list of cases in which the owner of the adjoining property does not have any claim:

לְאִשָּׁה וּלְיַתְמֵי וּלְשׁוּתָּפֵי – If someone sells land **to a woman, to orphans, or to** his **partners,** לֵית בָּהּ מִשּׁוּם דִּינָא דְּבַר מְצָרָא – **it is not subject to the right of the adjoining property holder.**[15]

The Gemara interrupts its discussion of the laws of adjoining property to deal with a related matter:[16]

שְׁכֵנֵי הָעִיר וּשְׁכֵנֵי שָׂדֶה – If someone has a choice of selling a field to **neighbors of** his in **town or** to **neighbors of** his in another **field** that he owns, שְׁכֵנֵי הָעִיר קוֹדְמִין – his **neighbors in town take precedence.**[17] שָׂכַר וְתַלְמִיד חָכָם – If he has a choice of selling his

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9. According to this association, the word *mashkanta* is related to the word שָׁכַן, *dwell.*

10. The lender who bought the field may thus keep it. The neighbors have no claim to displace him, because he is considered the closest "neighbor," having held the entire field as a security (*Rashi*).

In a parallel Gemara above (68a), *Rashi* writes that even if the borrower did not yet sell the field to the lender, the lender still has the first option to purchase it. *Rosh* understands from that ruling of *Rashi* that the rights of the lender as the closest neighbor extend even to a case where the borrower already sold the field to one of his geographic neighbors; the lender may take the field from that neighbor. *Rashba* (above, 68a) disagrees with *Rosh's* understanding of *Rashi* (see also *Maharshal* and *Yad David* here).

11. In both these cases it is against the interests of the seller to delay the sale, because the field he wishes to purchase could be sold to another buyer in the interim. Hence, we cannot ask the buyer to forgo his purchase for the sake of the neighbor, because we must be equally concerned for the seller's welfare (*Rashi*).

[The reason why the Gemara uses the term לִגְאוֹל (literally: *to redeem*) to convey the meaning of "buy" is because the expression "to sell far away and redeem close by" is an expression borrowed from the laws of ancestral fields, where it refers to the redemption of property previously sold (*Rashash;* see Mishnah, *Arachin* 30a).]

12. In these three cases there is a sense of urgency in selling the field. The owner needs the proceeds of the sale to pay the head-tax in time to avoid the wrath of the ruler, or to provide for his wife and daughters, or for his burial expenses (*Meiri*). Some say that a sale for the owner's own food expenses is also included in this ruling (*Rama, Choshen Mishpat* 175:43).

13. Ordinarily, when the court sells property held by orphans, it must publicize the sale for thirty days to allow for competitive bidding, to insure that the orphans receive the highest price for their property (see Mishnah, *Arachin* 21b). In these three cases, however, the need for cash is immediate, and there is no time for a public declaration and open bidding. The court may therefore sell the property without delay to pay for any of these three expenses.

[*Tosafos* note that the Nehardeans did not need to teach us that the deceased should not be left unburied for thirty days. Rather, they are referring to a case where loans were procured to pay for his burial. Even so, the land may be sold immediately to repay these loans, without having to wait thirty days to publicize the sale.]

14. For, if we do not postpone the sale in these three cases – even though a delay would benefit orphans – we certainly do not delay a sale in any of these cases just to inform the neighbor of the opportunity to purchase an adjoining field (*Rashi*).

[It is apparent from *Rashi* that even in these cases the neighbor would sometimes have first claim on the property. That is, if the neighbor happened to know about the impending sale, he could claim the property, since this would not result in any delay (*Hagahos HaAshri*; see there for a dissenting opinion).]

15. A woman is not accustomed to looking for someone willing to sell land. Therefore, if someone does sell her a field, we do not require her to forgo the sale for the good of the neighbor. Similar reasoning applies to orphans [since it is also difficult for them to search for land; they may therefore keep the first available purchase] (*Rashi*). The logic behind these two rulings is that the Rabbinic enactment assumed that the outside buyer could purchase another field elsewhere with little or no loss (see above, note 2). In these cases, however, this is not so since a woman and orphans cannot easily find another field (*Sma* 175:83).

The third exception refers to a case where one partner in a field buys the share of the other partner. Although the purchasing partner is unquestionably a neighbor, the neighbors from the surrounding fields claim that they too are neighbors and that they too should be able to purchase the share of the seller along with the partner. [The Gemara below will teach that where several neighbors wish to purchase the field, it is divided among them.] The Gemara teaches that they cannot prevent the remaining partner from buying the entire portion of the seller. Since the property had never been divided between the partners, the person who wishes to buy out his partner is considered to be the closest neighbor to the entire property. He may therefore take the whole field (*Rashi*). *Tos. HaRosh* explains that according to *Rashi* this is true only if the partner and the neighbor come to purchase the field at the same time [and certainly if the partner purchased the field first]. However, if the neighbor had already purchased the seller's portions, the claim of the partner is not strong enough to displace him (cf. *Rosh*).

16. This follows *Rashi's* understanding of the Gemara (see next note).

17. In this case, none of the potential buyers owns a field adjoining the one being sold. The owner though has a choice of selling his field either to someone who lives near his residence in town or to someone who owns a field next to another field of his that is not now for sale. The Sages advise that it is more proper to sell the field to his neighbor in town (*Rashi*).

[*Rashi* explains that שְׁכֵנֵי שָׂדֶה cannot be referring to a neighbor adjoining the field for sale, because the Gemara would then be teaching that someone living next to the owner's residence need not forgo his purchase for the sake of that adjoining neighbor. But if the Gemara meant this, it should have added this case to the list in the previous section, stating that a sale to women, orphans, partners, or neighbors in the town are excluded from the right of the adjoining property holder. Since the Gemara lists this case separately, we must assume that this ruling does not concern the law of adjoining property, and that the term שְׁכֵנֵי שָׂדֶה refers to neighbors of another field that the seller owns that does not adjoin the field being sold (cf. *Tosafos* with *Maharsha*). *Rashi's* other proofs of this explanation's validity will be explained in the notes that follow.]

field to **a neighbor or to a Torah scholar,** תַּלְמִיד חָכָם קוֹדֵם – **the Torah scholar takes precedence.**[18] קָרוֹב וְתַלְמִיד חָכָם – If there is a choice of selling one's field to **a relative, or to a Torah scholar,** תַּלְמִיד חָכָם קוֹדֵם – **the Torah scholar takes precedence.**[19]

The Gemara examines another possibility:

אִיבָּעֲיָא לְהוּ – **They inquired:** שָׁכֵן וְקָרוֹב מַאי – If there is a choice between selling to **a neighbor or** to **a relative, what** should one do?

The Gemara answers:

תָּא שְׁמַע – **Come, learn** a proof from the following verse: ,,טוֹב שָׁכֵן קָרוֹב מֵאָח רָחוֹק'' – ***A close neighbor is better than a distant brother.***[20] Therefore, the neighbor takes precedence.[21]

The Gemara returns to the laws of adjoining property:

חֲנֵי זוּזֵי טָבֵי – If **these coins** of the outside buyer **are good** in many locations, וְחֲנֵי זוּזֵי תְּקוּלֵי – **while these coins** of the neighbor **are of** greater **weight** [or vice versa], לֵית בֵּיהּ מְשׁוּם דִּינָא דְּבַר מְצָרָא – **[the sale] is not subject to the right of the adjoining property holder,** because the seller prefers the coins of the buyer.[22]

The Gemara states another case where the buyer need not defer to the neighbor:

חֲנֵי צְיוּרֵי וַחֲנֵי שָׁרֵי – If **these** coins of the neighbor **are tied together, while these** coins of the buyer **are loose,** לֵית בֵּיהּ מְשׁוּם דִּינָא דְּבַר מְצָרָא – **[the sale] is not subject to the right of the adjoining property holder,** because the seller does not wish to risk an argument regarding the number of coins received.[23]

The Gemara discusses a case where the neighbor's offer to buy the field is not acceptable:

אָמַר אֵיזִיל וְאֶטְרַח וְאֵיתֵי זוּזֵי – If **[the neighbor] says, "I will go and exert** myself **and bring money,"** לָא נַטְרִינַן לֵיהּ – **we do not wait for him,** because he obviously does not have the money on hand.[24] אָמַר אֵיזִיל אֵיתֵי זוּזֵי – But if **he says** simply, **"I will go bring the money,"** חֲזִינַן – **we must see:** אִי גַּבְרָא דְּאָמִיד הוּא – **If he is a man of means,**[25] דְּאָזִיל וּמַיְיתֵי זוּזֵי – **who can go and bring the money** without delay, נַטְרִינַן לֵיהּ – **we wait for him;** וְאִי לָא – **but if** he is **not,** לָא נַטְרִינַן לֵיהּ – **we do not wait for him.**

The Gemara states a related law:

אַרְעָא דְּחַד וּבָתֵּי דְּחַד – If a parcel of **land belongs to one** person, **while the house** on it **belongs to another** person,[26] מָרֵי אַרְעָא מְעַכְּבִי אֲמָרֵי בָּתֵּי – **the owner of the land can prevent the owner of the house** from selling his house to a third party; מָרֵי בָּתֵּי לָא מְעַכְּבִי אֲמָרֵי דְּאַרְעָא – but **the owner of the house cannot prevent the owner of the land** from selling his land to a third party.[27]

The Gemara presents a similar ruling:

אַרְעָא דְּחַד וְדִיקְלֵי דְּחַד – If a parcel of **land belongs to one** person, **and the palm trees** on it **belong to another** person,[28] מָרֵי דְּאַרְעָא מָצֵי מְעַכְּבִי אֲמָרֵי דִּיקְלֵי – **the owner of the land can prevent the owner of the palm trees** from selling his trees to a third party; מָרֵי דִּיקְלֵי לָא מָצֵי מְעַכְּבִי אֲמָרֵי דְּאַרְעָא – but **the owner of the palm trees cannot prevent the owner of the land** from selling his land to a third party.[29]

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18. [The neighbor referred to here cannot be the neighbor who owns the adjoining field, because the obligation to relinquish the field falls on the potential buyer, not the seller (see above, note 7). Why then would a Torah scholar not be required to forgo this purchase for the sake of the neighbor? It is thus obvious that the neighbor in this case is not someone who owns a field adjoining the one being sold (*Rashi*).]

19. Here, nothing is mentioned of a neighbor because this case is also not relevant to the laws of adjoining property. Rather, it refers to someone who has a choice of selling his property to a relative or to a Torah scholar, neither of whom owns any property next to the field being sold. In that case the Sages recommend selling to the Torah scholar (*Rashi*).

Rashi adds that this cannot be referring to a case where *both* the relative and the scholar each own a field adjoining the one for sale, because the scholar would not receive any preferential treatment in such a situation. Just because he is a scholar does not give him the right to take advantage of another person (*Rashi*). [The land would thus be divided between the two neighbors, as in the last case on this *amud*.]

20. *Proverbs* 27:10.

21. *Rama* (*Choshen Mishpat* 175:50) cites a dispute among Rishonim as to the definition of the term "neighbor" in this context. Some Rishonim assume that it should not be taken literally, but rather as a reference to a close associate of the seller who is often with him. Other Rishonim, though, do translate this literally as "neighbor." *Beur HaGra* (there) notes that the verse in *Proverbs* quoted by our Gemara implies that this person is an associate, because there is no advantage to a person from having a mere neighbor with whom he has little contact. But he also notes that the Gemara's first inquiry here ("neighbors in town and neighbors in the field") indicates that the issue involved is geographic proximity, not friendship.

22. [Some people prefer heavy coins, while others prefer coins that are recognized and accepted in more locations, even if they do not weigh as much.] The seller can therefore claim that he prefers the type of coins that the buyer gave him [whatever advantage they have] over the coins that the neighbor is offering (*Rashi*).

23. In this case the neighbor and outside buyer both sent their coins to the seller. However, the coins of the neighbor were tied in a bundle, while the coins of the outsider were loose. The seller is nervous about untying the neighbor's coins because he does not want to be accused of having pocketed some extra coins. He may therefore accept the offer of the outside buyer, which is free of that complication. The outside buyer is not subject to the law of adjoining property in this case, since invoking that law would cause a loss to the seller who needs the money [now, and does not want to wait for the neighbor to come and count the coins]. The Sages did not institute their law in such a circumstance (*Rashi*; see also *Rashi* above, cited in note 4).

24. By saying that he would have to exert himself to bring the money, the neighbor indicates that it will not be a simple matter. He therefore loses his claim to the field, because the seller is not asked to accept any disadvantage for his sake. The seller may take the money already available to him from the outside buyer rather than wait for the neighbor to procure funds (see *Meiri*).

25. That is, it seems to us that he can fulfill his promise (*Rashi*; see *Rashbam* to *Gittin* 52b ד"ה ולא אמיד).

26. Someone owned a house standing on the land of another person; the landowner retained ownership of the land on which the house stood. Under this arrangement, the landowner was to regain total control of his property after a certain length of time (see *Rashi* below ד"ה מרי בתי).

27. If the owner of the house wishes to sell his house and the landowner happens to need a house, it is only proper that the landowner be allowed to purchase the house which stands on his own property. But if the landowner wants to sell the land, the owner of the house does not have any special claim to buy it. Since his right to keep the house on this property is only temporary, his presence here is not considered significant (*Rashi*); i.e. he is not legally considered a property holder (*Rosh, Tur Choshen Mishpat* 175:79; cf. *Rif; Rambam, Hil. Shecheinim* 12:16; see *Beis Yosef*).

Tosafos note that the key point here is that the house is situated *on* the landowner's property since the law of adjoining property does not apply to a house *adjacent* to a field or another house. The law applies only to two arable fields, to give the adjoining neighbor the benefit of being able to work both fields at the same time. This reason obviously does not apply to houses. A landowner therefore has no rights to a house for sale merely because it is adjacent to his land. It is only in this case that he is given preference because the land on which the house stands belongs to him. [This issue, however, is debated among the Rishonim; see, for example, *Rosh, Ran,* and *Nimukei Yosef*.]

28. A landowner sold the palm trees on his land to another person for a certain amount of time or until they would wither and die (*Rashi*).

29. This follows the same logic as in the previous case. If the current owner of the trees wants to sell them, the landowner has preference since he will then have the convenience of possessing trees on his own

The Gemara states yet another ruling related to the law of adjoining property:

אַרְעָא לְבָתֵּי וְאַרְעָא לְזַרְעָא – If the outside buyer wants the **land for** building **a house, and** the neighbor wants **the land for planting,** יְשׁוּב עָדִיף – **settlement** of the land **takes precedence** over planting, וְלֵית בָּהּ מִשּׁוּם דִּינָא דְּבַר מְצָרָא – **and [the sale] is** therefore **not subject to the right of the adjoining property holder.**[30]

The Gemara discusses the case where a physical barrier separates the two neighboring fields:

אַפְּסִיק מְשׁוּנִיתָא אוֹ רִיכְבָּא דְּדִיקְלָא – If **an outcropping of rock or a hedge of palm trees**[31] separates the two fields, חֲזִינָא – **we must see:** אִם יָכוֹל לְהַכְנִיס בָּהּ אֲפִילּוּ תֶּלֶם אֶחָד – **If [the neighbor] is able to extend even one furrow** from his field **into [the adjacent field],** אִית בָּהּ מִשּׁוּם דִּינָא דְּבַר מְצָרָא – **[the sale] is subject to the right of the adjoining property holder;** וְאִי לָא – **but if** he is **not** able to extend even a single furrow into this field, לֵית בָּהּ מִשּׁוּם דִּינָא דְּבַר מְצָרָא – **[the sale] is not subject to the right of the adjoining property holder.**[32]

The Gemara presents one last ruling about the right of the adjoining property holder:

הָנֵי ד׳ בְּנֵי מְצָרָנֵי – Regarding **these four property holders adjoining** a field for sale[33] – דְּקָדִים חַד מִינַּיְיהוּ וְזַבִּין – **if one of them preceded** the others **and purchased** the field, זְבִינֵיהּ זְבִינֵי – **his purchase is a** valid **purchase,** and he cannot be displaced by the others.[34] וְאִי בּוֹלְהוּ אָתוּ בַּהֲדֵי הֲדָדֵי – **But if they all come together,** פָּלְגוּ לָהּ בְּקַרְנְזִיל – **they divide [the field] along** its **diagonals.**[35]

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land. But if the landowner wishes to sell his land, the owner of the trees has no claim to buy the land, since his ownership of the trees is only temporary.

30. The Rabbis did not grant the neighbor rights to the field in this case, because it is more important to have a house than for the neighbor to own adjoining fields (*Rashi*).

31. That is, palm trees planted closely together were intertwined to form a hedge (*Rashi*).

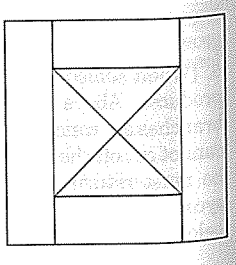
32. The reason why the Sages granted a neighbor first rights to an adjoining field was so that he could have the convenience of owning two fields that could be cared for together. But if the fields are so totally separated that not even one row can be plowed from one field to the next, these fields do not possess the normal advantages of adjoining fields. There is therefore no reason to give preference to the neighbor (see *Tosafos* ד״ה ארעא, cited above, note 27).

33. That is, the owners of the four fields surrounding the field that was for sale.

34. Since he is one of the adjoining property holders, he cannot be required to cede any of the field to the others, for it is "right and good" for him to retain the field. [However, this is only so if he *preceded* the others – the owner of the field cannot single one neighbor out if all four come together, as the Gemara will now state. See *Aruch HaShulchan* to *Choshen Mishpat* 175:7, where the rationale for this distinction is discussed.]

35. If each neighbor wants the part of the field that is adjoining his own field, the field being sold is divided into four triangular sections. In this way, everyone receives land adjoining his own property (*Rashi*). See diagram.

קַרְנְזִיל means *go* (זיל) *[to the] corner(s)* (קַרְנָא); that is, divide the field by drawing diagonal lines from corner to corner (*Rashi*).



Mishnah This Mishnah continues its discussion of leasing fields:

הַמְקַבֵּל שָׂדֶה מֵחֲבֵירוֹ לְשָׁנִים מוּעָטוֹת – If **one leases a field from his fellow for** just a **few years,**[1] לֹא יִזְרָענָּהּ פִּשְׁתָּן – **he may not sow it** with **flax,**[2] וְאֵין לוֹ בְּקוֹרוֹת שִׁקְמָה – **and he has no** rights to the **beams of** any **sycamore** trees growing there.[3] קִיבְּלָהּ הֵימֶנּוּ לְז׳ שָׁנִים – If **he leased it from him for seven years,** שָׁנָה רִאשׁוֹנָה – during **the first year he may sow it** with **flax,**[4] יִזְרָענָּהּ פִּשְׁתָּן – **and he has** rights to the **beams of sycamore** trees.[5] וְיֵשׁ לוֹ בְּקוֹרוֹת שִׁקְמָה

Gemara The Gemara elaborates upon the ruling regarding a short-term lease:

אָמַר אַבָּיֵי – **Abaye said:** בְּקוֹרוֹת שִׁקְמָה אֵין לוֹ – [The tenant] has no right to take the **beams of** any **sycamore** trees growing there, בִּשְׁבַח שִׁקְמָה יֵשׁ לוֹ – but **he has** the right to receive payment for **the improvement** (i.e. growth) **of the sycamore** that took place during his lease.[6] וְרָבָא אָמַר – **However, Rava said:** אֲפִילּוּ בִּשְׁבַח שִׁקְמָה נַמִּי אֵין לוֹ – **He does not have** rights **even** to **the improvement of the sycamore.**[7]

The Gemara questions Rava's view:

מֵיתִיבִי – **They challenged** Rava **from the** following **Baraisa:** הַמְקַבֵּל שָׂדֶה מֵחֲבֵירוֹ – IF ONE LEASES A FIELD FROM HIS FELLOW וְהִגִּיעַ זְמַנּוֹ לָצֵאת – AND HIS TIME TO LEAVE the field ARRIVED, שָׁמִין לוֹ – WE MAKE AN ASSESSMENT FOR HIM. Since the Baraisa does not state the purpose of this assessment, the Gemara assumes: מַאי לַאו שָׁמִין לוֹ בִּשְׁבַח שִׁקְמָה – **Is it not** teaching **that we assess for him the improvement of the sycamore,** and he is paid its worth when he leaves? This Baraisa, then, contradicts the position of Rava. – ? –

The Gemara defends Rava:

לֹא – **No!** The Baraisa may be interpreted in the following way: שָׁמִין לוֹ יַרְקָא וְסִילְקָא – **We assess for [the tenant]** the value of **the greens and beets** that are growing in the field when he leaves.[8]

The Gemara objects to this interpretation:

יַרְקָא – **The greens and beets!** נַעֲקוֹר וְנִשְׁקוֹל – **Let him uproot** them **and take** them. Why make an assessment?[9]

The Gemara answers:

בְּדְלָא מָטָא יוֹמָא דְּשׁוּקָא – The Baraisa refers to a case **where the market day did not** yet **arrive.** The tenant therefore prefers to leave the crops for the landowner and receive payment for their value rather than take the actual crops.[10]

The Gemara attempts again to refute Rava:

תָּא שְׁמַע – **Come, learn** a proof against Rava's view from the following Baraisa: הַמְקַבֵּל שָׂדֶה מֵחֲבֵירוֹ – IF ONE LEASES A FIELD FROM HIS FELLOW וְהִגִּיעַ שְׁבִיעִית – AND *SHEVIIS* ARRIVES, שָׁמִין לוֹ – WE MAKE AN ASSESSMENT FOR HIM.

The Gemara first seeks a clarification of the Baraisa:

שְׁבִיעִית מִי קָא מַפְקְעָא אַרְעָא – **Does *sheviis* remove land** from the one holding it? The laws of *sheviis* only prohibit working the land, not keeping it. Why then is any assessment made?[11]

The Gemara suggests another reading of the Baraisa:

אֶלָּא אֵימָא – **Rather state** the Baraisa in the following way:

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1. I.e. for less than seven years (*Rashi*).

2. Although flax is a very profitable crop, it depletes the soil excessively, and it takes up to seven years for it to recover fully (*Rashi*). Hence, the farmer may not plant this crop within six years of the expiration of his lease, since it will lead to his returning the land in worse condition than he received it.

This ruling applies only to *chachirus,* where the landowner receives a fixed payment no matter what the land produces. In the case of *arisus*, however, where the owner and sharecropper divide whatever grows, there are no restrictions on what the sharecropper may plant. Since the landowner shares in the more profitable crop, he is assumed to agree to a more intensive use of the field (*Rashi* and *Ran*, based on Gemara above, 104b). [This accords with *Rashi's* explanation to the Mishnah above, 106b; see note 38 there. Cf. *Ramban*; see *Maggid Mishneh* to *Hil. Sechirus,* 8:3.]

3. The sycamore does not bear fruit, but its branches are used as beams in construction. After being cut, the branches regenerate, but it generally takes seven years for the new branches to grow to the size of beams. One who leases a field for less than seven years may not cut off the branches since he would be returning the field in worse condition than he received it. The right to cut branches under such circumstances is not assumed to be part of the rental agreement [unless specified] (*Rashi*). This is true even in a location where a *chocheir* has rights to the fruit of trees growing in the land he leased; nevertheless, he does not have the right to the branches of a sycamore (*Meiri*).

4. Since the field will regain its vitality by the end of the seven-year period when the *chocheir* leaves it, the owner loses nothing by having his field planted with flax during the first year.

5. [In places where the trees are leased along with the field,] the tenant may cut off the branches during the first year of his lease, since they will grow back to full size by the time the lease expires (*Rashi*; cf. *Rosh*).

6. [When someone leases a field, he has rights to whatever the land produces. Abaye is of the opinion that the growth of a sycamore's branches are considered part of its yield. Therefore, although the tenant cannot cut off the branches during the last six years of his lease, because he must return the tree as he received it,] if the [branches of the] sycamore grew larger during his tenancy, the value of that increase belongs to the tenant. The increase is therefore assessed and the tenant receives payment for it when he leaves (*Rashi*).

Abaye refers only to trees such as a sycamore, which do not bear fruit but are grown for their wood. He considers the growth of their branches to be their "fruit" (*Tosafos* ד״ה אלא מעתה; *Bach, Choshen Mishpat* §325).

The Gemara's discussion here applies to both *arisus* and *chachirus* (*Meiri*).

7. According to Rava, the increased size of the trees is not considered produce but rather part of the tree itself, which obviously belongs to the landowner (*Meiri*).

8. These crops are certainly included in the produce of the field, to which the tenant is entitled. Therefore, when the tenant leaves, he receives their value from the landowner. [The reason why the Gemara singles out these particular crops will become apparent below (see note 10).]

9. When someone leases a field, the end of the rental period is dependent upon the ripening of the crops rather than on an arbitrary calendar date. The reason for this is that people do not intend to lease a field and have to leave unripened crops on it when the lease expires. Therefore, since the Baraisa stated that the time had arrived for the tenant to leave the field, it implies that the produce had already ripened; for otherwise, by definition, the lease would not yet have expired. The Gemara thus asks that if the greens and beets are already ripened, the tenant should simply uproot them and take the produce itself (*Ramban's* second explanation).

10. Thus, although the vegetables were ripe, thereby terminating the lease, the tenant did not want to pick them because they would spoil before he could sell them. He may therefore leave them on the field and receive a payment for their value from the landowner (*Ramban*).

[Accordingly, Rava must explain the Baraisa to be speaking of perishable crops, such as greens and beets, rather than grain, since grain that had ripened could certainly be harvested by the tenant before he left and held until the market day without any loss (*Ramban;* see also *Rashba* in *Shitah Mekubetzes*).]

11. By stating that some assessment is made at *sheviis*, the Baraisa indicates that the tenant has to return the field to the landowner and receive some payment. But *sheviis* should not have any effect on the tenant's rights in the field, since the laws of *sheviis* do not require the return of the land to its owner.

הַמְקַבֵּל שָׂדֶה מֵחֲבֵירוֹ וְהִגִּיעַ יוֹבֵל – **If one leases a field from his fellow and *Yovel* arrives,** שָׁמִין לוֹ – **we make an assessment for him.** Since the law of *Yovel* mandates the return of all land to its original owner, an assessment is made.

The Gemara rejects this version too:

וְאַמַּאי – **But** this is **still** difficult; יוֹבֵל מִי מַפְקְעָא קַבְּלָנוּת – for **does *Yovel* remove** land held under **a lease?** ״לִצְמִתֻתָהּ״ אָמַר רַחֲמָנָא – **The Merciful One said** only that *the land shall not be sold* ***in perpetuity.***[12] A leased field, which will eventually be returned to its owner, is not included in that law.

The Gemara now explains the true meaning of the Baraisa, thereby demonstrating its contradiction of Rava's view:

אֶלָּא אֵימָא – **Rather state** the Baraisa in the following way: הַלּוֹקֵחַ שָׂדֶה מֵחֲבֵירוֹ וְהִגִּיעַ יוֹבֵל – IF ONE *BUYS* A FIELD FROM HIS FELLOW AND *YOVEL* ARRIVES, שָׁמִין לוֹ – WE MAKE AN ASSESSMENT FOR HIM. This means, apparently, that we assess the increased value of the trees that grew larger during his tenure on the field, and we direct the owner to pay this amount to the buyer.[13] Similarly, a tenant should also receive such a payment when his lease expires – contrary to Rava's ruling.[14] – ? –

The Gemara explains why Rava cannot be defended here as he was previously:

וְכִי תֵּימָא הָכִי נַמִּי – **And if you will** try to **say** that **this** Baraisa **also** means that שָׁמִין לוֹ בִּירָקָא וְסִילְקָא – **we assess for him any greens and beets** left growing in the field, this cannot be true, סִילְקָא וְיָרָקָא בְּיוֹבֵל הֶפְקֵירָא הוּא – for **beets and green are ownerless** in *Yovel,* and there would be no reason to compensate the buyer for them.[15] אֶלָּא לַאו שְׁבַח שִׁקְמָה – **Rather, is [the Baraisa] not** referring to **the improvement of the sycamore** and contradicting Rava's view?[16]

The Gemara answers that the Baraisa is not a contradiction to Rava's view because *Yovel* law differs in this respect from the expiration of a lease:

תִּרְגְּמָא אַבַּיֵי אֲלִיבָּא דְּרָבָא – **Abaye interpreted** this Baraisa **according to Rava's** understanding in the following manner: שַׁאנִי הָתָם – **It is different there** with regard to *Yovel,* דְּאָמַר קְרָא ,,וְיָצָא מִמִּכַּר־בַּיִת״ – **for the verse states:**[17] ***A house that has been sold shall go out...*** *in the Yovel year.* מִמֶּכֶר חוֹזֵר – This teaches that in regard to the law of *Yovel,* only **what was** initially ***sold* returns** to the original owner at *Yovel,* שְׁבָח אֵינוֹ חוֹזֵר – **but the** subsequent **improvement** to the property **does not return** to him.[18]

The Gemara asks:

וְנִגְמַר מִינֵּיהּ – **But let us derive** the law for expired leases **from that** law of *Yovel,* and learn from it that a tenant receives payment for a tree's growth when he returns a leased field just as a buyer does when returning land at *Yovel*. – ? –

The Gemara answers:

הָתָם זְבִינֵי מְעַלְיָא הוּא – **There,** in the case of *Yovel,* **it was a proper sale,** וְיוֹבֵל אַפְקְעָתָא דְּמַלְכָּא הִיא – **but *Yovel's*** dispossession of the buyer **is a removal** decreed **by the King** [God]. Therefore, when the Torah says that the buyer has a right to be paid for any improvements to the property that occurred during his ownership of it, it is logical to say that this is because he once owned it. One who leased a property, though, never acquired ownership of the property itself, and we can therefore not derive from the law of *Yovel* that he should be entitled to improvements in the leased property.[19]

The Gemara presents a related case:

רַב פָּפָּא קַבִּיל אַרְעָא לְאַסְפַּסְתָּא – **Rav Pappa leased a land for** planting ***aspasta.***[20] קָדְחוּ בָּהּ תְּאלֵי – **Palm saplings**[21] **sprouted in [the land].** כִּי קָא מְסַתֵּלֵק – **When he was leaving** at the expiration of his lease, אָמַר לְהוּ – **[Rav Pappa] said to [the owners],** הָבוּ לִי שִׁבְחָא – **"Give me** the value of **the improvement** to the field," i.e. the value of the saplings that sprouted.

NOTES

12. *Leviticus* 25:23. The concern of the Torah is only that an ancestral field not be sold in perpetuity to another person; therefore, such a field returns to its original owner at *Yovel*. But if the field was merely *leased* to another person, it will return to its owner anyway when the lease has expired. There is thus no reason to return a leased field to its owner at *Yovel* (see *Rashi*). [This is so even if the lease expires after the *Yovel* year; since the land will eventually return to its original owner on its own, it is not subject to *Yovel* law (*Meiri*, based on Gemara above, 79a).]

13. [Since the land itself reverts back to its original owner without charge, the assessment cannot relate to the value of the land itself. The assessment and compensation can only concern what grows on the land.]

14. [If a buyer receives payment for the growth of the trees during his ownership, this indicates that the increase is not considered an increase of the land (which must be returned at *Yovel*), but rather the produce of the field. The same should then hold true with regard to the laws of leasing, since when a lease expires, the landowner repossesses his land, while the tenant is entitled to its produce. Thus, if the increased size of a tree is considered produce and not a part of the land, the tenant should receive payment for that gain.]

15. All produce that grows in Eretz Yisrael during *yovel* is considered ownerless, just as in a *sheviis* year.

16. Although a tree's fruit become ownerless during *Yovel* (and *sheviis*) and free for the taking, the tree itself (and any increase in its size, even if considered produce) does not. Thus, it makes sense to say that the assessment of the Baraisa refers to the increase in the size of the sycamore, which the buyer would be allowed to keep, and for which he would therefore receive compensation when the field was returned.

[Accordingly, the Baraisa teaches that the buyer has rights to the growth of the sycamore. This indicates that the growth is *not* considered an increase of the land, since this increase does not return gratis to the original owner at *Yovel* along with the land! Rather, it is considered the produce of the land. Therefore, in regard to leases as well, a tenant should receive payment for any such increase in value, since it is not viewed as part of the leased property but rather as its production.]

17. *Leviticus* 25:33.

18. [Although stated in connection with the return of a house in a Levitical city, this law is understood to be a general statement regarding all properties returned at *Yovel* that have been improved. Thus, the reason a buyer receives compensation for the improvements in the field he returns is not necessarily because these improvements are considered produce of the land, but rather because of a Scriptural decree that it need not be returned. The Gemara will now ask why we should not derive a general principle regarding tree growth from the special case of *Yovel*.]

19. If there were no law of *Yovel,* a person who bought land would keep it forever. It would then be obvious that whatever improvements occurred in the property – such as the growth of sycamore trees – would belong to the buyer. Accordingly, when the Torah decreed that land should return to its original owner at *Yovel,* but declared that only the land itself should return, not the improvements to it, we may well say that the improvements are in fact considered an increase of the land itself, but the Torah simply did not require that this part of the land be returned. Thus, they remain the buyer's – because they were his to begin with (*Rashi*). This is far different from the improvements that occur in leased property. Here, if we view them as an increase of the property (as Rava does), they rightfully belong to the owner of the property and not the tenant. There is therefore no reason for the tenant to be paid for them when he leaves. The law of *Yovel* does not demonstrate anything to the contrary.

20. See 105b note 41.

21. This translation is based on *Rashi* to *Shabbos* 110a and to *Bava Basra* 22b. The Gemara in *Bava Kamma* (92a) clearly indicates that תְּאלֵי refers to some type of palm trees. Cf. *Aruch* צוי ד״ה.

Rav Pappa's demand is challenged:

אָמַר לֵיהּ רַב שִׁישָׁא בְּרֵיהּ דְּרַב אִידִי לְרַב פָּפָּא – **Rav Shisha the son of Rav Idi said to Rav Pappa:** אֶלָּא מֵעַתָּה דִּיקְלָא וְאִילִים – **But now,** if you had leased **a palm tree, and it grew thicker** during the rental period, הָכִי נַמִּי דְּבָעֵי מַר שְׁבָחֵיהּ – **would** you, **master, also have asked** to be compensated for **its improvement?** Certainly not![22] By the same token, you should not have any claim for the trees that sprouted. – ? –

Rav Pappa distinguishes between the two cases:

אָמַר לֵיהּ – **He said to [Rav Shisha]:** הָתָם לָאו אַדַּעְתָּא דְּהָכִי נָחִית – **There, [the renter] did not enter** the land **on that understanding** (to receive a share of the growth of the tree); אֶלָּא הָכָא אַדַּעְתָּא דְּהָכִי נָחִיתְנָא – **but here, it was on this understanding that I entered** the land, i.e. on the understanding that I benefit from everything that grows on the field.[23]

The Gemara analyzes Rav Pappa's argument:

כְּמַאן – **Whose** opinion does Rav Pappa follow? כְּאַבָּיֵי – Apparently, **that of Abaye,** דְּאָמַר בִּשְׁבַח שְׁקָמָה יֵשׁ לוֹ – **who says that [a tenant] has** rights to **the improvement** (i.e. growth) **of a sycamore.**[24]

The Gemara explains that Rav Pappa's ruling is not really related to the dispute regarding sycamore trees:

אֲפִילּוּ תֵּימָא כְּרַבָּא – **You can even say** that Rav Pappa follows the view **of Rava** in regard to the growth of the sycamore. הָתָם לֵית לֵיהּ פְּסִידָא – **There,** in the case of the sycamore, **[the tenant] did not incur any loss** from the growth of the tree; הָכָא אִיכָּא פְּסִידָא – **here, however, there was a loss** to Rav Pappa from the saplings that sprouted since he could no longer plow or sow that part of the field. Rav Pappa therefore held that he should receive the value of the saplings as compensation.

Rav Shisha asks again:

אָמַר לֵיהּ – **He said to [Rav Pappa]:** מַאי פְּסַדְתִּיךְ – **What loss did it cause you?** יָדָא דְּאַסְפַּסְתָּא – **A place**[25] **for** growing *aspasta*? שְׁקוֹל יָדָא דְּאַסְפַּסְתָּא וְזִיל – **Take** payment for **the place of the *aspasta*** that was lost **and go!**[26]

Rav Pappa defends his position:

אָמַר לֵיהּ – **He said to [Rav Shisha]:** אֲנָא כּוּרְכְּמָא רִישְׁקָא רַבָּאי – **I could have raised garden saffron,** which is a very valuable crop, in that space.[27] Thus, I deserve the full value of the trees.

Rav Shisha counters:

אָמַר לֵיהּ – **He said to [Rav Pappa]:** גַּלִּית אַדַּעְתָּךְ דִּלְמִשְׁקַל וְאִסְתַּלּוּקֵי עֲבַדְתָּ – With your claim about the saffron, **you revealed that you worked** the field **with the intention of taking** the produce **and departing.** But you were not planning to leave anything growing on the field. שְׁקַל כּוּרְכְּמָא רִישְׁקָא וְזִיל – Therefore, **take** your **"garden saffron" and go; you have no** claim **to** anything **except the value of the wood alone,** but not to the value of live trees.[28]

The Gemara cites a related incident:

רַב בִּיבִי בַּר אַבָּיֵי קַבִּיל אַרְעָא וְאַהֲדַר לֵיהּ מְשׁוּנְיָתָא – **Rav Bivi bar Abaye leased a field, and** during the course of his lease, **an outcropping of rock** pushed its way up and **surrounded its** borders.[29] קָדְחוּ בֵּיהּ זְרָדָתָא – Then, **sorb trees sprouted through [the rock].** כִּי קָא מִיסְתַּלַּק – **When [Rav Bivi] was leaving** at the expiration of his lease, אָמַר לְהוּ הָבוּ לִי שְׁבָחַאי – **he said to [the owners], "Give me my** payment for the **improvement** of the land."[30]

His claim is rejected:

אָמַר רַב פָּפִּי – **Rav Pappi said:** מִשּׁוּם דְּאָתֵיתוּ מִמּוּלָאֵי – **Because you come from the blemished** lineage of Eli the Kohen Gadol, אָמְרִיתוּ מִילֵּי מוּלָיְיתָא – **you** therefore **state "blemished" arguments!**[31] אֲפִילּוּ רַב פָּפָּא לֹא אָמַר אֶלָּא דְּאִית לֵיהּ פְּסִידָא – **Even Rav Pappa did not argue** that he should be paid the worth of the saplings **except because he incurred a loss** through them.

NOTES

22. When someone leases a tree for the rights to its fruits, he certainly does not have any claim to be paid for the increase in the thickness of the tree during the period of his lease (*Rashi*). Even Abaye, who ruled above that one who leases a field is entitled to payment for the increase in the sycamores, said so only in the case of trees that do not bear fruit, but not in the case of a fruit-bearing palm (*Tosafos*; see note 6 above). By the same token, Rav Pappa, who leased the field to grow *aspasta,* should not have any rights to any tree-growth that occurred in the field.

23. Rav Pappa agrees that someone renting a tree for its fruits is not entitled to anything other than its fruits, but this is because it was understood that the lease was only with regard to fruit. However, a farmer who leases a field expects to receive *all* the produce of that field in return for his rental payment (*Rashi*). Thus, he should also receive the value of any trees that sprouted in it.

24. [Rav Pappa's ruling apparently follows that of Abaye above. Abaye held that a tenant is paid for the growth of the sycamore tree that occurred during his lease because he considered that growth to be the production of the field, to which the tenant is entitled. For the same reason Rav Pappa wanted to receive payment for the palm trees that sprouted while he was leasing the land for sowing. According to Rava, however, the increase in the size of any trees is considered an increase of the land itself and not produce of the land. Thus, Rav Pappa would not be entitled to any payment for it.]

25. The word יָדָא here means "place," as in *Numbers* 2:17 (*Rashi*).

26. Rav Pappa's argument should entitle him only to the value of *aspasta* that could have been planted in the small area where the saplings sprouted, not to the worth of the saplings!

27. [Even a few plants of this valuable crop are worth a significant amount of money. Thus, Rav Pappa claimed that he could potentially have earned as much as or even more than the value of the saplings.]

28. Rav Shisha points out that Rav Pappa was basing his claim on the fact that he could have planted garden saffron, not that he could have planted palm saplings. This makes it clear that Rav Pappa's intention was to plant crops that could be removed when the lease expired, not to plant something that would remain in the field. Consequently, Rav Pappa had no rights to the value of living trees, but only to the value of trees that have been cut down – that is, the value of the wood [which is less than the value of a living tree]. Thus, Rav Shisha told him to *take* with him the "garden saffron" – i.e. to cut the saplings in whose place he could have planted garden saffron – and go. The owner was therefore required to pay Rav Pappa only what those saplings would have been worth had Rav Pappa cut them down and taken them with him (*Rashi*).

However, had Rav Pappa actually planted a tree, he would have been entitled to receive payment for this improvement to the land. Hence, had Rav Pappa claimed that he could have planted palm trees in the place where those saplings had sprouted, he would have received payment for the value of those saplings that did sprout [because those trees prevented him from planting his own trees on that spot] (*Raavad* cited by *Nimukei Yosef*).

29. I.e. the earth around its borders eroded, exposing a layer of rock (*Rashi*).

30. I.e. the sorb trees.

31. [Rav Bivi was the son of Abaye, who was a descendant of Eli the Kohen Gadol (see *Rosh Hashanah* 18a). Members of this family died young as a result of a curse placed on their family (see *I Samuel* ch. 3).] They were called מוּלָאֵי, which literally means *humpbacked* (a מוּלְיָא is a mound of earth – see *Moed Katan* 10b), because people so blemished do not live long. Rav Pappi states that the claim of this member of the family was similarly "blemished," having no validity (*Rashi* here and to *Kesubos* 85a; cf. *Rashi* to *Eruvin* 25b).

הָכָא מַאי פְּסֵידָא אִית לָךְ – But **here, what loss did you incur?**[32]

The Gemara introduces another type of arrangement between a landowner and a farmer:

רַב יוֹסֵף הֲוָה לֵיהּ הַהוּא שַׁתְּלָא – **Rav Yosef had this planter** who planted vines for him.[33] שְׁכִיב וְשָׁבַק חֲמִשָּׁה חֲתָנָוותָא – **[The planter] died, and left five sons-in-law** who wanted to continue in his place. אָמַר עַד הָאִידְּנָא חַד הַשְׁתָּא חֲמִשָּׁה – **[Rav Yosef,]** though, rejected their bid and **said, "Until now** there was **one** worker, **now** there will be **five.** עַד הָאִידְּנָא לָא הֲווּ סָמְכוּ אַהֲדָדֵי וְלָא מַפְסְדוּ לִי – **Until now,** i.e. while the planter was alive, **[the workers]** responsible for this vineyard **did not rely on one another** to do any of the work (since there was only one worker), **and they** therefore **did not cause me a loss;** הַשְׁתָּא חֲמִשָּׁה סָמְכוּ אַהֲדָדֵי וּמַפְסְדוּ לִי – but **now,** if the **five** sons-in-law assume the job, they **will rely on one another, and they will cause me a loss."** Rav Yosef therefore refused to accept the five sons-in-law in place of the planter.[34] אָמַר לְהוּ – **He** therefore **said to them,** אִי שָׁקְלִיתוּ שְׁבָחֵייכוּ וּמִסְתַּלְקִיתוּ מוּטָב – **"If you accept your** payment for the **improvement** to the land **and leave** willingly, **good;** וְאִי לָא מְסַלֵּיקְנָא לְכוּ בְּלָא שְׁבָחָא – **but if not, I will remove you without** paying you for the **improvement.**[35] דְּאָמַר רַב יְהוּדָה – **For Rav Yehudah said,** וְאִיתֵּימָא רַב הוּנָא וְאִיתֵּימָא רַב נַחְמָן – **and some say it was Rav Huna** who said it, **while some say it was Rav Nachman:** הַאי שַׁתְּלָא דְּשָׁכִיב – **In the case of a planter who dies,** יוֹרְשִׁים דִּילֵיהּ מִסְתַּלְקִין לְהוּ בְּלָא שְׁבָחָא – **his heirs leave without** receiving payment for **the improvement."** Rav Yosef therefore attempted to convince the sons-in-law to leave on their own with payment for the improvement by threatening to invoke the ruling of Rav Yehudah, which denies them even such a payment.

The Gemara concludes:

וְלָאו מִילְתָא הִיא – **But this is not correct.** Rav Yehudah never stated such a ruling.[36]

The Gemara cites another ruling about a planter:

הַהוּא שַׁתְּלָא דְּאָמַר לְהוּ – There was **a certain planter who said to [the owners],** אִי מַפְסְדִינָא מְסַלַּקְנָא – **"If I cause** you **a loss, I will leave."** אַפְסִיד – **[The planter] did** eventually **cause a loss.**[37] אָמַר רַב יְהוּדָה – **Rav Yehudah said:** מִסְתַּלֵּק בְּלֹא שְׁבָחָא – **He leaves without** receiving payment for **the improvements** that he had made.[38] רַב כָּהֲנָא אָמַר – **Rav Kahana said:** מִסְתַּלֵּק וְשָׁקִיל שְׁבָחָא – **He leaves, but he takes the improvements,** i.e. he receives payment for them.[39] וּמוֹדֶה רַב כָּהֲנָא – **However, Rav Kahana concedes** דְּאִי אָמַר אִי פָּסֵידְנָא מְסַתַּלַּקְנָא בְּלֹא שְׁבָחָא – **that if [the planter] said** explicitly, **"If I cause** you **a loss, I will leave without** receiving payment for the **improvements,"** מְסַתַּלֵּק בְּלֹא שְׁבָחָא – **he leaves without** receiving any payment for **the improvements.** רָבָא אָמַר – **Rava,** however, **said** even in that case the planter receives payment for the improvements, אַסְמַכְתָּא הִיא – because **this is an *asmachta,*** וְאַסְמַכְתָּא לָא קָנְיָא – **and an** agreement of ***asmachta* is non-binding.**[40]

The Gemara questions Rava's view:

מַאי שְׁנָא מֵהָא דְּתָנֵן – **Now, according to Rava, why is this different from that which we learned in Mishnah** above: אִם אוֹבִיר וְלֹא אֲעֲבִיד – IF I LEAVE [THE FIELD] FALLOW AND DO NOT WORK it properly, אֲשַׁלֵּם בְּמֵיטְבָא – I WILL PAY ACCORDING TO THE BEST?[41] We see from this that the sharecropper's commitment to compensate the landowner is binding. – ? –

The Gemara answers:

הָתָם מַאי דְּאַפְסִיד מְשַׁלֵּם – **There, [the sharecropper]** agrees to **pay for the loss that he caused** by not working the field. הָכָא מַאי דְּאַפְסִיד מְנַכִּינַן לֵיהּ – **Here,** too, **we** will **deduct from [the planter's]** payment **the loss that he caused;** וְאִידָךְ יָהֲבִינַן לֵיהּ –

NOTES

32. In Rav Pappa's case the saplings had sprouted on arable land. But here the sorb trees sprouted through rocks, in an area Rav Bivi could not have planted anyway (*Rashi*). There is therefore no justification to claim the value of the trees.

33. Under this arrangement the worker agrees to plant a vineyard in the landowner's field. In return for developing the land, the worker becomes a permanent *aris*, receiving one-half of the vineyard's yield each year (*Rashi*). It is also understood that the landowner may not dismiss the planter from his *arisus* as long as the vines continue to produce, unless the planter causes a loss. Even in this case, the landowner must pay the planter half the value of his improvement when dismissing him (*Meiri*; see below, 109b). [The planter arrangement differs in this respect from normal *arisus* or *chachirus* because the planter is hired to develop the land (before assuming the job of working it), whereas an *aris* or *chocheir* work land that was already developed.]

[This arrangement is not limited to someone who plants a vineyard, but applies to one planting any type of trees (see *Rambam, Hil. Sechirus* 10:6; *Meiri*).]

34. *Ramban* writes that Rav Yosef did not have to base his claim on the increase in the number of workers; rather, he could have merely stated that he was committed only to the planter, not to anyone else. However, if there had been only one heir who wanted the job, Rav Yosef would have gone beyond the letter of the law and accepted him (see also *Rosh*; cf. *Meiri*).

35. [In this context the term "improvement" refers to improvements brought about by the planter's efforts (i.e. the vines that he planted), not to improvements that occurred on their own.]

36. That is, Rav Yehudah never stated that the heirs of a planter are not entitled to the improvements made by him. Rather, the law is that although the landowner has the right to refuse to accept the heir as his worker, he must pay the heir for the improvement that the deceased planter made in the land (*Rosh*). Rav Yosef correctly cited Rav Yehudah to support his refusal to take on the sons-in-law, for indeed, in Rav Yehudah's opinion he was not required to do so. However, he exaggerated Rav Yehudah's ruling, stating that the heirs do not even receive the improvements due the vine planter, in order to intimidate them into dropping their claim of their own volition (*Tosafos* on 109b; see also *Beur HaGra, Choshen Mishpat* 329:1).

37. That is, the planter ruined some of the improvements he had made. However, the land was still worth more than it had been when the planter began working (*Rashi*).

38. Rav Yehudah understands the planter's statement to mean that if he causes any loss he will leave without being paid for his improvements (*Rashi* ד"ה אפסיד; see *Kos HaYeshuos*).

39. According to Rav Kahana, the planter meant only that he would leave voluntarily, but he did not abandon his claim to the improvements he made (*Rashi*; see *Kos HaYeshuos*).

40. As explained above (104b note 14), *asmachta,* literally "reliance," is the term used in the Talmud for an agreement based on expectation. In general, an *asmachta* involves one party consenting to surrender to the other a certain sum of money, depending on the performance of a certain act or the outcome of a particular event. In each case, the individual obligating himself enters into the agreement "relying" that the outcome will be favorable and that he will not actually have to pay. Rava says that the vine planter's commitment to leave without payment if he inflicted any loss was made only because of his expectation that this would never come to pass. But he did not actually mean to relinquish his rights to that compensation.

41. Above, 104a. The Mishnah refers to the standard sharecropping contract, in which an *aris* commits himself to work the field or compensate the owner for his failure to do so. In this case too, the *aris* is relying on the fact that he will be able to work the field. Nevertheless, if he leaves the field fallow or does not work it properly, he must fulfill his commitment.

but the rest of the payment that is coming to him **we give him.**[42]

The Gemara cites another incident concerning a vine planter who caused a loss:

רוּנְיָא שַׁתְּלָא דְּרַבִינָא הֲוָה – Runya was Ravina's planter. **אַפְסִיד – He caused a loss** **סַלְּקֵיהּ** – and **[Ravina] removed him.** **אָתָא לְקַמֵּיהּ דְּרָבָא – [Runya] came before Rava** **אָמַר לֵיהּ מַר חֲזֵי** – and **said to him, "See, master, what he** [Ravina] **is doing to me."** **אָמַר לֵיהּ** – **[Rava] replied to** [Runya], **שַׁפִּיר עָבִיד** – **"[Ravina] did** what is **proper."**[43]

אָמַר לֵיהּ – **[Runya] said to [Rava],** **הָא לֹא הִתְרָה בִּי** – **"But he did not warn me** first." **אָמַר לֵיהּ** – **[Rava] replied to him,** **לֹא צְרִיכָא לְהַתְרוֹת** – **"It is not necessary to warn** a planter," because warning is implicit in any agreement between a planter and a landowner.

The Gemara elaborates on Rava's ruling:

רָבָא לְטַעֲמֵיהּ – **Rava follows his own reasoning** that he stated elsewhere. **דְּאָמַר רָבָא** – **For Rava said:** **מַקְרֵי דַּרְדְּקֵי שַׁתְּלָא טַבָּחָא וְאוּמָּנָא** – **A teacher of children, a planter, a butcher, a circumciser,**[44]

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42. Agreeing to pay for the loss one caused is not *asmachta* [since it is not unreasonable for a person to pay this amount even if he could not legally be held liable for it without his express commitment (see 104a note 23). Thus, we assume that his commitment to make good the amount of the loss was genuine.] His agreement to forfeit what is due him for the improvements, however, is considered *asmachta* because there is no reason for him to agree to this except to assure the landowner that he will fulfill his obligation. We therefore assume that he made this commitment only because he relied on its never coming to pass – which makes it *asmachta* and not binding (see *Meiri*; see also 104b note 16). Rava therefore rules that the planter receives his share of the improvements even though he agreed to forfeit it, but the amount of the loss is deducted from it [because that part of the agreement is not *asmachta*].

43. That is, the landowner has the right to remove a planter if he causes a loss.

44. This follows *Rashi's* translation here. However, in a parallel Gemara in *Bava Basra* (21b), he translates אוּמָּנָא as a bloodletter (see also above, 97a). *Beur HaGra* (*Choshen Mishpat* 306:21) notes that this term is used for both professions, and that both translations are applicable here.

כּוּלָּן כִּמּוּתְרִין וְעוֹמְדִין דָּמֵי – **and the town scribe are all** considered **as having been forewarned.** That is to say, if they make a critical error, they may be dismissed without notice. בְּלָלָא דְּמִילְּתָא – **The general rule for this matter is:** כָּל פְּסִידָא דְּלֹא הָדַר – **Any** person who is in a position to cause an **irreversible loss** כִּמּוּתְרִין וְעוֹמְדִין דָּמֵי – **is** considered **as forewarned** that he will be dismissed for causing such a loss.[1]

The Gemara discusses the payment that a vine planter receives when he decides to stop working in the vineyard:

הַהוּא שַׁתָּלָא דַּאֲמַר לְהוּ – There was **a certain planter who said to [the owners],** הָבוּ לִי שְׁבָחַאי – **"Give me** the payment for **my improvement** of the field, דְּבְעִינָא לְמֵיסַק לְאַרְעָא דְּיִשְׂרָאֵל – **because I want to go up to the Land of Israel."** אָתָא לְקַמֵּיהּ דְּרַב פָּפָּא בַּר שְׁמוּאֵל – **[This case] came before Rav Pappa bar Shmuel.**[2] אָמַר לְהוּ – **He said to [the owners]:** הָבוּ לֵיהּ שְׁבָחֵיהּ – **Give him** the payment for **his improvements.**

Assuming this to mean that the planter receives the total value of his improvements to the land, Rava asks:

אִיהוּ אָמַר לֵיהּ רָבָא – **Rava said to [Rav Pappa bar Shmuel]:** Is it only **he** [the planter] who **brought about the improvement,** אַרְעָא לֹא אַשְׁבַּח – but **the land did not bring about the improvement?** The land also contributed to the growth of the vines. Why should the planter receive payment for the full increase in the value of the vineyard?[3]

Rav Pappa bar Shmuel clarifies his ruling:

אָמַר לֵיהּ – **He said to [Rava]:** אֲנָא פַּלְגָא דְּשַׁבָּחָא קָאֲמִינָא לָךְ – **I meant to say to you** that he should receive **half** the improvement.[4]

Rava objects to this ruling as well:

אָמַר לֵיהּ – **He said to [Rav Pappa bar Shmuel]:** עַד הַאִידָּנָא – **Until now,** when the planter was caring for the entire vineyard, הָוָה שָׁקִיל בַּעַל הַבַּיִת פַּלְגָא – **the landowner would take half** the produce of the vines וְשַׁתְּלָא פַּלְגָא – **and the planter** the other **half.**[5] הַשְׁתָּא בְּעֵי לְמֵיתַב מִנָּתָא לַאֲרִיסָא – But **now** that the planter is leaving earlier than usual, **[the landowner] will have to pay a portion** of his half of the produce **to a sharecropper** to have him care for the vineyard. Since the landowner will lose some of his share of the crop as a result of the planter leaving, why should the planter receive his full share of the improvements?[6]

Rav Pappa bar Shmuel again clarifies his ruling:

אָמַר לֵיהּ – **He said to [Rava]:** רִיבְעָא דְּשַׁבָּחָא קָאֲמִינָא – **I meant** that the planter should receive only **one-fourth of the improvement.**[7]

The Gemara analyzes Rav Pappa bar Shmuel's ruling:

סָבַר רַב אַשִׁי לְמֵימַר רִיבְעָא דְּהוּא דַּנְקָא – **Rav Ashi thought to say** that this means that the planter receives **one-fourth** of

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NOTES

1. All of the professionals listed by Rava are in a position to cause an irreversible loss:

(1) *Teacher of children:* Once a child learns something incorrect, the mistake is likely to remain with him throughout his life (*Rashi*). [*Tosafos* disagree with *Rashi's* explanation, citing a Gemara in which Rava himself states that a mistake learned in childhood will likely be corrected later in life (see *Bava Basra* 21a). They therefore explain that Rava means here that the time spent learning the wrong information is lost forever. See *Ran* for a defense of *Rashi*; see also *Chazon Ish* to *Bava Kamma* 23:2.]

(2) *Vine planter:* If the vineyard planted by the worker is not as productive as it could have been, the landowner can never recover that loss (*Tosafos* to *Bava Basra* 21a; see also *Sma*, *Choshen Mishpat* 306:20).

(3) *Butcher:* If a butcher slaughters an animal in a manner that is not in accordance with the law, the meat may not be eaten. Even if the butcher pays for the cost of the animal, there are certain losses for which he will not be obligated to pay (e.g. the embarrassment to the host or guests in not having meat at the meal). This loss is therefore considered irreversible (*Raavad,* cited by *Ran*).

(4) *Circumciser*: If the blood is not drawn out properly after the circumcision, the child will be in mortal danger (*Aruch* from *Shabbos* 133b).

(5) *Scribe:* A scribe who makes mistakes when writing a Torah scroll can cause an irreversible loss (*Rashi* to *Bava Basra* 21b, as understood by *Tosafos* and other Rishonim), for there are situations in which the mistakes cannot be corrected; e.g. where there are five mistakes in a column (*Rashba* there, in explanation of *Rashi*). Other Rishonim understand this to refer to a scribe who writes legal contracts. Cf. *Rashi* above, 97a ד"ה ספר; see *Tos. HaRosh* here.

2. As long as the planter works in the vineyard that he planted, he receives half the produce each year as pay. In addition, when he leaves he must be compensated for his work in developing the land. At issue here is how much compensation he receives for that development.

We learned above (109a) that a landowner may not dismiss the planter from his job. Similarly, a planter may not leave without permission of the landowner (*Rama, Choshen Mishpat* 330:3; cf. *Shach* there; see above, 105a note 27). *Kos HaYeshuos* suggests that this is why the planter in our case stated that he was traveling to Eretz Yisrael, for otherwise he would not have been given permission to leave his post.

3. Rava thought that Rav Pappa bar Shmuel meant that the planter should receive payment for the entire increase in the value of the field. For example, if the planter developed an empty parcel of land by planting six vines on it, and each vine is worth one *dinar* (apart from the value of the grapes growing on it), the planter would receive a payment of six *dinars* when he left. Rava objects to this by pointing out that the landowner's field played a role in this increase by nourishing the vines until they grew to their current size. It is therefore not logical that the landowner should have to pay the planter the entire current value of the vines (*Toras Chaim*).

4. This percentage of improvement is the same as the percentage of produce given to the planter while he is still working in the vineyard (*Rashi*). Thus, the landowner would give the departing planter three *dinars* in our example (*Toras Chaim*).

5. This arrangement could be viewed as if the vine planter had rights to half of the vines, while the landowner had rights to the other half. They would then each receive the produce coming from their respective half of the vineyard (see next note).

6. While the vine planter worked the land, the landowner received half the produce of the vineyard without having to hire anyone else to work for him. But if the planter leaves, the landowner will have to hire an *aris* to replace him, and he will have to pay this *aris* a percentage of the crop in return for his work. For example, an *aris* contracting to care for an existing vineyard typically takes a third of the produce. Thus, the landowner will have to relinquish one-third of the produce out of his half of the vineyard each year to pay the *aris* (*Rashi*). Although the landowner will also be receiving two-thirds of the grapes from the planter's former share, that does not compensate him for the loss from his share. Since the landowner had to pay for those vines, he in effect "purchased" them from the planter. Thus, whatever he profits from them does not make up for any increased payments he must make on the share that he received before.

This loss can be illustrated as follows: When the planter departs, the landowner pays him (in the case described in note 3) the worth of three vines. This is tantamount to purchasing three vines from him. Thus, while the planter was still working for the landowner (before this "purchase"), they were each considered to be in control of three vines; under those circumstances, the landowner received the produce of "his" three vines, while the planter received his share of the vineyard from the other three (see note 5). But now that the planter leaves, the landowner must hire an *aris* to work on his half of the vineyard and pay him a third of the crop. Consequently, the landowner no longer receives the full benefit of his original share (*Toras Chaim*).

7. The Gemara will explain this immediately below.

what will be the landowner's share after he hires a sharecropper, **which is** actually **one-sixth** of the vines.[8]

Rav Ashi based his view on the following statement:

דְּאָמַר רַב מַנְיוּמִי בְּרֵיהּ דְּרַב נַחוּמִי – **For Rav Manyumi the son of Rav Nachumi said:** בְּאַתְרָא דְּשָׁקִיל שַׁתְּלָא פַּלְגָּא וַאֲרִיסָא תִּילְתָּא – **In a place where a planter takes half** the yield **and a sharecropper takes** only **a third,**[9] הַאי שַׁתְּלָא דְּבָעֵי לְאִסְתַּלּוֹקֵי – **should a planter wish to depart,** יָהֲבִינַן לֵיהּ שְׁבָחָא וּמְסַלְּקִינַן לֵיהּ – **we give him** his share of the **improvement and remove him,** כִּי הֵיכִי דְּלָא נִמְטְיֵיהּ הֶפְסֵד לְבַעַל הַבַּיִת – but **in a way that the landowner does not suffer any loss.**[10]

Rav Ashi elaborates:

אִי אָמְרַתְּ בִּשְׁלָמָא רִיבְעָא דְּהַוּא דַּנְקָא – Now, **[Rav Manyumi's injunction] is satisifed if you say** that the planter receives **one-fourth** of what will remain to the landowner after he hires a sharecropper, **which is** actually **one-sixth** of the value of the vines; שַׁפִּיר – all is then **well,** because the landowner will not suffer any loss by giving the planter that amount.[11] אֶלָּא אִי אָמְרַתְּ רִיבְעָא מַמָּשׁ – **But if you say** that the planter receives **an actual fourth** of the total value of the vines, קָא מָטֵי לֵיהּ פְּסִידָא לְבַעַל הַבַּיִת פַּלְגָּא דַּנְקָא – **the landowner will suffer a loss of one-twelfth** of the total.[12]

The Gemara presents an argument for the planter to receive one-fourth of the *total* value of the vines:

אָמַר לֵיהּ רַב אַחָא בְּרֵיהּ דְּרַב יוֹסֵף לְרַב אַשִׁי – **Rav Acha the son of Rav Yosef said to Rav Ashi:** וְלֵימָא לֵיהּ – **But let [the planter] say to [the landowner],** אֲנָא מְנָתָא דִּילָךְ הַב לֵיהּ לַאֲרִיסָא – **"You** take three-fourths of the vines and **give** from **your portion** the proper percentage **to the sharecropper,** וְאֲנָא מְנָתָא דִּילִי מַאי דְּבָעֵינָא עֲבִידְנָא בֵּיהּ – **while I will** take one-fourth of the vines and **do with my portion what I want."** Since the landowner will then own only four-and-a-half vines, he will pay an *aris* one-third of that and keep two-thirds – three vines worth – for himself. He will thus receive as much as he received before the planter left. Whatever extra the *aris* will be paid for tending the other vine-and-a-half, he will be paid for working on the *planter's* share. Thus, that amount should not be subtracted from the portion given to the planter.[13]

Rav Ashi responds appreciatively:

אָמַר – **He said:** כִּי מָטֵית לִשְׁחִיטַת קָדָשִׁים – **When you get to** the tractate ***Shechitas Kodashim*** [more commonly known as *Zevachim*], תָּא וְאַקְשִׁי לִי – **come** back **and ask me** your questions.[14]

The Gemara cites a ruling mentioned above to introduce another ruling made by the same Amora:[15]

גּוּפָא – **The text** above stated: אָמַר רַב מַנְיוּמִי בְּרֵיהּ דְּרַב נַחוּמִי – **Rav Manyumi the son of Rav Nachumi said:** בְּאַתְרָא דְּשָׁקִיל שַׁתְּלָא פַּלְגָּא וַאֲרִיסָא תִּילְתָּא – **In a place where a planter takes half** the yield **and a sharecropper takes a third,** הַאי שַׁתְּלָא דְּבָעֵי אִסְתַּלּוֹקֵי – **should a planter wish to depart,** יָהֲבִינַן לֵיהּ שְׁבָחֵיהּ וּמְסַלְּקִינַן לֵיהּ – **we give him his** share of the **improvement and remove him,** כִּי הֵיכִי דְּלָא לִיפְסוֹד בַּעַל הַבַּיִת – but **in a way that the landowner does not suffer any loss.**

The Gemara cites another ruling made by Rav Manyumi about vine planters:

אָמַר רַב מַנְיוּמִי בְּרֵיהּ דְּרַב נַחוּמִי – **Rav Manyumi the son of Rav**

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8. When the planter leaves, the landowner will hire an *aris* and pay him one-third of the produce of the entire vineyard, which will leave the landowner with two-thirds of the crop. In our case, for example, where the improvement to the field consists of six vines worth one *dinar* each, the landowner would, in effect, have to set aside two vines to pay the *aris,* leaving him with four vines for himself. [For purposes of simplification, the six vines are assumed to produce equal amounts of grapes.] Rav Ashi understood Rav Pappa bar Shmuel to be saying that the planter receives at his departure one-fourth of the value of the four vines that constitute the landowner's new share of the entire vineyard. He would get, therefore, one *dinar* – the worth of one vine. This amounts to one-sixth the total number of vines [$^1/_4 \times ^2/_3 = ^2/_{12} = ^1/_6$] (*Rashi,* as explained by *Toras Chaim*). [These fractions are calculated against the total number of vines, and they take into account the fact that the profits from the planter's share cannot cause losses from the landowner's share. Rav Ashi will now explain why this formula yields the fairest result.]

9. That is, in return for planting the vines, the worker receives half of the produce every year, and he may work there forever. [Thus, he is entitled to some compensation when he leaves.] However, an *aris* who takes over an established vineyard receives only one-third of the produce each year that he works there (*Rashi*).

10. That is, we must carefully calculate the percentages to insure that the amount the planter is paid should not come at the expense of the landowner (*Rashi*).

11. In the example given above of a six-*dinar* improvement, the planter takes one *dinar* [the value of one vine], the *aris* takes [the produce of] two vines, and the landowner receives the full benefit of the other half of the vineyard – three vines – exactly what he received when the planter was working for him (*Rashi*). Thus, the planter receives a share of the improvement that does not come at the expense of the landowner.

12. In the above example, giving the planter an actual fourth would mean that he would receive 1½ *dinars* [one-fourth of the total of six]. In the meantime, the *aris* would still take a third of the produce as his share (two *dinar's* worth). This would leave the landowner with only 2½ *dinars'* worth of produce, which comes to half a *dinar* less than he was receiving when the planter was working in the vineyard. That loss of half a *dinar* equals one-twelfth of the total value of six *dinars* (*Rashi*).

13. The planter concedes that the landowner is entitled to continue receiving the produce of half the vines. He argues, however, that the payment he (the planter) receives for his share of the vines should be calculated as if he had been given ownership of the vines themselves to dispose of as he pleases. If this were actually done, it would only be necessary to give the landowner 4½ vines to insure that he continued to receive three vines worth of grapes. With only 4½ vines the owner would have to pay the *aris* the produce of just 1½ vines (one-third of his vines) and he would keep three vines worth for himself – exactly what he received before! The remaining 1½ vines would belong to the planter, who could sell them to anyone he wished. If he sold them to a third party, that party would have to either tend the vines himself or hire an *aris* to do so for him. If he chose to hire an *aris,* he would have to pay him one-third of the crop (half a vine worth), but this would obviously be an expense incurred by the buyer and would not come off the purchase price. Therefore, even if the planter chooses to sell his 1½ vines back to the landowner (which he in effect does by taking payment for the vines rather than title to them), the cost of paying an *aris* to care for those vines should be borne by the landowner, not the planter.

Accordingly, the planter should be paid for 1½ vines – one-*quarter* of the total vines – and not just the sixth that Rav Ashi suggested (*Rashi* as explained by *Toras Chaim*; cf. *Maharshal and Maharsha*).

14. Rav Ashi complimented Rav Acha, noting that it required a sharp mind to ask such a penetrating question. Rav Ashi therefore told Rav Acha that when he studied the difficult tractate *Zevachim* – called here שְׁחִיטַת קָדָשִׁים, literally: *The Slaughter of Sanctified [Animals]* – he should come back to Rav Ashi and challenge him with his questions, which Rav Ashi would attempt to answer (*Rashi's* first explanation). *Rashi* notes that as a result of this question Rav Ashi retracted his position. Hence, the Gemara introduces it above as סָבַר רַב אַשִׁי לְמֵימַר, "Rav Ashi *thought* to say," because Rav Ashi later changed his mind as a result of Rav Acha's question.

[*Rosh,* however, understands Rav Ashi's response to be a diversion. In reality, Rav Acha's question does not pose a difficulty because it is based on the premise that the planter owns rights to the actual vines. But in reality the planter is not empowered to sell any of the vines to a third party; he is entitled only to receive payments for the produce and improvement, not the vines themselves. See also *Ramban* at length.]

15. *Tos. HaRosh.*

Nachumi said: קוּפָּא סָבָא – From **an aged** vine that withered and no longer produces, פַּלְגָא – the vine planter receives **half** the vines.[16] שְׁטָפָהּ נַהֲרָא – However, if **a river washed away [the vineyard],** רִיבְעָא – the planter receives only **one-fourth** of the vines.[17]

The Gemara presents a similar case:

הַהוּא גַּבְרָא דְּמַשְׁכִּין פַּרְדִּיסָא לְחַבְרֵיהּ לְעֶשֶׂר שְׁנִין – There was **a certain person who mortgaged**[18] **a vineyard to his fellow for ten years.** Under this arrangement the lender was to receive the produce of the vineyard as installment payments for the debt. וְקַשׁ לְחֲמֵשׁ שְׁנִין – **[The vineyard] aged** and withered **after five years,** as expected.[19] The lender now claimed the dead vines for himself. אַבַּיֵי אָמַר – **Abaye said:** פֵּירָא הָוֵי – **[The dead wood] is** considered **produce** of the vineyard; therefore, the lender may take it.[20] רָבָא אָמַר – **Rava said:** קַרְנָא הָוֵי – **[The wood] is** considered **principal,** i.e. part of the land itself; וְיִלָּקַח בּוֹ קַרְקַע – **therefore, land should be purchased with [the proceeds]** of the sale, וְהוּא אוֹכֵל פֵּירוֹת – **and [the lender] consumes the produce** of that newly purchased land until the expiration of the security term.[21]

The Gemara questions Abaye's opinion:

מֵיתִיבִי – **They challenged** Abaye **from the** following **Baraisa:** יָבֵשׁ הָאִילָן אוֹ נִקְצַץ – If **THE TREE** that was given to a lender as security **WITHERED** and died **OR IT WAS FELLED,** שְׁנֵיהֶם אֲסוּרִים בּוֹ – **BOTH OF THEM** [i.e. both the borrower and the lender] **ARE FORBIDDEN TO** take **IT** and use it for wood.[22] בֵּיצַד יַעֲשׂוּ – **WHAT SHOULD THEY DO** with such trees? יִמָּכְרוּ לְעֵצִים – **THEY SHOULD BE SOLD AS WOOD;** וְיִלָּקַח בָּהֶן קַרְקַע – **AND LAND SHOULD BE PURCHASED WITH [THE PROCEEDS]** of the sale, וְהוּא אוֹכֵל פֵּירוֹת – from which **[THE LENDER] CONSUMES THE PRODUCE** until the expiration of the security term.

The Gemara now explains its challenge from this Baraisa to Abaye:

מַאי לָאו יָבֵשׁ דּוּמְיָא דְּנִקְצַץ – **Does** the Baraisa **not** speak of a **withered** tree whose case is **comparable to** that of **the felled** tree?[23] מַה נִּקְצַץ בִּזְמַנּוֹ – **Just as the felled** tree was presumably cut down **in its** proper **time** [after it stopped bearing fruit], אַף יָבֵשׁ בִּזְמַנּוֹ – **so too the withered** tree of which the Baraisa speaks must refer to a tree that withered **in its** proper **time** [at the age when such a tree normally dies].[24] וְקָתָנֵי יִלָּקַח בָּהֶן קַרְקַע – **Yet, [the Baraisa] teaches:** LAND SHOULD BE BOUGHT WITH [THE PROCEEDS] וְהוּא אוֹכֵל פֵּירוֹת – from which **[THE LENDER] CONSUMES THE PRODUCE.** אַלְמָא קַרְנָא הָוֵי – We **thus** see that **[the tree] is** considered **principal** even though it withered at a normal age![25] – ? –

The Gemara defends Abaye:

לֹא – **No!** That is not the proper interpretation of the Baraisa. The Baraisa should actually be understood in the following way: נִקְצַץ דּוּמְיָא דְּיָבֵשׁ – The Baraisa speaks of a **felled** tree that is

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16. [When a vine grows old and no longer produces, it is cut down] and the dead vines are divided equally between the planter and the landowner. Since it is normal for vines to age and die and be cut down for their wood, the wood left over is viewed as part of the produce of the vine. These dead vines are treated much the same as vines that were cut off [to prune the tree] during the lifetime of the vineyard, to which the planter is entitled to half. [Since it is understood that vines must be pruned at regular intervals, the prunings are viewed as products of the vine to be divided between owner and planter. Similarly,] since the eventual death of the vines is anticipated at the time they are planted, the wood of the dead vines is an expected "product" of the vineyard, to which the planter is entitled to half (*Rashi*).

17. A flooding river sometimes uproots entire vines, or depletes the soil so that it cannot produce crops for a long time. In either of these cases [the vineyard is considered dead and the planter-owner arrangement has come to an end]. The vine planter and landowner therefore divide the wood. However, because this is an unusual occurrence, this case is treated like that of a vine planter who leaves the field earlier than normal [i.e. the prematurely dead vines are not considered the normal "produce" of the vineyard but rather the remnant of the "improvement" of the land]. Since the vine planter receives only one-fourth of improvements he made to the land, he receives only one-fourth of the wood [which is all the improvements are currently worth] (*Rashi*).

This is apparently difficult. We learned above that the reason the vine planter receives only one-fourth of the improvements (rather than half) is because the landowner will have to hire an *aris* to replace the planter. But that argument is not relevant in our case, where the vineyard has been wiped out! From *Tosafos* (ד"ה רבא) it seems that it is standard for a planter to accept upon himself to take only one-fourth of the improvements if he leaves the vineyard sooner than expected – for any reason whatsoever. [Thus, although the rationale for a one-fourth share does not apply in this case, the rule nonetheless applies contractually.]

18. The lender was to deduct a fixed amount from the loan for each year that he used the field. Alternatively, this refers to an arrangement known as a Surean security (see above, 67b), in which the lender is granted the use of the borrower's property for a predetermined amount of time as payment for the loan (*Rashi*). [See above, 67b note 12 for a lengthy discussion of these two types of arrangements.]

19. That is, this was the normal time for the vineyard to wither and die (*Rashi*; see note 26). [See *Maayanei HaChochmah*, who asks why the lender would accept the vineyard as a ten-year security if he knew that it would wither after only five years.]

20. [The borrower would then have to find new resources to pay off the remainder of the loan.]

21. In this way, the borrower retains the newly purchased land as his principal, with the landowner taking the produce from that new principal.

Tosafos and *Tos. HaRosh* ask why this case is different than the case of the vine planter cited previously. In that case, the vine planter was allowed to take half the withered vines because they were considered produce. Why does Rava deny a lender holding a vineyard as security the same privilege? *Rashi* seems to anticipate this problem by implying that the wood that remains at the end is not by definition produce but is viewed as such only because this is the understanding between a planter and landowner (אַדַּעְתָּא דְּהָכִי נָחֵת; see *Rashi* ד"ה קופא סבא). [Because the planter planted the vines and cultivated them, he thus expects to receive a share of what remains of them, just as he receives compensation for them if he is dismissed from the vineyard.] Because of this understanding, the wood that remains at the end of the natural life of the vines is viewed as their final "produce." But objectively speaking, the wood is not produce but principal (according to Rava). Therefore, a lender holding a security, who has rights only to the produce of the vineyard but not to the vines themselves, does not receive any of the dead vines outright. Rather, they are considered the principal of the borrower and they must therefore be sold for land, to preserve that principal for him.

22. I.e. neither is permitted to chop the tree into logs and use it for fuel. If the borrower burns the wood, he consumes the principal of the lender [since the profit of the tree is repaying his loan; see note 18]. Similarly, if the lender burns the wood, he consumes the borrower's principal [since the tree is supposed to revert to him once the loan is paid] (*Rashi* above, 79a; see note 12 there).

23. [The juxtaposition of the two cases in the Baraisa indicates that they are similar.]

24. The case of a felled tree is presumably referring to one that no longer produces fruit, because people do not cut down a fruit-bearing tree (*Rashi*). [In addition, it is prohibited to cut down a fruit-bearing tree. It is therefore unlikely that the Baraisa would base its case on someone violating this prohibition (*Tosafos*, from *Bava Basra* 26a).] Hence, since the first case of the Baraisa refers to a tree that was cut down at a point when it is common to do such a thing, the second case too must refer to a tree that withered at an age when trees normally wither.

25. For if it were considered produce, the lender would be allowed to keep the wood outright.

comparable to the case of a **withered** tree. מַה יָּבֵשׁ בְּלֹא זְמַנּוֹ – **Just as** the case of the **withered** tree refers to a tree that died **not in its** proper **time** [it died unexpectedly],[26] אַף נִקְצָץ בְּלֹא זְמַנּוֹ – **so too** the case of the **felled** tree refers to a tree that was cut down **not in its** proper **time** [but while it was still bearing fruit].[27]

The Gemara attempts again to refute Abaye:

תָּא שְׁמַע – **Come, learn** a proof from the following Mishnah:[28] נָפְלוּ לָהּ גְּפָנִים וְזֵיתִים וְקָנִים – If an inheritance of **OLD VINES OR OLIVE TREES FELL TO HER,**[29]

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26. The term used in the Baraisa, יָבֵשׁ, *withered,* connotes something unexpected. When referring to a tree that dried out because of its age, the Baraisa uses the term הָזוּקִין, *aged* (*Tosafos*).

Since the tree withered unexpectedly, its wood is not considered produce but principal even according to Abaye. [As we learned above in the case of the planter,] even one who enters a vineyard with the expectation of receiving a share of the wood at the end of the vines' natural life does not expect to receive a share should they die prematurely (*Rashi*). Rather, that wood is treated as principal, which should be sold to raise money for the purchase of more land.

27. [However, a tree that died at its expected time would be treated as produce, not principal, as Abaye ruled.]

28. *Kesubos* 79b. The Mishnah discusses what to do with property items that a woman inherits from her relatives after her marriage. By law, these are treated as נְכְסֵי מְלוֹג, *melog property.* Accordingly, the wife retains ownership of the principal while the husband may use the property and keep all produce and income that derives from it.

29. After the woman married, her father died, leaving her this inheritance (*Rashi*).

יִמָּכְרוּ לְעֵצִים – THEY SHOULD BE SOLD FOR WOOD; וְיִלָּקַח בָּהֶן קַרְקַע – AND LAND SHOULD BE PURCHASED WITH THEIR [PROCEEDS], וְהוּא אוֹכֵל פֵּירוֹת – from which [THE HUSBAND] CONSUMES THE PRODUCE. It is thus apparent from this Mishnah that withered trees are considered to be the principal of the field, not its produce.[1] This contradicts Abaye's view. – ? –

The Gemara offers two answers:

אֵימָא וְהִזְקִינוּ – **Say** that the Mishnah means: **They became aged,** withering unexpectedly. In that case Abaye agrees that the wood is considered principal, not produce.[2] וְאִיבָּעֵית אֵימָא – **Or, if you prefer, say** in defense of Abaye: לָאו מִי אוֹקִימְנָא לְהָהִיא – **Did we not establish that** Mishnah to be referring to בְּגוֹן שֶׁנָּפְלוּ לָהּ בְּשָׂדֶה אַחֶרֶת – **a case where [the old trees]** that **fell to [the wife]** were growing **in another field,** not her own? Therefore, even according to Abaye, the husband may not take them outright, דְּקָא בָּלְיָא קָרְנָא – **because** if he does, **the** wife's **principal is consumed.**[3]

The Gemara digresses to discuss another ruling about land held as a security for a loan:

הַהוּא שְׁטָרָא דַּהֲוָה כְּתִיב בֵּיהּ שְׁנִין סְתָמָא – There was **a certain contract in which** the security term **was written** as an **unspecified** number of **years.**[4] מַלְוֶה אָמַר שָׁלֹשׁ – Subsequently, **the lender said** that the term was **three** years, לוֶֹה אָמַר שְׁתַּיִם – while **the borrower said** that the term was only **two** years. קַדִּים מַלְוֶה וְאָכְלִינְהוּ לְפֵירֵי – Meanwhile, **the lender went ahead and consumed the produce** of the third year before the borrower could take him to court. The borrower demanded payment for that produce. מִי נֶאֱמָן – In this case, **who is believed?**

The Gemara presents conflicting opinions:

רַב יְהוּדָה אָמַר – **Rav Yehudah says:** קַרְקַע בְּחֶזְקַת בְּעָלֶיהָ קַיְימָא – **The land stands in the possession of its owner** [the borrower]; the borrower may therefore collect payment for the disputed produce from the lender who took it.[5] רַב כָּהֲנָא אָמַר – **Rav Kahana,** though, **says:** פֵּירוֹת בְּחֶזְקַת אוֹכְלֵיהֶן קַיְימִי – **The fruits stand in the possession of the one who consumed them** [the lender]; the lender is therefore not obligated to compensate the borrower for them.[6]

The Gemara decides the law:

וְהִלְכְתָא כְּוָותֵיהּ דְּרַב כָּהֲנָא – **And the law is in accordance with Rav Kahana,** דְּאָמַר פֵּירוֹת בְּחֶזְקַת אוֹכְלֵיהֶן קַיְימִי – **who said that the fruits stand in the possession of the one who consumed them.**

The Gemara asks:

וְהָא קַיְימָא לָן דְּהִלְכְתָא כְּוָותֵיהּ דְּרַב נַחְמָן – **But it has been established for us that the law is in accordance with Rav Nachman** in monetary cases, דְּאָמַר קַרְקַע בְּחֶזְקַת בְּעָלֶיהָ עוֹמֶדֶת – **and he said** in a circumstance similar to this one [in a dispute involving rental payment for the use of a bathhouse] that **the land** [i.e. the bathhouse] **stands in the possession of its owner,** and the tenant must pay him the rental.[7] – ? –

The Gemara explains why the ruling of Rav Nachman is not applicable here:

הָתָם מִילְתָא דְּלֹא עֲבִידָא לְאִיגְלוּיֵי הִיא – **There,** in Rav Nachman's case, the dispute was about **something that does not stand to become known.** Consequently, no harm could result from ruling in favor of the owner of the bathhouse. הָכָא מִילְתָא דַּעֲבִידָא לְאִיגְלוּיֵי הִיא – But **here,** the dispute is about **something that stands to become known.** וְאַטְרוּחֵי בֵּי דִינָא תְּרֵי זִמְנֵי לָא מַטְרְחִינַן – **Therefore,** in this case, **we do not** take the risk of **bothering a**

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1. The Rabbis instituted that the husband should receive the produce or income produced by any property that his wife inherits, with the wife retaining ownership over the principal. Therefore, if the withered trees were considered produce of the field, the husband would receive them outright. Since the Baraisa requires them to be sold to preserve their value for the wife, it is obvious that the trees are still considered principal even after they have withered (see *Rashi*; see *Tosafos* to 109b ד"ה נפלו).

2. That is, the Mishnah does not mean that the wife inherited trees that were already aged. Rather, when she inherited the trees, they were still producing fruit; but they unexpectedly withered and died. Since the trees withered before the end of their normal life span, even Abaye views the wood as the principal (see above, 109b).

3. The Gemara in *Kesubos* (79b) interprets the Mishnah to be referring to old trees that the wife inherited in a field belonging to another party. In that case, were the husband to take the withered trees as produce, there would be absolutely nothing left to the woman from that inheritance (*Rashi*). Therefore, even Abaye agrees that the trees should be sold for new land to preserve their principal for the woman. If, however, she had inherited the land along with the trees, the withered trees could be considered produce, since she would still be left with the land as her principal (*Raavad* in *Shitah Mekubetzes*). [According to this answer, the Mishnah can be referring to trees that were already aged when she inherited them, as first thought.]

4. This refers to a contract for a Surean security (see 109b note 18). Such a contract normally states that after a certain number of years in the hands of the lender the field will revert to its owner, the borrower. This contract, though, stated only that "after the completion of these years" the land would revert to the owner, without specifying how many years were meant (*Rashi*).

5. [As discussed many times in this tractate, a basic principle of Torah law regarding monetary litigations is הַמּוֹצִיא מֵחֲבֵירוֹ עָלָיו הָרְאָיָה, *The [burden of] proof is on the one who seeks to exact [property] from his fellow.*] Thus, according to Rav Yehudah, we award the disputed produce of the third year to the borrower because he commands presumptive ownership of the land from which it grew. This is so even though the borrower did not take the lender to court until the lender had already consumed the produce. Since the lender was not justified in taking the produce, the fact that it is now in his physical possession does not affect the law (*Rashi*). [See also below, note 7.]

6. According to Rav Kahana, the main factor to consider here is that the lender had already taken the disputed produce into his possession. Since the produce is in the lender's possession, the burden of proof is upon the borrower to exact that property from the lender. The borrower must therefore prove that the term of the security was for only two years. Without such proof, the lender need not return anything to the borrower (*Rashi*).

7. This refers to the case discussed above (102b), where someone leased a bathhouse for one year, with the rental fee established at "twelve *dinars* a year, one *dinar* a month." The Gemara there debates how much the renter must pay during a Jewish leap year when a thirteenth month is added. According to the first of these phrases, "twelve *dinars* a year," the renter should have rights to use the bathhouse during the entire year for twelve *dinars;* but according to the second phrase, "one *dinar* a month," he should have to pay an extra *dinar* for the thirteenth month. Rav Nachman rules in that case that the owner can demand payment for the thirteenth month even if the renter had already used the bathhouse that month, because the bathhouse is in its owner's possession (*Rashi*). Even though the renter possesses the disputed money, he must pay it to the bathhouse owner since the cause of the dispute was apparent before he occupied the bathhouse on the thirteenth month. Before the thirteenth month, the court would certainly have ruled in favor of the owner. Therefore, if the renter goes ahead and uses the bathhouse during the disputed month, he must pay the owner for its use (*Rashi* above, 102b). That case is apparently analogous to the present one, where the lender had already taken the produce of the disputed third year. If we follow Rav Nachman's ruling (in the case of the bathhouse), we should order the lender to pay for the produce, since the land certainly belongs to the borrower, and the cause of the dispute [the ambiguity in the security document] was apparent before the lender took the produce. Yet here, the Gemara rules that the lender need not pay for the produce since he had already taken it into his possession.

court two times by ruling in favor of the owner of the land [i.e. the borrower].[8]

The Gemara discusses the case of another dispute between a lender and borrower regarding land being held as a security:[9]

מַלְוֶה אוֹמֵר חָמֵשׁ – Consider a case where the **lender says** that he has rights to the land for **five** years, לְוֶה אוֹמֵר שָׁלֹשׁ – while the **borrower says** the term was only **three** years. The lender had already benefited from the land for three years; thus the borrower was demanding its immediate return, while the lender claimed that he could keep the land for another two years. אָמַר לֵיהּ אֵיתֵי לִי שְׁטָרָךְ – **[The borrower] said to [the lender], "Bring me your contract** of security." אָמַר לֵיהּ שְׁטָרָא אִירְבַּס לִי – **[The lender] replied to him, "I lost the contract."**

The Gemara cites a ruling:

אָמַר רַב יְהוּדָה – **Rav Yehudah said:** מַלְוֶה נֶאֱמָן – **The lender is believed** to say that the security term was five years, מִגּוֹ דְּאִי בָּעֵי אָמַר לְקוּחָה הִיא בְּיָדִי – **since,** if he had wanted to lie, **he could have claimed, "I purchased [the land]** from you."[10]

The Gemara offers a dissenting opinion:

רַב אָמַר לֵיהּ רַב פָּפָּא לְרַב אַשִׁי: – **Rav Pappa said to Rav Ashi:** זְבִיד וְרַב עֲוִירָא לֹא סְבִירָא לְהוּ הָא דְּרַב יְהוּדָה – **Rav Zevid and Rav Avira do not agree with that** ruling **of Rav Yehudah.** מַאי טַעְמָא – **Why** do they disagree? הַאי שְׁטָרָא בִּינּוֹן דִּלְגוּבְיֵינָא קָאֵי – Because regarding **such a contract** of security, **since it is subject** to be used **for collecting** the produce of the field for only a limited amount of time, מִיזְהַר זָהִיר בֵּיהּ – **[a lender] is certainly careful with it.** We must therefore assume that the lender did not actually lose it as he said. וּמִיכַּבֵּשׁ הוּא דְּכַבְּשֵׁיהּ לִשְׁטָרֵיהּ – **Rather, he is concealing his contract,** סָבַר אוֹכְלָה תַּרְתֵּין שְׁנִין יְתֵירְתָא – **thinking that he will consume [the produce]** of the field illegally for **an additional two years.**[11]

The Gemara now raises an objection to Rav Yehudah's statement that if the lender would say that he had *purchased* the land, he would be believed:

אֶלָּא מֵעַתָּה אָמַר לֵיהּ רָבִינָא לְרַב אַשִׁי: – **Ravina said to Rav Ashi:** – **But now** that an occupant is believed to say that he purchased the land (even where the original owner is claiming that it was given only as a security), a potentially dangerous situation is created by הַאי מַשְׁכַּנְתָּא דְּסוּרָא – **this Surean security,** דִּכְתְבֵי הָכִי – **where they** typically **write the following** in the contract: בְּמֵישְׁלַם שְׁנַיָּא אִלֵּין תִּיפּוֹק – **"At the completion of these years,** אַרְעָא דָּא בְּלָא כְּסַף – **this land shall leave** the lender's possession **without** the borrower having to pay any **money."** הֵיכָא דְּכַבְּשֵׁיהּ לִשְׁטַר מַשְׁכַּנְתָּא – For **if** after three years **[the lender] conceals the document of security** וְאָמַר לְקוּחָה הִיא בְּיָדִי – **and says, "I purchased [the land]** from you," הָכִי נַמִי דְּמְהֵימְנַן – **he would indeed be believed!** וְכִי מְתַקְּנִי רַבָּנַן מִילְּתָא – **Now, would the Rabbis institute something** דְּאָתֵי בָּהּ [לִידֵי] פְּסֵידָא – **that can lead to** the borrower sustaining **an** unfair **loss** of his land?[12] What can the borrower do to protect himself against the lender claiming after three years that he purchased the land?[13]

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8. The Gemara concedes that we should normally rule in favor of the person who owns the property that is the source of the item under dispute. In our case, this would require the lender to pay for the disputed produce, since the borrower commands ownership of the land. But since we have no actual proof that the borrower's claim of two years' use is true, it is possible that the lender will one day produce the witnesses signed on the contract and they will testify that the lender was in fact entitled to three years on the field. The court would then require the borrower to pay back the lender the money for the fruits that the court earlier allowed him to collect from the lender. Hence, to avoid the possibility of the court having to order two payments, we rule that the lender does not have to pay for the disputed produce. In the earlier case, though, there is no such concern, because that dispute can never be settled (see *Rashi*). There, the dispute is based on the legal question of which phrase is primary – the first phrase (which set a yearly rate) or the second phrase (which set a monthly rate). This is not something that can be proven either way. The owner of the bathhouse may therefore collect payment from the renter, since he has possession of the property that is the source of the dispute. See *Tos. HaRosh*; see also *Shach* 317:9.

9. Whereas in the previous case the dispute between the lender and borrower was based on an ambiguity in the contract, the dispute in the following case resulted from the lack of any contract on hand (*Rashi*).

10. Literally: it [the land] is purchased in my hand. If the lender had claimed that he purchased the field from its original owner, the borrower, he would have been believed. This claim would be successful even though he could not produce a deed, because he had already benefited from the land for three years. [The Rabbis ruled that someone who occupies a parcel of land for three years unchallenged is believed to say that he purchased it from its owner. These three years of occupancy are called the years of *chazakah*. This principle is discussed at length in the third chapter of *Bava Basra*, 28a ff.]

Rav Yehudah therefore maintains that, in our case, where the lender had already used the borrower's field for three years, he is believed when he says that he is entitled to retain the security land for another two years. This is based on the principle of *migo* (literally: since), which is generally explained as follows: A dishonest litigant would prefer to enter a stronger plea rather than a weaker one. Therefore, if a litigant enters a weaker plea, the court assumes that he is telling the truth. Thus, in our case, the lender is assumed to be telling the truth about the produce of those two additional years, *since* if he wanted to gain it illegally he could have advanced a claim that would be of greater benefit to him – that he had bought the field outright.

11. Rav Zevid and Rav Avira maintain that we cannot apply the *migo* principle to our case, because the lender's claim of losing the contract is clearly false. Since documents of security are needed for only a *limited* time (for collecting produce until the term of the security expires) a lender would not lose it. We must therefore conclude that this lender did not lose his security contract; rather, he is concealing it in order to receive an extra two years of produce. This is unlike a deed of sale, which a buyer needs for an *unlimited* time as proof of ownership. In that case the Rabbis ruled that since it is highly impractical for a buyer to guard a document forever, he is expected to keep his deeds for only three years (after three years, people believe that if no one has challenged their ownership until now, no one ever will). Therefore, if after three years on the field someone claims that he bought the field and lost the deed, he is assumed to be telling the truth (*Rashi*).

[Even though a *migo* argument gives credence to one's claim, such a claim is never believed against witnesses to the contrary. In the case under discussion, the strength of the argument against the lender's claim that he lost the security document is tantamount to that of witnesses. Therefore, even though his claim is based on a *migo,* it cannot be accepted.]

12. [As explained above (see 67b note 12), the Rabbis instituted the Surean security to avoid the Biblical prohibition (see *Leviticus* 25:36) of charging interest for a loan to a fellow Jew.] But why would the Rabbis institute a practice that [while successfully avoiding the prohibition against taking interest] sets up a situation which could lead to fraud at the expense of the borrower? (see *Rashi*).

13. This objection against Rav Yehudah's ruling adds to the previous one, raised by Rav Zevid and Rav Avira. They objected to Rav Yehudah's application of the *migo* principle in this case. Ravina questions the ruling on which Rav Yehudah based the *migo*: viz. if someone claims that the person occupying his land for the last three years is holding it as a security whose term has now expired and the occupant counters that he bought the field, the occupant is believed (see *Rashi*).

Ravina does not necessarily disagree with Rav Yehudah's actual ruling on this point. A person is indeed believed to say he bought the field that he has been occupying for the past three years. (It makes no difference whether the challenger claimed that the land was stolen or he claimed that it was being held as a security.) Rather, Ravina is asking why this ruling does not undermine the Rabbinic enactment of the Surean security (*Tosafos*; see *Ramban*).

[The Rishonim note that this aspect of Rav Yehudah's ruling was never disputed by Rav Zevid and Rav Avira. They objected only to Rav

Rav Ashi answers:

אָמַר לֵיהּ – **He said to [Ravina]:** הָתָם תַּקִּינוּ לֵיהּ רַבָּנַן – **There, the Rabbis** also **enacted** דְּמָרֵי אַרְעָא יָהִיב טַסְקָא וְכָרֵי כַּרְיָא – **that the owner of the land pays the land tax** to the government **and digs the ditch** around its borders.[14] Therefore in the case of a Surean security there can be no mistake as to the identity of the owner.[15]

Ravina asks:

אַרְעָא דְּלֵית לָהּ כַּרְיָא וְלָא יָהִיב טַסְקָא – But regarding **land that does not have a ditch and** for which **one does not** need to **pay the land tax,**[16] מַאי – **what** will prevent the lender from falsely claiming that he purchased the land?

Rav Ashi replies:

אָמַר לֵיהּ – **He said to [Ravina]:** אִיבָּעֵי לֵיהּ לְמִחווֵי – **[The field's owner] should have protested** before three years elapsed.[17]

Ravina counters:

לֹא אִימְחָא – If **[the owner] did not protest,** מַאי – **what** will prevent him from losing his field?

Ravina answers:

אִיהוּ הוּא דְּאַפְסִיד אַנַּפְשֵׁיהּ – If the owner did not protest, **he is the one who caused his own loss.** Therefore, the Rabbis did not account for that possibility when instituting the arrangement of a Surean security.[18]

The Gemara discusses a similar dispute between a sharecropper and the landowner:

אָרִיס אוֹמֵר לְמֶחֱצָה יָרַדְתִּי – If **a sharecropper said, "I went down** to work the field **for** payment of **half** of the produce," וּבַעַל הַבַּיִת אוֹמֵר לִשְׁלִישׁ הוֹרַדְתִּיו – **while the landowner said, "I sent him down** to the field **for** payment of **a third** of the produce," מִי נֶאֱמָן – **who is believed?**

The Gemara cites two responses:

רַב יְהוּדָה אָמַר – **Rav Yehudah said:** בַּעַל הַבַּיִת נֶאֱמָן – **The landowner is believed.** רַב נַחְמָן אָמַר – **Rav Nachman said:** הַכֹּל כִּמְנָהָג הַמְּדִינָה – It **all** depends **on the local custom.**

The Gemara analyzes these statements:

סָבוּר מִינָּהּ לֹא פְּלִיגִי – **[The students][19] assumed that [Rav Yehudah and Rav Nachman] do not** actually **disagree** with one another: הָא בְּאַתְרָא דְּשָׁקִיל אֲרִיסָא פַּלְגָא – Rather **this** statement of Rav Nachman **is referring to a place where a sharecropper takes half** of the produce for his pay; הָא בְּאַתְרָא דְּשָׁקִיל אֲרִיסָא תִּילְתָּא – while **this** statement of Rav Yehudah **is referring to a place where a sharecropper takes a third** of the produce for his pay. Rav Yehudah agrees with Rav Nachman that we rule according to the prevailing custom. His statement that we believe the landlord (who said that the payment was a third) is limited to a case in which the local custom was to pay a third.

The Gemara explains that Rav Yehudah and Rav Nachman do in fact disagree with one another:

אָמַר לְהוּ רַב מָרִי בְּרֵהּ דְּבַת שְׁמוּאֵל – **Rav Mari the son of Shmuel's daughter said to [those students]:** הָכִי אָמַר אַבַּיֵי – **Thus said Abaye:** אֲפִילּוּ בְּאַתְרָא דְּשָׁקִיל אֲרִיסָא פַּלְגָא פְּלִיגִי – **[Rav Yehudah and Rav Nachman] disagree even regarding a place where a sharecropper** usually **takes one-half** of the produce. רַב יְהוּדָה אָמַר בַּעַל הַבַּיִת נֶאֱמָן – **Rav Yehudah says that the landowner is** nevertheless **believed** in his claim that this particular sharecropper agreed to be paid only one-third of the produce; דְּאִי בָּעֵי – **for if [the landowner] wanted** to lie, אָמַר שְׁכִירִי וְלָקִיטִי הוּא – **he** could have **said that [this worker] is my** hired **employee or my farm hand.**[20] The landowner is therefore believed to say that the worker is a sharecropper who agreed to receive only one-third of the crops as his pay.[21]

The Gemara discusses a case in which a person dies leaving a debt, and his creditor wishes to collect land from the debtor's estate as payment of the debt. The land in question had been improved since the loan was made, but it was not known whether the debtor himself or his inheritors had made the improvements:

יְתוֹמִים אוֹמְרִים אָנוּ הִשְׁבַּחְנוּ – If **the orphans** of the debtor **say, "We improved** the land, and may therefore keep the improvements," וּבַעַל חוֹב אוֹמֵר אֲבִיכֶם הִשְׁבִּיחַ – **but the creditor says, "Your father improved** it, and the improvements may therefore be collected," עַל מִי לְהָבִיא רְאָיָה – **upon whom does the** burden of **proof rest?**[22]

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Yehudah's use of this law as the basis for a *migo*. Accordingly, Ravina's question is not limited to the opinion of Rav Yehudah (see *Tos. HaRosh, Ran*; see also *Nesivos HaMishpat* 150:5 regarding Rashi's view in this matter).]

14. We have learned (103b note 17) that ditches were commonly dug around the boundaries of a field.

15. That is, the Rabbis did account for the possibility of a fraudulent claim by the lender. They included in their enactment of a Surean security that the borrower take responsibility for the land tax and the ditch around the field. Because of this arrangement, we would know that the lender is holding the land only as a Surean security, and not as a purchased property. Rav Yehudah's ruling, which assumes that the occupant is believed to say that he purchased the field, is limited to a case where the challenger had *not* performed these services (*Ramban*).

16. Certain properties were exempt from the land-tax, and in addition [for an unrelated reason] did not have a ditch around their border (*Rashi*). [The Gemara in *Succah* 45a calls a tax-exempt land קַלְנְיָא. This is possibly the source for *Rashi's* reference to the land discussed here as אַרְעָא קַנְיָא.]

17. The borrower should have protected himself by declaring before witnesses that the land is his and that the person occupying it is his creditor who is holding it merely as a security (*Rashi*).

18. The Gemara thus successfully explains why an unfair loss cannot result from Rav Yehudah's ruling (viz. we accept an occupant's claim that he bought the field, even though the original owner claims that the land was being held as a security). Where land is being held as a security, the original owner should protest the lender's occupancy before three years elapse. If he fails to do so, he must bear the loss.

19. Based on *Rashi* to *Beitzah* 36b and *Megillah* 4a.

20. A שָׂכִיר is a worker who is hired for a fixed period of time. A לָקִט is someone hired for the reaping and harvesting seasons. In either case, the worker receives a fixed monetary payment, rather than a share of the produce (*Rashi* here and to *Eruvin* 64a).

21. Here also Rav Yehudah utilizes the principle of *migo*: We do not suspect the landowner of lying when he claims that the *aris* agreed to accept only one-third of the produce. If the landowner wanted to defraud the worker he could have claimed that the worker was not an *aris* at all. Rather he was a hired hand, who does not receive any produce from the field.

Rav Nachman, though, disagrees with Rav Yehudah's use of the *migo* principle here. Just as a claim based on a *migo* cannot outweigh the conflicting testimony of witnesses, so too it cannot outweigh a claim that is based on local custom. Therefore, if the local custom is that an *aris* receives one-half of the produce, the landowner is not believed to say that the agreement was for only a third of the produce (*Nimukei Yosef*; cf. *Yad David*).

22. If the orphans had improved the land, they would not have to give the improvements to their father's creditor (*Rashi*; see also below, 110b note 19). But if the improvements had been made before they inherited the land, they would have to surrender the improvements.

The Gemara presents an opinion:

סָבַר רַבִּי חֲנִינָא לְמֵימַר – **R' Chanina was inclined to say:** אַרְעָא בְּחֶזְקַת יְתָמֵי קַיְימָא – **The land stands in the possession of the orphans,** וְעַל בַּעַל חוֹב לְהָבִיא רְאָיָה – **and** consequently **the burden of proof is upon the lender.**[1]

A dissenting view is cited:

הָכִי אָמַר – **A certain elder said to them:**[2] אָמַר לְהוּ הַהוּא סָבָא – **Thus said R' Yochanan:** רַבִּי יוֹחָנָן – עַל הַיְתוֹמִים לְהָבִיא רְאָיָה – **The burden of proof is upon the orphans.**

This is explained:

מַאי טַעְמָא – **What is the reason** for this ruling? אַרְעָא בֵּינָן דִּלְגוּבַיְינָא קַיְימָא – **Since the land is subject to collection** by the creditor, כְּמַאן דְּגַבְיָא דַּמְיָא – **it is** considered **as if it were** already **collected** and in the possession of the creditor. וְעַל הַיְתוֹמִין לְהָבִיא רְאָיָה – **Therefore, the burden of proof is upon the orphans** to collect payment from him for the improvements.[3]

The Gemara cites support for R' Yochanan's ruling:

אָמַר אַבָּיֵי – **Abaye said:** אַף אָנָן נָמֵי תְּנִינָא – **We also learned** this **in a Mishnah:**[4] סָפֵק זֶה קָדַם וְסָפֵק זֶה קָדַם – Regarding a tree that is located near a town, if IT IS UNCERTAIN WHETHER [THE TREE] OR [THE TOWN] CAME FIRST, קוֹצֵץ – [THE OWNER OF THE TREE] MUST CUT it DOWN, וְאֵינוֹ נוֹתֵן דָּמִים – AND [THE RESIDENTS OF THE TOWN] NEED NOT PAY him compensation.[5] אַלְמָא בֵּינָן דִּלְמֵיקַץ קַיְימָא – We **thus** see that **since [the tree] is subject to be cut down,** אֲמִרִינַן לֵיהּ – **we say to [the owner],** אַיְיתִי רְאָיָה הָכָא נָמֵי – **"Produce a proof and collect** compensation." וּשְׁקוֹל הַאי שְׁטָרָא – Therefore, **here also** with regard to **this** case of a debt **document,** בֵּינָן דִּלְגוּבַיְינָא קַיְימָא – **since [the land] is subject to collection,** כְּמַאן דְּגַבְיָא דַּמְיָא – **it is** considered **as if it were** already **collected;** וְעַל הַיְתוֹמִין לְהָבִיא רְאָיָה – **hence, the burden of proof is upon the orphans** to collect compensation for the improvements.[6]

The Gemara continues its narrative of this case:

אַיְיתוּ וַתְּמֵי רְאָיָה דְּאִינְהוּ אַשְׁבְּחוּ – **The orphans** eventually **produced a proof that it was they** who **had improved** the field. They therefore were entitled to compensation for the improvement. סָבַר רַבִּי חֲנִינָא לְמֵימַר – **R' Chanina was inclined to say:** בְּאַרְעָא מְסַלְּקִינַן – **When we settle their claim,** כִּי מְסַלְּקִינַן לְהוּ – **we do so with land.**[7] I.e. the creditor leaves them a portion of their father's land which is equivalent to the value of the improvement.[8]

The Gemara rejects this view:

וְלָא הִיא – **But this is not so.** בְּדְמֵי מְסַלְּקִינַן לְהוּ – Actually, **we settle their claim with** a **cash** payment for the value of the improvement, מִדְּרַב נַחְמָן – as can be seen **from** a ruling **of Rav Nachman.** דְּאָמַר רַב נַחְמָן אָמַר שְׁמוּאֵל – **For Rav Nachman said in the name of Shmuel:** שְׁלֹשָׁה שָׁמִין לָהֶם אֶת הַשָּׁבָח – **For three** people **we assess the improvement** that they made to the land, וּמַעֲלִין אוֹתָן בְּדָמִים – **and we remove them** from the land **with** a **cash** payment for the amount of that assessment; וְאֵלּוּ הֵן – **and these** three people **are** the recipients named in the following cases: בְּכוֹר לַפָּשׁוּט – **a firstborn** pays cash **for** improvements made by **an ordinary** son;[9] וּבַעַל חוֹב וּכְתוּבַּת אִשָּׁה לַיְתוֹמִים – **a creditor, or a woman** collecting her ***kesubah***, pays cash **for** improvements made by **the orphans;**[10] וּבַעַל חוֹב לַלְקוּחוֹת –

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1. [That is, since the orphans inherited this land from their father, the land together with its improvements is under their control. The lender must therefore produce proof in order to take the improvements from them.]

2. An alternative version of the text reads אָמַר לֵיהּ הַהוּא סָבָא, *A certain elder said to him* [R' Chanina] (see *Dikdukei Sofrim;* see also the texts of *Rif* and *Rosh*).

3. The creditor has the right to collect the land as is, no matter who improved it. At issue is only whether he must *pay* the orphans for the improvements. The orphans must therefore produce proof that they are the ones who improved the field in order to exact such payment from the creditor (*Rashi* ד"ה ספק; cf. *Tosafos* ד"ה סבר with *Maharsha*, *Shitah Mekubetzes*; see *Ramban* and *Shach, Choshen Mishpat* 115:33 at length).

4. *Bava Basra* 24b. The Mishnah there rules that it is prohibited to plant carob or sycamore trees within fifty *amos* of a town. [Other trees must be distanced twenty-five *amos* from a town.] Furthermore, if one owns a tree that stands too close to a town, he must remove it, regardless of whether the tree was planted before or after the town was built. However, if the tree was planted before the town was built, the residents of the town must compensate the owner of the tree; if the tree was planted after the town was built, the owner receives no compensation. In the section of the Mishnah cited here, the Mishnah discusses a case where it is not known when the tree was planted (*Rashi*).

5. The owner must certainly cut down his tree. The question is only whether he should receive compensation for it (see previous note). Since the residents of the town are in possession of the money, the burden of proof rests upon the owner of the tree to collect that money from them (*Rashi*).

6. This case of orphans paying their father's debt is similar to the case of a tree planted near a town. The creditor certainly has the right to collect the land with its improvements. (Even if the orphans were the ones who had improved the land, they receive only monetary compensation for those improvements, as the Gemara concludes below.) The only question is whether the creditor is obligated to pay compensation to the orphans for the improvements. To this we say that since he is holding the money, the burden of proof rests upon the orphans to collect it (*Rashi*).

7. Literally: when we dismiss them, we dismiss them with land.

8. R' Chanina thought that since the land had originally belonged to the father and was still under the control of the orphans when they made the improvements, their compensation should be a parcel of that land equal in value to their improvements (see *Tosafos*).

[*Kos HaYeshuos* notes that this is the basis for R' Chanina's own opinion (cited above) that the burden of proof rests upon the creditor. Since, according to R' Chanina, the creditor could *not* collect the entire land if the orphans had in fact made the improvements, the land cannot be viewed as being in his possession. This case is different from that of a tree planted near a town, where the tree has to be cut down in any case (see note 6).]

9. This refers to a firstborn son and his brother who improved an inherited field before they divided it between themselves. The Gemara in *Bava Basra* (124a) states that the firstborn does not receive a double share of the improvements to the field, even though he does receive a double share of the field itself. This is based on the principle that a firstborn receives a double portion only of property that was in the father's possession when he died (see *Deuteronomy* 21:17). Therefore, since at the time of the father's death the field was not yet in this improved condition, the firstborn does not receive a double share of the improvements. Rather, he receives a tract of land twice the size of the other brother, and then pays the brother for the amount of improvements due him. This comes to one-fourth of the improvement found in the firstborn's portion (*Rashi*).

[To understand this distribution we can consider the inherited field as consisting of three equal sections, two taken by the firstborn and one by the ordinary son. One of the firstborn's sections with its improvement is identical to that of the other brother with its improvement. The firstborn may therefore keep all of the improvements in that section since his brother gained the same amount in his own identical section. The firstborn's second section, though, is different since the other brother did not receive any corresponding parcel. The firstborn must therefore share the improvement in this section equally with his brother. The firstborn thus pays his brother the value of half of the improvement there, which is equivalent to one-fourth of the total improvement that the firstborn received in both of his sections.]

10. When a person dies, his orphans must pay his creditors (including his wife, who wants to collect her *kesubah*) with land that he left behind. The creditors, though, do not have a claim to any improvements that the orphans made to the field. Therefore, after collecting the field, they must pay the orphans for such improvements.

and a creditor pays cash **for** improvements made by **the purchasers** of his debtor's property.[11] Rav Nachman states here explicitly that orphans are entitled only to a cash payment for any improvement they made to inherited land; they do not receive a parcel of land of equivalent value as R' Chanina thought.

In the preceding statement, Rav Nachman taught in the name of Shmuel that a creditor must compensate a purchaser (in cash) for any improvements made by the purchaser to mortgaged land. The Gemara now questions whether a purchaser is entitled to any such compensation:

לְמֵימְרָא – **Ravina said to Rav Ashi:** אָמַר לֵיהּ רָבִינָא לְרַב אַשִׁי – Is this **to say that Shmuel holds that a creditor must pay compensation to the buyers** of a mortgaged field for improvements they had made to the field? דְּסָבַר שְׁמוּאֵל בַּעַל חוֹב לַלְקוּחוֹת [וַיְהִיב שִׁבְחָא][11a] – **But,** in Shmuel's view, **does a purchaser have** any right to compensation for **improvements?** וּמִי אִית לֵיהּ שִׁבְחָא לַלּוֹקֵחַ – **Why, Shmuel** himself **has said that a creditor collects the improvements** of the land from the purchaser and does not have to compensate him![12] וְהָאָמַר שְׁמוּאֵל בַּעַל חוֹב גּוֹבֶה אֶת הַשֶּׁבַח

The Gemara anticipates a possible answer:

וְכִי תֵּימָא לָא קַשְׁיָא – **And if you will say that this is not a difficulty,** כָּאן בְּשֶׁבַח הַמַּגִּיעַ לִכְתֵּפַיִם – because **here,** in the ruling cited by Rav Nachman, Shmuel is dealing **with improvement** [i.e. produce] **that is** almost **ready for the harvesters,**[13] כָּאן בְּשֶׁבַח שֶׁאֵין מַגִּיעַ לִכְתֵּפַיִם – while **here** in the ruling just cited, Shmuel is dealing **with improvement that is not** almost **ready for the harvesters,**[14] that would not resolve the problem for the following reason: וְהָא מַעֲשִׂים בְּכָל יוֹם – **For there are instances occurring daily** in which creditors would approach Shmuel וְקָא מַגְבֵּי שְׁמוּאֵל – **and Shmuel would allow them to collect** from purchasers of their debtor's land אֲפִילּוּ בְּשֶׁבַח הַמַּגִּיעַ לִכְתֵּפַיִם – **even improvement** that is almost **ready for the harvesters,** without compensating the purchaser for that improvement!

The Gemara reconciles the two statements of Shmuel:

הָא דְּמַסֵּיק בֵּיהּ בְּשִׁיעוּר אַרְעָא – **This is not a difficulty.** לָא קַשְׁיָא – **This** ruling (viz. that a purchaser is not compensated for improvements) refers to cases **where [the creditor] is owed by [his debtor],** the seller, **an amount** equivalent to the value **of the land and** its **improvements.** In such a case, he is entitled to collect the land and the improvements without compensating the purchaser. הָא דְּלָא מַסֵּיק בֵּיהּ שִׁיעוּר אַרְעָא וּשְׁבָחָא – **This** ruling (viz. that a purchaser *is* compensated for improvements) refers to a case **where [the creditor] is not owed by [the debtor] an amount** equivalent to the value **of the land and improvements;** rather, he is owed only the value of the land without its improvements. In such a case, he must compensate the purchaser for the improvements.[15]

The Gemara asks:

וְכִי לָא מַסֵּיק שִׁיעוּר אַרְעָא וּשְׁבָחָא – **But where [the creditor] is not owed an amount** equivalent to the value **of** both **the land and the improvements,** דְּיָהֵיב לֵיהּ זוּזֵי לַלּוֹקֵחַ וּמְסַלֵּק לֵיהּ – if you say **that he may dismiss the purchaser by giving him money,** the following difficulty arises: הָנֵיחָא לְמַאן דְּאָמַר – **This is acceptable** only **according to the one who says** that אִי אִית [לֵיהּ] זוּזֵי לַלּוֹקֵחַ – even **if a purchaser** of mortgaged land **has money,** לָא מָצֵי מְסַלֵּק לֵיהּ לְבַעַל חוֹב – **he may not prevent**[16] the **creditor** from possessing the land by offering him money instead, שַׁפִּיר – for Shmuel's ruling is then **appropriate:** The creditor need give only monetary compensation to the purchaser for any improvements to the land.[17] אֶלָּא לְמַאן דְּאָמַר – **However, according to the one who says** that אִית לֵיהּ זוּזֵי לַלּוֹקֵחַ – when

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11. When someone borrows money (for example), his land becomes mortgaged to the creditor. If the land is subsequently sold, the creditor may collect the land – together with any improvements made by the purchaser – from the purchaser. However, the creditor must pay the purchaser for the value of the improvement he made to the field (*Rashi*).

In all these three cases, a cash payment (not a payment in land) is made for the improvement. The reason is that the land is viewed as belonging to the one who may collect it (viz. the creditor or the firstborn). They are not required to, in effect, sell a portion of their property to pay for the improvement if they have cash available. The Gemara elaborates on this point below [see note 20] (*Rashi*).

11a. Emendation follows *Hagahos HaBach.*

12. [It is important to note that the Gemara's discussion pertains only to the third ruling reported by Rav Nachman in the name of Shmuel, which concerns a creditor collecting land that someone *purchased* from his debtor. However, where the debtor died, and the creditor is collecting the land from the *orphans,* he must certainly pay compensation for improvements they made to the field. The reason for this distinction is that a seller generally guarantees to someone purchasing his field that if the field is seized by a creditor, he will compensate the purchaser for the field and any improvements made to it by the purchaser. This gives the creditor the right to take those improvements, since doing so will not cause a loss to the purchaser. This reasoning is obviously not applicable to orphans, who have no one to compensate them. They are similar to a recipient of a gift, who cannot demand compensation from his benefactor if the present is collected. In that case the Gemara ruled above (15a) that the recipient does not lose monetary rights to the improvement he makes on the field that he received. By the same token, orphans retain monetary rights to improvements that they made (*Ran, Nimukei Yosef*).]

13. Literally: that reaches the shoulders. The produce is almost ready to be harvested and carried on the shoulders (see *Ramban* to 15a ד"ה שבח). Since the produce will be harvested in the near future, it is not as closely associated with the land as are other land improvements. Consequently, the creditor would have to compensate the purchaser for its value.

The Gemara refers to a case in which the produce still derives some nourishment from the ground. If the produce is fully ready for harvest, it is no longer regarded as a land improvement at all. Rather, it is regarded as an already-harvested crop which is not subject to collection by creditors at all (*Rashi,* from Gemara above, 14b).

14. According to this explanation, Shmuel holds that a creditor can generally collect mortgaged land and its improvements and does not have to compensate the purchaser for the improvements. It is only in the case of almost ripened produce, which is viewed as though it were independent of the land, that Shmuel holds that the creditor must pay compensation. [There would thus be three different categories: (a) If the produce were completely ripened, the creditor could not collect it at all; (b) if it were almost ripened, he could take it but would have to compensate the purchaser; (c) all other improvements may be taken by the creditor without paying any compensation.]

15. That is, if the amount of the debt equals the value of the land with its improvements, the creditor is not obligated to pay the purchaser for the improvements he put into the field. It is in such a case that Shmuel ruled that the creditor collects the improvement (without providing compensation), and it is those types of cases that Shmuel ruled upon daily. However, if the debt equals only the value of the field without the improvements, the creditor compensates the buyer for those improvements, as Rav Nachman quoted in the name of Shmuel.

16. Literally: remove.

17. There is an Amoraic dispute in *Kesubos* (91b) whether a purchaser of mortgaged land may prevent the seller's creditor from seizing that land by paying off the debt with money (and then collecting that money from the seller). According to the view that the purchaser may not prevent the creditor from taking the land, the land is viewed as though it was the creditor's property from the moment the debt was contracted. Thus, in our case, the improvements were made to land already belonging to the creditor. The purchaser is viewed as one who occupied someone's field without permission and improved it. He therefore receives only monetary payment for those improvements. Since the debt is equivalent to the value of the entire parcel of land, the creditor is not required to allow any part of it to remain with the purchaser (*Rashi*).

the purchaser has money, מָצִי מְסַלֵּק לֵיהּ לְבַעַל חוֹב – **he may prevent the creditor** from possessing the land by offering him money instead, why can the creditor compensate the purchaser for his improvements with money? וְנֵימָא לֵיהּ – **Let [the purchaser] say to him,** אִי הֲוָה לִי זוּזֵי – **"If I had the money,** הָוָה מְסַלֵּיקְנָא לָךְ מִבּוֹלָא אַרְעָא – **I could have prevented you from** taking **the entire land.** הַשְׁתָּא דְּלֵית לִי זוּזֵי – **Now that I do not have money** to prevent you from possessing the entire land, הַב לִי גְּרִיוָא דְּאַרְעָא בְּאַרְעָאי שִׁיעוּר שְׁבָחַאי – at least **give me a parcel in my land** equivalent to **the value of my improvements."**[18] – ? –

The Gemara explains why the purchaser may not demand land as compensation for his improvements:

כְּגוֹן הָכָא בְּמַאי עַסְקִינַן – **What** case **are we dealing with here?** דְּשַׁוְּיָא נִיהֲלֵיהּ אַפּוֹתִיקִי – We are dealing with a case where [the seller] had made this field **an *apotiki* for [the creditor],** דְּאָמַר לֵיהּ – **by telling him,** לֹא יְהֵא לְךָ פֵּרָעוֹן אֶלָּא מִזּוֹ – **"You will have no** right to **collect** the debt **except from this** field."[19] In such a case, all agree that if the purchaser offers money, the creditor need not accept it. Consequently, when the creditor possesses the field, he may compensate the purchaser for his improvements with money; he does not have to give him any land.[20]

Mishnah The first section of this Mishnah concludes its discussion of leasing fields:

הַמְקַבֵּל שָׂדֶה מֵחֲבֵירוֹ לְשָׁבוּעַ אֶחָד – If **one leases a field from his fellow for one septennial** בִּשְׁבַע קִבְּלָהּ הֵימֶנּוּ – **for seven hundred *zuz*,**[21] הַשְּׁבִיעִית מִן הַמִּנְיָן – the ***sheviis* year is** part **of the count.**[22] מָאתַיִם זוּז – **for seven hundred *zuz*,** אֵין שֶׁבַע שָׁנִים – However, if **he leased it from him for seven years** בִּשְׁבַע מֵאוֹת זוּז – **for seven hundred *zuz*,** הַשְּׁבִיעִית מִן הַמִּנְיָן – the ***sheviis* year is not** part **of the count.**[23]

The Mishnah now turns to a new topic – timely payment of a hired worker:[24]

שְׂכִיר יוֹם – **One who is hired for the day**[25] גּוֹבֶה כָּל הַלַּיְלָה – **collects** his wages **all night.**[26] שְׂכִיר לַיְלָה – **One who is hired for the night** גּוֹבֶה כָּל הַיּוֹם – **collects all day.**[27] שְׂכִיר שָׁעוֹת – **One hired for** several **hours**[28]

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18. Since the purchaser may normally prevent the creditor from seizing the mortgaged property by offering money instead, it is clear that the land is not considered as belonging to the creditor. The creditor is therefore entitled to collect only as much of the property as is necessary to satisfy his debt. Therefore, in this case, where the debt equaled only the value of the land without its improvements, the creditor should be entitled only to the amount of improved land that equals his debt. Why, then, does Shmuel (according to Rav Nachman) hold that the creditor may possess all the land and improvements, and give the purchaser only money for his improvements? The purchaser should be allowed to keep the amount of land that exceeds the value of the debt.

19. *Rashi* (to *Bava Kamma* 11b ד"ה אפותיקי) explains that אַפּוֹתִיקִי is an acronym for אַפֵּה תְּהֵא קָאֵי, *you* [the creditor] *will stand here.* Thus, it refers to property specifically designated by the debtor as set aside for payment of the obligation in case he defaults. When property is so designated, everyone agrees that its purchaser may not prevent the creditor from possessing it by offering money instead (*Rashi* above, 15b).

[It should be noted that the Greek word *hypotheke* means "a pledge" or "a property placed under obligation" and the word hypothec is used even today in that legal sense. *Tosefos Anshei Shem* (*Sheviis* 10:3) asserts that the Talmudic sages were fully aware of the origins of the many foreign words for which they provided a Semitic interpretation; the Semitic interpretations were meant to be explanatory, not etymological.]

20. Since the purchaser cannot prevent the creditor from seizing the land, the land is considered to already belong to the creditor, as explained above. The creditor may therefore take the entire land, giving the purchaser only monetary compensation for the improvements he made on it.

[Now that the Gemara has concluded that the third ruling reported by Rav Nachman (where a *purchaser* improved the field) must be referring to an *apotiki* field, it follows that the second ruling of Rav Nachman (where the *orphans* improved the field) is also referring to an *apotiki* field for the same reason. In the case of a non-*apotiki* field, orphans, too, could demand a portion of the land equivalent to the value of the improvements. Therefore, Rav Nachman, who rules that the orphans are entitled only to money, must be referring to orphans who inherited an *apotiki* field (see *Rashi* above, ד"ה וכן).]

21. [The field was leased for a fixed fee to be paid in cash.] The same laws would apply, however, if the tenant leased the field as an *aris* [paying the landowner a certain percentage of the crops] or a *chocheir* [paying a fixed amount of produce] (*Rambam, Hil. Sechirus* 8:3 with *Maggid Mishneh*).

22. The landowner need not leave the land in the renter's possession for another year to compensate for the *sheviis* year, when the tenant was not allowed to work on the field and profit from it. Furthermore, since the rental agreement fixed the seven hundred-*zuz* fee for one septennial, rather than for seven years, the owner need not deduct a seventh of the rental for the *sheviis* year even though the tenant cannot till the field that year (see *Nimukei Yosef*).

The Mishnah uses the example of a rental fee of seven hundred *zuz* to teach that there is no implication that the fee was based on a calculation of one hundred *zuz* per year. Rather the seven hundred *zuz* was the fee for the entire period, which is understood to include only six working years (*Toras Chaim*; see also *Kos HaYeshuos*).

23. If the rental agreement stipulated "seven years" [rather than one septennial], the implication is that the lease is for seven working years. Therefore, the owner must leave the field in the tenant's possession for an additional year in lieu of the *sheviis* year when he could not work (see *Meiri*).

24. This has two ramifications: (1) The Torah prohibits an employer from delaying payment due to his employee. This prohibition is stated in *Leviticus* (19:13): לֹא־תָלִין פְּעֻלַּת שָׂכִיר אִתְּךָ עַד־בֹּקֶר, *The wage of a hired worker shall not stay overnight with you until morning.* It is repeated in *Deuteronomy* (24:15): בְּיוֹמוֹ תִתֵּן שְׂכָרוֹ וְלֹא־תָבוֹא עָלָיו הַשָּׁמֶשׁ, *On his day shall you pay his hire; and the sun shall not set upon him.* [The Gemara below and on 111a will discuss when each prohibition applies, and will list other prohibitions that are transgressed by withholding the wages of a worker.] (2) The Sages enacted that during the time period in which the employer is required to compensate the worker, the worker is believed under oath to claim that he has not yet been paid his wages. [According to Biblical law an oath functions only to prevent a litigant from collecting property from the person taking the oath. Here the Rabbis allowed the employee to take an oath and collect his wages from the employer. The reason for this will be explained below, 111b].

25. [I.e. a worker who is hired for one day's work.] The Mishnah refers specifically to one who works for the entire day and completes his work at evening (*Rashi*).

26. The entire night constitutes the payment time of the worker. Therefore, according to the Rabbinic enactment the worker is believed under oath within this time, should he claim that he has not yet been paid his wages. Also, if the employer does not pay the worker during the day, he is not in violation of the Biblical prohibition against delaying payment (see Gemara below). Only if he does not pay that night will he have violated the command in *Leviticus* not to hold one's wages overnight (*Rashi*).

27. That is, the collection time for one who terminates his employment at dawn is that day. Thus, a night worker is believed all the next day if he claims under oath that he has not yet been paid. In addition, the employer is not in violation of the prohibition (stated in *Leviticus* against keeping the wage of a worker overnight, if he does not pay that night. He is subject only to the command in *Deuteronomy* to pay during the day (*Rashi*).

28. I.e. a worker who is not hired for an entire day or night but only for several hours.

שְׂכִיר שַׁבָּת שְׂכִיר חֹדֶשׁ שְׂכִיר שָׁנָה שְׂכִיר שָׁבוּעַ – Regarding one hired for a week, a month, a year, or a septenary, גּוֹבֶה כָּל הַלַּיְלָה וְכָל הַיּוֹם – collects all night and all day.[29] יָצָא בַּיּוֹם – if he departs by day, גּוֹבֶה כָּל הַיּוֹם – he collects all that day;[30] יָצָא בַּלַּיְלָה – and if he departs at night, גּוֹבֶה כָּל הַלַּיְלָה וְכָל הַיּוֹם – he collects all that night and the following day.[31]

Gemara The Gemara explains the Biblical source for the prohibition against delaying payment to an employee:

תָּנוּ רַבָּנָן – **The Rabbis taught in a Baraisa:** מִנַּיִן לִשְׂכִיר יוֹם שֶׁגּוֹבֶה כָּל הַלַּיְלָה – FROM WHERE is it derived THAT ONE WHO IS HIRED FOR A DAY COLLECTS his wages ALL NIGHT? תַּלְמוּד לוֹמַר ,,לֹא־תָלִין פְּעֻלַּת שָׂכִיר אִתָּךְ עַד־בֹּקֶר'' – For THE TORAH TEACHES:[32] *THE WAGE OF A HIRED WORKER SHALL NOT STAY OVERNIGHT WITH YOU UNTIL MORNING.* וּמִנַּיִן לִשְׂכִיר לַיְלָה שֶׁגּוֹבֶה כָּל הַיּוֹם – AND FROM WHERE is it derived THAT ONE WHO IS HIRED FOR A NIGHT COLLECTS his wages ALL DAY? שֶׁנֶּאֱמַר ,,בְּיוֹמוֹ תִתֵּן שְׂכָרוֹ'' – FOR IT IS STATED: *ON HIS DAY SHALL YOU PAY HIS HIRE.*[33]

The Gemara asks:

וְאֵימָא אִיפְּכָא – **But say the opposite** is true: A night worker must be paid during the night in which he has done his work, while a day worker must be paid during the day in which he completed his work! – ? –

The Gemara answers:

שְׂכִירוּת אֵינָהּ מִשְׁתַּלֶּמֶת אֶלָּא בְּסוֹף – **Wages are due only at the end** of the job. Therefore, someone working all day does not have to be paid until nighttime, while someone working all night does not have to be paid until daytime.[34]

The Gemara elaborates upon this prohibition:

תָּנוּ רַבָּנָן – **The Rabbis taught in a Baraisa:** מִמַּשְׁמָע שֶׁנֶּאֱמַר ,,לֹא־תָלִין פְּעֻלַּת שָׂכִיר אִתָּךְ'' – FROM THE IMPLICATION OF THAT WHICH IS STATED: *THE WAGE OF A HIRED WORKER SHALL NOT STAY OVERNIGHT WITH YOU,* אֵינִי יוֹדֵעַ שֶׁעַד בֹּקֶר – DO I NOT KNOW THAT it means UNTIL MORNING?[35] מָה תַּלְמוּד לוֹמַר ,,עַד־בֹּקֶר'' – WHAT DOES THE TORAH TEACH by adding *UNTIL MORNING*? מְלַמֵּד שֶׁאֵינוֹ עוֹבֵר אֶלָּא עַד בֹּקֶר רִאשׁוֹן בִּלְבָד – IT TEACHES THAT ONE VIOLATES this prohibition ONLY if he delays paying the wages UNTIL THE FIRST MORNING ALONE, but he does not violate the prohibition repeatedly if he delays payment further.[36]

The Gemara inquires:

מִכָּאן וְאֵילָךְ מַאי – **What is** the law if someone delays payment **from then on?** Is he subject to any prohibition?

The Gemara answers:

אָמַר רַב – **Rav said:** עוֹבֵר מִשּׁוּם בַּל תַּשְׁהֶא – **He violates** a Rabbinic prohibition **not to delay** payments.[37]

The Gemara finds a Scriptural reference to this prohibition:

אָמַר רַב יוֹסֵף – **Rav Yosef said:** מַאי קְרָאָה – **What is the verse** that alludes to this prohibition? ,,אַל־תֹּאמַר לְרֵעֲךָ לֵךְ וָשׁוּב וּמָחָר אֶתֵּן וְיֵשׁ אִתָּךְ'' – ***Say not to your neighbor, "Go, and come back, and tomorrow I will give," when you have [it] with you.***[38]

The Gemara elaborates further on the prohibition against delaying payment of one's wages:

תָּנוּ רַבָּנָן – **The Rabbis taught in a Baraisa:** הָאוֹמֵר לַחֲבֵירוֹ – If ONE SAYS TO HIS FELLOW, צֵא שְׂכוֹר לִי פּוֹעֲלִים – "GO HIRE WORKERS FOR ME," שְׁנֵיהֶן אֵין עוֹבְרִין מִשּׁוּם בַּל תָּלִין – NEITHER OF THEM VIOLATES the prohibition NOT TO HOLD the wages OVERNIGHT. זֶה לְפִי שֶׁלֹּא שְׂכָרָן – THIS ONE [the employer] does not violate it BECAUSE HE DID NOT HIRE THEM;[39]

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29. The Gemara will discuss the meaning of this ruling (see 111a).

30. That is, if his employment ends in the morning or sometime during the day, he must be paid before sunset. If the employer fails to do so, he transgresses the Biblical commandment to pay the worker in a timely manner (*Rashi*).

31. Since his employment extended into the night, he is adjudged as one hired for the night, and the employer therefore has the remainder of the night and all the next day to pay (*Rashi*). [This too will be elaborated in the Gemara.]

32. *Leviticus* 19:13.

33. *Deuteronomy* 24:15. See *Kos HaYeshuos* for an explanation of why the Gemara cites the positive command and not the negative prohibition in the second half of that verse [וְלֹא־תָבוֹא עָלָיו הַשָּׁמֶשׁ, *And the sun shall not set upon him*].

34. The Gemara above (65a) taught that someone hired for a year is not due to be paid until the start of the next year. Thus, an employer is not obligated to pay someone hired for a day until that work is completed – after sundown. Hence, the verse requiring an employer to pay his worker's wage during the day [implying that it was due by then] cannot be referring to employment that is still in progress; it must obviously be referring to work completed the previous night. Similarly, the verse requiring an employer to pay his worker's wages during the night must be referring to work completed that day (*Rashi*).

35. When the Torah uses the term לִינָה, it always refers to delaying overnight (*Rashi*; see also *Tosafos*).

36. That is, the employer transgresses the prohibition only once, after the first night that he delayed payment. However, he does not violate that prohibition each and every night afterwards (*Meiri*).

The same applies to a worker hired for a night. Once the employer fails to pay him during the following day, he does not violate the prohibition against delaying payment each and every day afterwards (*Ran, Nimukei Yosef*; cf. *Shitah Mekubetzes*).

37. This follows *Rambam* (*Hil. Sechirus* 11:5) and *Meiri*, who write that this prohibition is Rabbinic. See also *Rashi* ד"ה מאי.

38. *Proverbs* 3:28.

39. The verse (*Leviticus* 19:13) prohibits one to delay payments to his שָׂכִיר, *hired worker*. Therefore, in this case, where the householder did not hire the worker himself, the worker is not considered the שָׂכִיר to which the verse refers (*Rashi*).

[This, though, is apparently difficult, for why does the principle of agency not apply here? There should be no legal difference if the householder hired the workers personally or through his agent! (See *Ritva* [old]). However, in this particular case a distinction can be made for the following reason. If the householder hires the worker himself, we can then assume that the worker is expecting his payment in a timely manner; consequently, the prohibition against delaying payment is in effect. If, however, the worker is hired by an agent of the householder, the worker probably suspects that he will not be paid on time; the householder is therefore not liable for delay (*Tos. Rid*; see *Gidulei Shmuel* here and also *Meshech Chochmah* to this verse).]

וְזֶה לְפִי שֶׁאֵין פְּעוּלָתוֹ אֲצָלוֹ – AND THIS ONE [the agent] is not liable BECAUSE THE WAGES ARE NOT being held BY HIM.[1]

The Gemara analyzes the Baraisa:

הֵיכִי דָּמֵי – **What is the case?** אִי דְּאָמַר לְהוּ שְׂכַרְכֶם עָלַי – **If [the agent] said to [the workers], "Your wages are** incumbent **upon me,"** שְׂכָרוֹ עָלָיו הוּא – **[the worker's] wages are** indeed incumbent **upon [the agent].** This is so even though the agent did not receive any benefit from the work. דְּתַנְיָא – **For it was taught in** another **Baraisa:** הַשּׂוֹכֵר אֶת הַפּוֹעֵל לַעֲשׂוֹת בְּשֶׁלּוֹ – IF ONE HIRES A WORKER TO PERFORM a job IN ONE'S OWN property,[2] וְהֶרְאָהוּ בְּשֶׁל חֲבֵירוֹ – BUT when instructing the worker, HE SHOWS HIM the property OF HIS FELLOW, and the worker performs the work there instead, נוֹתֵן לוֹ שְׂכָרוֹ מְשֻׁלָּם – [THE HIRER] MUST GIVE [THE WORKER] HIS FULL WAGE, וְחוֹזֵר וְנוֹטֵל מִבַּעַל הַבַּיִת מַה שֶׁהֶהֱנָה אוֹתוֹ – AND afterwards, [THE HIRER] RETURNS AND COLLECTS FROM THE HOUSEHOLDER compensation for THAT WHICH HE BENEFITED HIM.[3] Therefore, since in our case the agent would be responsible for paying the wages to the workers, why would he not be liable for delaying such payment?

The Gemara therefore offers another interpretation of our Baraisa:

לֹא צְרִיכָא דְּאָמַר לְהוּ – **[The Baraisa] is needed only** in a case **where [the agent] said to [the workers],** שְׂכַרְכֶם עַל בַּעַל הַבַּיִת – **"Your wages are** incumbent **upon the householder."** Therefore, the householder, not the agent, is responsible to pay the wages. The agent is thus not subject to the prohibition against delaying payment. Moreover, since the householder did not hire the workers himself, he too is not liable if he delays their payment.

The Gemara cites illustrations of the previous ruling:

יְהוּדָה בַּר מְרֵימָר אָמַר לִיהּ לְשַׁמָּעְיָה – **Yehudah bar Mereimar said to his servant:** זִיל אֲגַיר לִי פּוֹעֲלִים – **Go, hire workers for me,** וְאֵימָא לְהוּ שְׂכַרְכֶם עַל בַּעַל הַבַּיִת – **and say to them, "Your wages are** incumbent **upon the householder."**[4] מְרֵימָר וּמַר זוּטְרָא – **Mereimar and Mar Zutra would hire** workers **for one another** so that they would never be in violation of the prohibition against delaying payment.

The Gemara states another case in which the Biblical prohibition against delaying payment to a worker does not apply:

אָמַר רַבָּה בַּר רַב הוּנָא – **Rabbah bar Rav Huna said:** הָנֵי שׁוּקָאֵי דְּסוּרָא – **These market traders of Sura** לָא עָבְרִי מִשּׁוּם בַּל תָּלִין – **do not transgress** the prohibition **not to hold wages of their workers overnight,** מִידַּע יָדְעִי דְּעַל יוֹמָא סָמְכִי – because **[the workers] realize that [the employers] are relying upon the market day** to procure funds for their wages.[5] אֲבָל מִשּׁוּם בַּל תַּשְׁהֶא וַדַּאי עָבְרִי – **However,** such **[an employer] certainly transgresses** the Rabbinic prohibition **not to delay** the wages.[6]

The Gemara cites the next ruling of the Mishnah:

שְׂכִיר שָׁעוֹת גּוֹבֶה כָּל הַלַּיְלָה וְכָל הַיּוֹם – ONE HIRED FOR several HOURS COLLECTS ALL NIGHT AND ALL DAY.

The Gemara presents a related Amoraic dispute:

אָמַר רַב – **Rav said:** שְׂכִיר שָׁעוֹת דְּיוֹם גּוֹבֶה כָּל הַיּוֹם – **One hired for** several **hours of the day collects all day** [after the work is completed] שְׂכִיר שָׁעוֹת דְּלַיְלָה גּוֹבֶה כָּל הַלַּיְלָה – while **one hired for** several **hours of the night collects all night** [after finishing the work].[7] וּשְׁמוּאֵל אָמַר – **But Shmuel said:** שְׂכִיר שָׁעוֹת דְּיוֹם גּוֹבֶה כָּל הַיּוֹם – **One hired for** several **hours of the day collects all day;** וּשְׂכִיר שָׁעוֹת דְּלַיְלָה גּוֹבֶה כָּל הַלַּיְלָה וְכָל הַיּוֹם – **however, one hired for** several **hours of the night collects all night and all** the next **day.**[8]

The Gemara challenges Rav's view:

תְּנַן – **We learned in** our **Mishnah:** שְׂכִיר שָׁעוֹת גּוֹבֶה כָּל הַלַּיְלָה וְכָל הַיּוֹם – ONE HIRED FOR several HOURS COLLECTS ALL NIGHT AND ALL DAY. תְּיוּבְתָּא דְּרַב – **This** Mishnah **is a refutation of Rav,** since it apparently states that a worker hired for a few hours can be paid all night and all the next day. But according to

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1. Since the work was not done for the agent, he does not owe the worker any wages. The verse that prohibits delaying payment of wages can therefore not apply to this agent (Rashi).

2. I.e. he represented to the workers that the work was to be performed in his own property.

3. The owner of the other property received an unexpected benefit in having workers improve his land. The person who had hired the workers is therefore entitled to demand fair compensation for having provided this benefit (see above, 76a note 9).

4. Yehudah bar Mereimar was not planning to delay paying their wages. Rather, he wanted to protect himself in case he was occupied with another matter when their payment was due. In this way he would not be in violation of any prohibitions if he would not pay them at that time (*Tosafos*; see also *Nimukei Yosef*).

5. Since the workers do not expect to get paid until the market day, the employer is not required to pay them as soon as they finish their work. This is so even if the employer happens to have the necessary funds. Since when the workers agreed to work they were not expecting to be paid immediately after the job was finished, the employer is not liable at that time. Then, once the first day passes, the employer is never liable for the Biblical prohibition [even after the market day], because we learned above (110b) that this prohibition applies only to the time period immediately after the termination of the worker's employment (*Rashi*).

6. That is, after the market day the employer is liable to the Rabbinic prohibition against delaying wages (*Rashi*). This is the same prohibition that applies to any employer who delays payment after the required time, as stated above, 110b.

7. [For example] if someone hires a worker from morning to noon, he is obligated to pay him sometime between noon and the end of the day. If he fails to do so, he violates the prohibition found in *Deuteronomy* (24:15), *The sun shall not set upon him.* Similarly, if someone hires a worker for the first hours of the night, he is obligated to pay him that night when the work is finished. Failure to pay him before dawn makes him subject to the prohibition found in *Leviticus* (19:13), *The wage of a hired worker shall not stay overnight with you* (*Rashi*).

8. Shmuel agrees with Rav's ruling about someone hired for a few hours during the day; he must be paid that day after finishing his work. However, Shmuel disagrees with Rav's ruling about someone hired for a few hours of the night. In that case, according to Shmuel, the employer has the rest of the night and all of the next day in which to pay this worker. This distinction is based on the fact that each new date in the Jewish calendar begins at night. Therefore, someone obligated to pay his worker at the end of the night may also pay him during the daylight hours, since it is still the same date. But in the case of someone working for a few hours during the day, the employer must pay the worker that day. He does not have the option of paying him throughout the next night, because that night is the beginning of a new date (*Rashi*; see also *Baal HaMaor* and *Milchamos*).

[Now, Above, 110b, the verse *on his day you shall pay his hire* was explained as teaching that a night worker must be paid during the day that follows. Shmuel, however, apparently interprets "*on his day*" to mean on the calendar day of his employment. Hence, one who works for a few hours during the day must be paid that day, and one who works for a few hours during the night must be paid either during the remaining hours of that night or during the following day. As regards one who works for an entire day, however, we learned above, 110b, that he is entitled to collect his wages only at nightfall, for wages are payable only upon completion of the work. Thus, the verse *on his day* [of employment] *you shall pay his hire* cannot possibly refer to a day worker, for he is paid on the *following* calendar day. Such a worker, is instead governed by the verse *the wage of a hired worker shall not stay overnight with you,* and he must be paid by morning. Cf. *Tosafos* to 110b ד"ה יצא.]

Rav, this is never the case.[9] – ? –

The Gemara answers:

לְצַדְדִין קָתָנֵי – **Rav could say to you** אָמַר לָךְ רַב – **that the Mishnah teaches** two **separate** rulings: שְׂכִיר שָׁעוֹת דְּיוֹם – **One hired for** several **hours of the day** גּוֹבֶה כָּל הַיּוֹם – **collects all day;** שְׂכִיר שָׁעוֹת דְּלַיְלָה גּוֹבֶה כָּל הַלַּיְלָה – while **one hired for** several **hours of the night collects all night.**[10]

The Gemara attempts again to refute Rav:

תְּנַן – **We learned in** the end of our **Mishnah:** הָיָה שָׂכִיר שַׁבָּת שָׂכִיר חֹדֶשׁ שָׂכִיר שָׁנָה שָׂכִיר שָׁבוּעַ – Regarding ONE HIRED FOR A WEEK, A MONTH, A YEAR, or A SEPTENNIAL, יוֹצֵא בַּיּוֹם – if HE DEPARTS BY DAY, גּוֹבֶה כָּל הַיּוֹם – HE COLLECTS ALL that DAY; יוֹצֵא בַּלַּיְלָה – and if HE DEPARTS AT NIGHT, גּוֹבֶה כָּל הַלַּיְלָה וְכָל הַיּוֹם – HE COLLECTS ALL that NIGHT AND THE following DAY. The Mishnah thus clearly indicates that a worker hired for a few hours at night can be paid throughout the next day.[11] This then contradicts Rav's ruling. – ? –

The Gemara answers:

אָמַר לָךְ רַב – **Rav could say to you:** תַּנָּאֵי הִיא – **This** issue **is** indeed the subject of **a Tannaic dispute.** דְּתַנְיָא – **For it was taught in a Baraisa:** שְׂכִיר שָׁעוֹת דְּיוֹם גּוֹבֶה כָּל הַיּוֹם – ONE HIRED FOR several HOURS OF THE DAY COLLECTS ALL DAY; שְׂכִיר שָׁעוֹת דְּלַיְלָה גּוֹבֶה כָּל הַלַּיְלָה – while ONE HIRED FOR several HOURS OF THE NIGHT COLLECTS ALL NIGHT. דִּבְרֵי ר' יְהוּדָה – These are THE WORDS OF R' YEHUDAH. רַבִּי שִׁמְעוֹן אוֹמֵר – R' SHIMON, though, SAYS: שְׂכִיר שָׁעוֹת דְּיוֹם גּוֹבֶה כָּל הַיּוֹם – ONE HIRED FOR several HOURS OF THE DAY COLLECTS ALL DAY; שְׂכִיר שָׁעוֹת דְּלַיְלָה גּוֹבֶה כָּל הַלַּיְלָה וְכָל הַיּוֹם – but ONE HIRED FOR several HOURS OF THE NIGHT COLLECTS ALL that NIGHT AND ALL the next DAY. Rav could thus follow the view of R' Yehudah, while our Mishnah is in accordance with R' Shimon's view.

The Gemara cites the rest of the aforementioned Baraisa:

מִכָּאן אָמְרוּ – FROM HERE[12] [THE SAGES] SAID: כָּל הַבּוֹצֵשׁ שְׂכַר שָׂכִיר – ANYONE THAT WITHHOLDS THE WAGES OF A WORKER עוֹבֵר בְּה' שְׁמוֹת הַלָּלוּ וַעֲשֵׂה – VIOLATES THESE following FIVE PROHIBITIONS[13] AND also A POSITIVE COMMANDMENT: מִשּׁוּם בַּל תַּעֲשֹׁק אֶת רֵעֶךָ – The prohibition NOT TO RETAIN WHAT IS DUE YOUR FELLOW;[14] וּמִשּׁוּם בַּל תִּגְזֹל – the prohibition NOT TO ROB;[15] וּמִשּׁוּם בַּל תַּעֲשֹׁק שְׂכִיר עָנִי – the prohibition NOT TO RETAIN [WAGES OF] AN EMPLOYEE WHO IS POOR;[16] וּמִשּׁוּם בַּל תָּלִין – AND the prohibition NOT TO HOLD [WAGES] OVERNIGHT;[17] וּמִשּׁוּם ,,בְּיוֹמוֹ תִּתֵּן שְׂכָרוֹ'' – AND the commandment, *ON HIS DAY SHALL YOU PAY HIS HIRE;*[18] וּמִשּׁוּם ,,לֹא־תָבוֹא עָלָיו הַשֶּׁמֶשׁ'' – AND the prohibition, *THE SUN SHALL NOT SET UPON HIM.*[19]

The Gemara questions this statement:

הָנֵי דְּאִיכָּא בֵּימָמָא לֵיכָּא בְּלֵילְיָא – **These** prohibitions **that are** applicable **to a day** worker **are not** applicable **to a night** worker; דְּאִיכָּא בְּלֵילְיָא לֵיכָּא בֵּימָמָא – while those **that are** applicable **to a night** worker **are not** applicable **to a day** worker! How then can an employer violate all five prohibitions?[20]

The Gemara concedes:

אָמַר רַב חִסְדָּא – **Rav Chisda said:** שֵׁם שְׁכִירוּת בְּעָלְמָא – The Baraisa means **merely** to list all of the **prohibitions** involved **in hiring** workers.[21]

Having listed the various prohibitions applicable to withholding wages of one's employee, the Gemara inquires:

אֵיזֶהוּ הוּא עוֹשֵׁק וְאֵיזֶהוּ גּוֹזֵל – **What is** considered **retention** of an

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9. Shmuel can explain that the Mishnah is discussing a worker hired for a few hours at night; and the employer has the whole rest of the night and the next day to pay. But according to Rav the employer must pay that night before dawn (*Rashi*).

10. The Mishnah would thus be interpreted as stating that a worker hired for a few hours must sometimes be paid at night and sometimes by day – depending on whether he was hired for the day or for the night (*Rashi*).

11. Since the worker's employment stretched into the night, the worker is the same as someone hired for just the first few hours of the night. Yet, the Mishnah rules that his period for payment stretches through the next day (*Rashi*).

12. Since even someone hired for part of a day must be paid in a timely manner, the following laws apply to all workers, without exception (*Ran*; cf. *Pnei Yehoshua*).

13. Literally: names. If someone withholds wages of his worker, he violates the five negative prohibitions that will be listed in addition to the one positive commandment in that list (*Rashi*; see below, note 19). [As will become evident from the Gemara below, the Baraisa is discussing someone who does not want to pay his worker at all. The employer is therefore subject to more prohibitions than if he merely delays payment past the set time, which was the issue discussed until now (see *Sma, Choshen Mishpat* 339:1).]

14. That is the prohibition stated in *Leviticus* (19:13): לֹא־תַעֲשֹׁק אֶת־רֵעֶךָ, *You shall not retain what is due your fellow.* This includes the wages due someone that worked for you (see *Toras Kohanim*; see also below, note 23).

The verse in its entirety reads: לֹא־תַעֲשֹׁק אֶת־רֵעֲךָ וְלֹא תִגְזֹל לֹא־תָלִין פְּעֻלַּת שָׂכִיר אִתְּךָ עַד־בֹּקֶר, *You shall not retain what is due your fellow, and you shall not rob; the wage of a hired worker shall not stay overnight with you until morning.*

15. The prohibition is found in the same verse וְלֹא תִגְזֹל, *and you shall not rob.* The Gemara above (61a) expounded this prohibition to be referring to withholding the wages of an employee. For general cases of robbery, the prohibition is learned by way of derivation from the prohibitions against fraud and interest. However, withholding wages cannot be derived from those other prohibitions because the offender does not actually remove money from the employee's possession as he does when defrauding or taking interest; rather, he withholds what is due the worker (*Rashi* here and above, 61a).

16. This prohibition is found in *Deuteronomy* (24:14): לֹא־תַעֲשֹׁק שָׂכִיר עָנִי, *You shall not retain [wages of] an employee who is poor.* In fact, the prohibition applies to any employee, rich or poor (as is evident from the verse in *Leviticus* cited above, where no distinction is made). The Gemara below (111b) will derive various rulings from the specification of a poor employee in this verse. [See also *Sifri* and *Rashi's* commentary to the Torah for other explanations of this specification.]

17. This prohibition concludes the verse in *Leviticus* (19:13) cited above: לֹא־תָלִין פְּעֻלַּת שָׂכִיר אִתְּךָ עַד־בֹּקֶר, *The wage of a hired worker shall not stay overnight with you until morning.*

18. *Deuteronomy* 24:15. This is the positive commandment in the list.

19. Ibid. Our explanation to this Baraisa follows *Rashi's* version, which lists all five negative prohibitions and the one positive commandment. Other versions differ. *Nimukei Yosef* writes (following *Rif's* version) that only five laws in total are listed – four negative prohibitions and the one positive commandment. The prohibition found in *Deuteronomy,* לֹא־תַעֲשֹׁק שָׂכִיר עָנִי, is not included in the count because it is identical to the prohibition found in *Leviticus,* לֹא־תַעֲשֹׁק אֶת־רֵעֶךָ (see also *Rambam, Hil. Sechirus* 11:2 with *Lechem Mishneh*).

20. The Baraisa seems to state that the employer violates all five negative prohibitions for one withheld payment. But that is impossible, since one of the prohibitions applies only to a day worker (*Leviticus* 19:13) and one only to a night worker (*Deuteronomy* 24:15).

21. Thus, the Baraisa does not mean that a person could violate all five prohibitions by withholding wages of one employee. Rather, it is just listing all the various prohibitions that could possibly be violated, with some applying only to a night worker and some only to a day worker (*Rashi*; cf. *Rambam Hil. Sechirus* 11:2 and *Sma* 339:1,4).

employee's wages **and what is** considered **robbery** of his wages?[22]

The Gemara answers:

אָמַר רַב חִסְדָּא – **Rav Chisda said:** לֵךְ וְשׁוּב לֵךְ וְשׁוּב – If the employer keeps saying, **"Go, and come back; go, and come back,"** זֶה הוּא עוֹשֶׁק – **this is** classified as **retention** of the wages. יֵשׁ לְךָ בְּיָדִי וְאֵינִי נוֹתֵן לְךָ – However, if the employer says, **"I have your** wages **in my possession, but I am not going to give** them **to you,"** זֶה הוּא גָּזֵל – **this is** classified as **robbery** of the wages.[23]

The Gemara refutes this explanation of the prohibition against retaining the wages of an employee:

אִיזֶהוּ מַתְקִיף לָהּ רַב שֵׁשֶׁת – **Rav Sheishess objected to this:** עוֹשֶׁק שֶׁחִייְבָה עָלָיו תּוֹרָה קָרְבָּן – Now, **for which** type of **retention** of wages **did the Torah obligate** a violator to bring **a sacrifice** when he lies about that offense under oath?[24] דּוּמְיָא דְּפִקָּדוֹן – It did so specifically for an offense **similar to** the case of **a deposit,** דְּקָא כָּפַר לֵיהּ מָמוֹנָא – **where [the defendant] denies** owing any **money to [the claimant].**[25] Hence, the prohibition against retaining someone's wages must refer to an employer who denies owing the wages, not to someone who admits his debt but keeps postponing payment. – ? –

Rav Sheishess therefore offers another explanation of the prohibition against retaining the wages of an employee:

אֶלָּא אָמַר רַב שֵׁשֶׁת – **Rather, Rav Sheishess said:** נְתַתִּיו לְךָ – If the employer says, **"I** already **gave you [your wages],"**[26] זֶהוּ עוֹשֶׁק – **this is** classified as **retention.** יֵשׁ לְךָ בְּיָדִי וְאֵינִי נוֹתֵן לְךָ – However, if he says, **"I have your** wages **in my possession, but I am not going to give** them **to you,"** זֶה הוּא גָּזֵל – **this is** classified as **robbery.**

The Gemara rejects the explanation given by Rav Sheishess and Rav Chisda for the prohibition against robbing an employee:

אִיזֶה הוּא גָּזֵל שֶׁחִייְבָה לָהּ אַבַּיֵי מִתְקִיף לָהּ – **Abaye objected to this:** עָלָיו תּוֹרָה קָרְבָּן – **For which** type of **robbery did the Torah obligate** a violator to bring **a sacrifice** when he lies about that offense under oath? דּוּמְיָא דְּפִקָּדוֹן בְּעִינַן – **We need** that it be an offense **similar to** the case of **a deposit,** דְּקָא כָּפַר לֵיהּ מָמוֹנָא – **where [the defendant] denies** owing any **money to [the claimant].** Hence, the case of robbing the wages must refer to an employer who denies owing them, not to an employer who admits his debt but refuses outright to pay it.[27] – ? –

Abaye therefore offers an alternative explanation:

אֶלָּא אָמַר אַבַּיֵי – **Rather, Abaye said:** לֹא שְׂכַרְתִּיךָ מֵעוֹלָם – If the employer falsely claims, **"I never hired you,"** זֶה הוּא עוֹשֶׁק – **this is** classified as **retention.** נְתַתִּיו לְךָ – But if he says, **"I gave [the wages] to you,"** זֶה הוּא גָּזֵל – **this is** classified as **robbery.**[28]

The Gemara returns to the explanation attempted by Rav Sheishess:

מַאי שְׁנָא עוֹשֶׁק וּלְרַב שֵׁשֶׁת – **Now, according to Rav Sheishess, why is it that he had difficulty with** Rav Chisda's explanation of **retention** of wages, דְּקַשְׁיָא לֵיהּ – וּמַאי שְׁנָא גָּזֵל דְּלָא קַשְׁיָא לֵיהּ – **whereas he had no difficulty with** Rav Chisda's explanation of **robbery** of wages?[29]

The Gemara answers:

אָמַר לָךְ – **[Rav Sheishess] can say to you:** גָּזֵל דְּגַזְלֵיהּ – The case of **robbery is** referring to **[an employer] who** first **robbed**

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22. Two of the prohibitions listed above are found in the same verse (*Leviticus* 19:13): לֹא־תַעֲשֹׁק אֶת־רֵעֲךָ וְלֹא תִגְזֹל, *You shall not retain what is due your fellow and you shall not rob.* As noted above (note 15), the "robbery" in that verse also refers specifically to withholding an employee's wages. It is thus apparently redundant, since the verse already prohibited an employer to retain an employee's wages. The Gemara therefore asks what the difference is between these two prohibitions (see *Ritva* [old]; see also *Pnei Yehoshua*).

[The Gemara assumes that these must be two distinct prohibitions against non-payment of wages, since different terms are used in the verse. The Baraisa thus means that someone who does not pay his employee *can* be subject to the prohibitions listed there. But actual liability would depend on the method of non-payment.]

23. The term גָּזֵל in Scripture (see *Judges* 9:25, *II Samuel* 23:21) connotes a more direct form of theft than the term עוֹשֶׁק (*Rashi*). גָּזֵל generally refers to taking something out of another person's possession, while עוֹשֶׁק refers to retaining (not paying) something that is owed to another person (*Radak* in *Shorashim* s.v. עשק, see also *Malbim* to *Leviticus* 19:13 and *Korban Aharon* to *Toras Kohanim* there). Therefore, in the context of withholding an employee's wages Rav Chisda explains that one is liable for robbing the wages when he refuses outright to pay them. If the employer, merely keeps postponing payment, though, he is liable for retaining the wages.

[The expression לֵךְ וְשׁוּב, *"Go, and come back,"* is taken from the verse in *Proverbs* 3:28 cited by the Gemara above (end of 110b).]

24. The Torah (*Leviticus* 5:21) lists various liabilities in monetary law that can lead to an obligation of a sacrifice. This comes about when the offender lies under oath about having committed them. Included in that list of infractions is someone who retains what is due his fellow (עָשַׁק אֶת עֲמִיתוֹ). The Gemara assumes that it refers to the prohibition mentioned here (לֹא־תַעֲשֹׁק) against withholding wages from an employee (see *Rashi*).

The section of the verse that will be discussed here reads: וְכִחֵשׁ בַּעֲמִיתוֹ בְּפִקָּדוֹן אוֹ־בִתְשׂוּמֶת יָד אוֹ בְגָזֵל אוֹ עָשַׁק אֶת־עֲמִיתוֹ, *And he falsely denies [his obligation] to his fellow in [the matter of] a deposit or a loan or a robbery, or he retained what was due his fellow.*

25. The beginning of the verse states, וְכִחֵשׁ בַּעֲמִיתוֹ בְּפִקָּדוֹן, *And he falsely denies [his obligation] to his fellow in [the matter of] a deposit.* This implies that the defendant denied any liability for the alleged deposit not that he continuously postponed returning it. Likewise, the case of retaining a worker's wages refers to someone who falsely denies any debt to his employee. [Rav Sheishess does not mean that the definition of retention of wages is derived through a Scriptural comparison (a *hekeish*) to the case of a deposit. Rather, he means that like the case of a deposit, the case of retention of wages must also involve a denial of liability, since in both cases the Torah obligates the defendant to bring a sacrifice because of a false oath. Without a denial, no oath is possible.]

26. That is, the employer *denies* any liability.

27. גָּזֵל, *robbery,* is also included in the list of infractions that can lead to obligation of a sacrifice for a false oath (see above, note 24). Consequently, this offense too, similar to the case of a deposit and the other cases mentioned, must involve a denial of liability, for only such a denial can lead to the obligation of a sacrifice (*Rashi*). It cannot therefore include an employer who admits a debt but refuses to pay it, as both Rav Chisda and Rav Sheishess explained.

[The Gemara below will ask why Rav Sheishess himself – who raised this very problem regarding retention of wages – did not deal with this obvious problem.]

28. [Thus, in both cases, the employer denies owing anything to the claimant; therefore both of these offenses can be included among those that can lead to obligation of a sacrifice for a false oath.] The second case is similar to classical robbery [where the robber forcefully takes an item from his victim], because the employer admits that the claimant once worked for him, but states that he is now robbing that worker's wages. The first case, however, where the employer claims that he never owed any money, is not as similar to robbery and is consequently defined as עוֹשֶׁק, *retention [of wages]* (*Rashi*).

29. Robbery is also one of the offenses listed in the section of the sacrifice for a false oath. But if the offender did not deny any liability, he would not be subject to an oath that could lead to a sacrifice (*Rashi*). Why then did Rav Sheishess agree with Rav Chisda's explanation that robbery refers to someone who admits a debt but refuses to pay? Rav Sheishess should have objected to that definition just as he objected to Rav Chisda's explanation of retention of wages.

[his employee] by refusing to pay him; וְהָדַר כְּפָרֵיהּ – **but later,** when he was brought to court, **[the employer] denied** owing **him** any money.[30] The employer would then be subject to an oath, and then a sacrifice upon swearing falsely.

The Gemara asks:

אִי הָכִי – **If so,** אֲפִילּוּ עוֹשֶׁק נַמִּי – **even** the offense of **retaining** someone's wages can **also** be interpreted that way: First, the employer continuously postponed paying the wages to his worker, דְּהָדַר כְּפָרֵיהּ – **but later,** when he was brought to court, **he denied** owing **him** any money.[31] Why then did Rav Sheishess object to Rav Chisda's explanation of the prohibition against retaining wages?

The Gemara explains:

בְּשִׁלְמָא הָתָם הָכִי הַשְׁתָּא – **Now, is this** really a comparison? בְּתִיב ,,אוֹ בְּגָזֵל״ – **It is understandable there,** with regard to robbery, for **it is written:** *or in [the matter of] a robbery.* מִכְּלָל דְּאוֹדֵי לֵיהּ מֵעִיקָּרָא – **This implies that he initially conceded to him** that he owed him wages, but refused to pay them. Only later, when the employer was brought to court, did he deny the whole claim.[32] אֲבָל גַּבֵּי עוֹשֶׁק – **But with regard to retention** of wages, מִי כְּתִיב אוֹ בְּעוֹשֶׁק – **is it written: "or in [the matter of] retention"?** Certainly not! בְּתִיב ,,אוֹ עָשַׁק״ – **It is written:** *or he retained.* שֶׁעָשְׁקוֹ בְּבָר – This implies **that [the employer]** was guilty of having **retained what was due [the worker] already** as soon as the worker made his claim.[33]

The Gemara cites another view, which disagrees with the entire premise that the two prohibitions describe different violations:

רָבָא אָמַר – **Rava said:** זֶה הוּא עוֹשֶׁק וְזֶהוּ גָּזֵל – **This** prohibition against **retention** of one's wages **is the same as this** prohibition against **robbery.** וְלָמָּה חִלְּקָן הַכָּתוּב – **And why did Scripture divide them** into two prohibitions? לַעֲבוֹר עָלָיו בִּשְׁנֵי לַאוִין – It was **so that [the offender] should** be liable for **transgressing two prohibitions on account of them.**[34]

Mishnah This Mishnah elaborates upon the prohibition against delaying payment to an employee:

אֶחָד שְׂכַר בְּהֵמָה – **Whether it be the hire of a man,** וְאֶחָד שְׂכַר אָדָם – **the hire of an animal,** וְאֶחָד שְׂכַר כֵּלִים – **or the hire of utensils,**[35] יֶשׁ בּוֹ מִשּׁוּם ,,בְּיוֹמוֹ תִּתֵּן שְׂכָרוֹ״ – **it is subject to:** *On his day shall you pay his hire.*[36] וְיֵשׁ בּוֹ מִשּׁוּם ,,לֹא־תָלִין פְּעֻלַּת שָׂכִיר אִתְּךָ עַד־בֹּקֶר״ – **and it is** also **subject to:** *The wage of a hired worker shall not stay overnight with you until morning.*[37]

The Mishnah presents some qualifications to the prohibition against delaying payment:

אֵימָתַי – **When** is this so? בִּזְמַן שֶׁתְּבָעוֹ – **When [the worker] demanded** his wage from **[the employer].**[38] לֹא תְבָעוֹ – But if **[the worker] did not demand** his wages from **[the employer],** אֵינוֹ עוֹבֵר עָלָיו – **[the employer] does not transgress [the law].**[39] הִמְחָהוּ אֵצֶל חֲנָוָנִי – If **[the employer] directed him**[40] **to a storekeeper** אוֹ אֵצֶל שׁוּלְחָנִי – **or a moneychanger**[41] but the worker was not paid, אֵינוֹ עוֹבֵר עָלָיו – **[the employer] does not transgress [the law].**[42]

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30. [Rav Sheishess could thus hold that the offense of robbery on its own does not necessitate denying any liability to the employee. But it can nevertheless be included among the infractions that can lead to obligation of a sacrifice if, for example, prior to coming to court the employer was indeed guilty of robbery by admitting the debt but refusing outright to pay the wages. But when they came to court, the employee denied [וְכִחֵשׁ] that he had been guilty of that robbery [בְּגָזֵל] (*Rashi*).

31. That is, the same argument can apparently be made about the offense of retaining wages. Perhaps the actual offense does not include any denial of the debt. But it can still lead to obligation of a sacrifice if the employer later denies violation of that offense in court, and then swears to that effect (see *Rashi*).

32. [בְּגָזֵל is a noun. There,] בְּגָזֵל ... וְכִחֵשׁ can be interpreted to mean that the employer now denied [וְכִחֵשׁ] that he had *earlier* been guilty of robbery [בְּגָזֵל]. That is, before this denial, when the employer had admitted the debt but refused outright to pay it, it was termed "robbery" (*Rashi*).

33. If, similar to the case of robbery, the verse had concluded אוֹ בְּעוֹשֶׁק, *or in [the matter of] retention,* the verse would be understood as discussing an employer who now falsely denies that he was *previously* guilty of retaining his worker's wages by continuously postponing payment. However, by writing אוֹ עָשַׁק, *or he retained,* the verse implies that no previous infraction of עוֹשֶׁק had occurred; rather the act of עוֹשֶׁק was accomplished right from the start by the employer denying any liability and claiming that he had already paid. Without denying any liability, though, the mere postponement would not be classified as עוֹשֶׁק (*Rashi*). [See *Tosafos* and *Tos. HaRosh* for the reason why Abaye disagreed with Rav Sheishess about this.]

34. Since both offenses are prohibited independently in the verse (*Leviticus* 19:13): לֹא־תַעֲשֹׁק אֶת־רֵעֲךָ וְלֹא תִגְזֹל, *You shall not retain what is due your fellow man and you shall not rob,* the otherwise redundant prohibition against robbing must be meant to reinforce the prohibition against withholding wages (*Tosafos*; see *Tos. HaRosh*).

[Rava agrees that these prohibitions are applicable to an employer who does not want to pay his worker at all. Someone who merely delays payment is subject only to the verses cited in our Mishnah above.]

35. That is, the wages due a man for his labor, or the payment due him for renting his animal or utensils.

36. If the renter does not pay on time, he transgresses this positive commandment (*Deuteronomy* 24:15). [As with an employee, the command to pay the rental during the day refers to an animal or utensils rented for the entire night.]

37. For daytime renting, this verse in *Leviticus* (19:13) applies. [Our Tanna also holds that rental payments are subject to the various prohibitions against withholding payment (לֹא־תַעֲשֹׁק, etc.), which are found in these two sections (see below, 111b note 5).]

Meiri, based on *Toras Kohanim,* adds that these laws apply to rental payments for land as well. *Shulchan Aruch* (*Choshen Mishpat* 339:1), though, cites a view that these prohibitions do not apply to land. See *Ketzos HaChoshen* and *Pischei Teshuvah* there for the ramifications of this dispute to rental payments for a leased apartment or dwelling. See also *Ahavas Chesed* 9:5 for a discussion about this matter.

38. That is, the worker claimed his wage, but the employer did not give it to him. The employer thus violated the prohibition against delaying payment. [As the Mishnah stated previously, the same considerations apply in the case of renting animals or articles: The owner must have demanded payment for the renter to be liable.]

39. If the worker did not ask for his wage, the employer has not violated the prohibition against delaying payment. The Gemara will explain the Biblical source for this ruling.

40. This translation is based on *Rashi.* See also *Tos. Yom Tov.*

41. The employer transferred the debt from himself to a storekeeper or moneychanger by arranging an account with them from which his workers draw food or money for their wages (*Rashi*). [It is unclear whether the employee has to agree to this arrangement for the employer to be free of any liability for delayed payments (see *Beis Yosef* §339, *Kesef Mishneh* to *Rambam, Hil. Sechirus* 11:4, with *Shaar Mishpat* 339:3).]

42. If the storekeeper or the moneychanger did not pay the worker during the prescribed period, the employer does not transgress the Torah's prohibition against delaying payment. The Gemara will explain the reason for this ruling.

The Mishnah now discusses a Rabbinic law that was instituted for an employee:

שָׂכִיר בִּזְמַנּוֹ – If **a hired worker** claims his wage **during its time,** when it is due, נִשְׁבָּע וְנוֹטֵל – **he may swear and collect** it.[43] עָבַר זְמַנּוֹ – If **its time has passed,** אֵינוֹ נִשְׁבָּע וְנוֹטֵל – **he may not swear and collect** it.[44] אִם יֵשׁ עֵדִים (בזמנו) שֶׁתָּבְעוֹ – **If there are witnesses that he demanded** his wage from **[the employer],** הֲרֵי זֶה נִשְׁבָּע וְנוֹטֵל – **[the worker] may swear and collect** it.[45]

גֵּר תּוֹשָׁב – As for the wage of **a resident alien,**[46] יֵשׁ בּוֹ מִשּׁוּם ״בְּיוֹמוֹ תִתֵּן שְׂכָרוֹ״ – **it is subject to:** ***On his day shall you pay his hire;***[47] וְאֵין בּוֹ מִשּׁוּם ״לֹא־תָלִין פְּעֻלַּת שָׂכִיר אִתְּךָ עַד־בֹּקֶר״ – **but it is not subject to:** ***The wage of a hired worker shall not stay overnight with you until morning.***[48]

Gemara The Gemara asks:

מַנִּי מַתְנִיתִין – **Whose view is** reflected in **our Mishnah?** לֹא תַּנָּא קַמָּא דְּ״מֵאַחֶיךָ״ – It is **neither** that of **the Tanna Kamma of** the Baraisa below that expounds the term ***"among your brethren,"*** וְלֹא רַבִּי יוֹסֵי בְּרַבִּי יְהוּדָה – **nor** that of **R' Yose the son of R' Yehudah,** whose view is also recorded there.

The Gemara explains its question:

מַאי הִיא – **What is** this dispute between the Tanna Kamma and R' Yose the son of R' Yehudah? דְּתַנְיָא – **For it was taught in a Baraisa:**

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43. If a worker claims his wage when it becomes due [i.e. during the time period in which the employer is obligated to pay, as described in the previous Mishnah, 110b] and the employer claims to have already paid (*Meiri*), the worker may come before the court and swear that he has not yet received his wages and collect from the employer. The Gemara will explain the reason for this ruling below (112b).

44. Once the time granted the employer to pay his workers has passed, the worker is no longer believed, on the basis of his oath, that he has not been paid.

45. If there are witnesses that the worker demanded his wages of the employer before the termination of the time granted to pay (*Rashi*), the worker may go to court anytime during the following day and swear and collect his wages (see Gemara below, 113a).

46. A resident alien (*ger toshav*) is a gentile who has formally undertaken to abide by the seven precepts of the Noahide Code, but has not converted to Judaism (*Rambam, Issurei Biah* 14:7). This follows the view of the Sages cited in *Avodah Zarah* (64b).

Rashi, though, defines a *ger toshav* as a gentile who accepts upon himself to refrain from idolatry. By his omission of the other Noahide laws, *Rashi* apparently follows the opinion of R' Meir cited in *Avodah Zarah*. [*Rashi* defines a *ger toshav* this way in his commentary to the *Chumash* (see *Leviticus* 25:35, *Deuteronomy* 14:21), as well as in most places in the Talmud (see, for example, *Gittin* 57b, *Sanhedrin* 96a, etc.). In *Avodah Zarah* (20a, 24b), however, *Rashi* explains that a *ger toshav* must formally accept all seven Noahide laws. See *Be'er Sheva* to *Sanhedrin* 96a, and *V'Shav HaKohen* §37 for various solutions to this apparent contradiction.]

Rashi adds that a *ger toshav* is permitted to eat meat of animals that died without proper slaughtering *neveilos*). *Rashi* singles out this characteristic because the Torah commands Jews (see *Deuteronomy* 14:21) to give such animals to a *ger toshav* (see *V'Shav HaKohen*; cf. *Sdei Chemed*, *Maareches "Gimel" Kellalim §44*). In fact, the Gemara below (111b, see note 3 there) will cite a Baraisa that refers to a *ger toshav* as simply an אוֹכֵל נְבֵילוֹת, *one who may eat neveilos.*

47. Although he is not Jewish, and many of the Torah's laws govern only relations between fellow Jews, the prohibitions stated in the section of a night worker apply to the employer of a *ger toshav* (resident alien) as well.

48. That is, the prohibitions stated in the section of a day worker do not apply to a *ger toshav*. The Gemara below (111b) will explain the source for our Tanna's view about a *ger toshav*.

"מֵאַחֶיךָ,, – The verse states:[1] *You shall not retain [the wages of] an employee. . . AMONG YOUR BRETHREN.* פְּרָט לַאֲחֵרִים – The verse makes this specification TO THE EXCLUSION OF OTHERS [i.e. idolaters]. "גֵּרְךָ,, – The verse continues: *[or from] YOUR CONVERT;* זֶה גֵּר צֶדֶק – THIS term includes the wages of an employee who is a FULL-FLEDGED CONVERT.[2] "בִּשְׁעָרֶיךָ,, – The verse states: *IN YOUR GATES;* זֶה אוֹכֵל נְבֵילוֹת – THIS term includes the wages of a resident alien, WHO EATS [MEAT OF] UNSLAUGHTERED ANIMALS.[3] אֵין לִי אֶלָּא שְׂכַר אָדָם – I now KNOW ONLY that THE WAGE OF A PERSON is subject to the prohibition against withholding payment; מִנַּיִן לְרַבּוֹת בְּהֵמָה וְכֵלִים – FROM WHERE do I know TO INCLUDE rental payments for use of someone's ANIMAL OR UTENSILS? "תַּלְמוּד לוֹמַר ,,בְּאַרְצֶךָ" – THE TORAH therefore STATES: *IN YOUR LAND,* כָּל שֶׁבְּאַרְצֶךָ – to include ANY payment IN YOUR LAND – even money owed for rentals.[4] וְכוֹלֵל עוֹבְרִים בְּכָל הַשָּׁמוֹת הַלָּלוּ – For withholding ANY OF [THESE PAYMENTS] ONE TRANSGRESSES ALL OF THOSE PROHIBITIONS that apply to wages of a Jewish worker.[5] מִכָּאן אָמְרוּ אֶחָד שְׂכַר אָדָם – FROM HERE THEY SAID: WHETHER IT BE THE HIRE OF A MAN, וְאֶחָד שְׂכַר בְּהֵמָה – THE HIRE OF A ANIMAL, וְאֶחָד שְׂכַר כֵּלִים – OR THE HIRE OF UTENSILS, "יֵשׁ בּוֹ מִשּׁוּם ,,בְּיוֹמוֹ תִתֵּן שְׂכָרוֹ" – IT IS SUBJECT TO the verse pertaining to a night worker: *ON HIS DAY SHALL YOU PAY HIS HIRE,*[6] וְיֵשׁ בָּהֶן מִשּׁוּם בַּל תָּלִין פְּעֻלַּת שָׂכִיר – AND IT IS SUBJECT TO the prohibition concerning a day worker, NOT TO HOLD THE WAGE OF A HIRED WORKER OVERNIGHT.[7] רַבִּי יוֹסֵי בְּרַבִּי יְהוּדָה אוֹמֵר – R' YOSE THE SON OF R' YEHUDAH SAYS: גֵּר תּוֹשָׁב יֵשׁ בּוֹ מִשּׁוּם ,,בְּיוֹמוֹ" תִּתֵּן שְׂכָרוֹ" – The wage of A RESIDENT ALIEN IS SUBJECT TO the verse pertaining to a night worker: *ON HIS DAY SHALL YOU PAY HIS HIRE,* "וְאֵין בּוֹ מִשּׁוּם ,,לֹא־תָלִין" – BUT IS NOT SUBJECT TO the verse pertaining to a day worker: *[THE WAGE] of a hired worker SHALL NOT STAY OVERNIGHT.*[8] בְּהֵמָה וְכֵלִים – Rental payments for AN ANIMAL OR UTENSILS אֵין בָּהֶן אֶלָּא מִשּׁוּם בַּל תַּעֲשֹׁק בִּלְבַד – ARE SUBJECT ONLY TO the prohibition NOT TO RETAIN payment.[9]

Having finished its citation of the Baraisa, the Gemara now explains its difficulty with our Mishnah:

מַנִּי – **Whom** does our Mishnah follow? "אִי תַּנָּא קַמָּא דְּ,,מֵאַחֶיךָ" – **If it is the Tanna Kamma of** the Baraisa that expounds the term ***"among your brethren,"*** קַשְׁיָא גֵּר תּוֹשָׁב – the ruling about **a resident alien is difficult.**[10] אִי רַבִּי יוֹסֵי – And **if** our Mishnah follows the view of **R' Yose,** קַשְׁיָא בְּהֵמָה וְכֵלִים – then its ruling about rental payments of **an animal or utensils is difficult.**[11] – ? –

NOTES

1. *Deuteronomy* 24:14. The verse in its entirety states: לֹא־תַעֲשֹׁק שָׂכִיר עָנִי וְאֶבְיוֹן מֵאַחֶיךָ אוֹ מִגֵּרְךָ אֲשֶׁר בְּאַרְצְךָ בִּשְׁעָרֶיךָ, *You shall not retain [the wages of] an employee who is poor or destitute among your brethren, or from your convert who is in your land within your gates.*

2. A גֵּר צֶדֶק (literally: *a righteous convert*) is a convert to Judaism, commonly known simply as a *ger* (גֵּר). The term גֵּר צֶדֶק is used to distinguish him from a גֵּר תּוֹשָׁב, *a resident alien.* This verse thus subjects the wages of a convert to the same prohibition as those of a born-Jew.

A convert is generally treated the same as a born-Jew in all areas of Torah law. It should therefore not be necessary to specify here that his wages should not be withheld. However, since the verse first states a limiting term, מֵאַחֶיךָ, *among your brethren,* there might have been cause to exclude a convert from this verse [as well as an idolater]. The Torah therefore states explicitly, אוֹ מִגֵּרְךָ, *or from your convert,* to teach that the wages of a convert are in fact included in this law [with only wages of an idolater excluded] (see *Tosafos, Tos. HaRosh*).

3. The Baraisa bases this exposition on the following verse (*Deuteronomy* 14:21): לֹא־תֹאכְלוּ כָל־נְבֵלָה לַגֵּר אֲשֶׁר־בִּשְׁעָרֶיךָ תִּתְּנֶנָּה וַאֲכָלָהּ, *You shall not eat any unslaughtered animal; to the stranger who is in your gates shall you give it that he may eat it* (*Rashi*). Just as the "stranger in your gates" mentioned there refers to a *ger toshav* and not a full-fledged convert to Judaism [a full-fledged *ger* is of course forbidden to partake of an unslaughtered animal, just like a born-Jew], here too the verse alludes to a *ger toshav* with the term *"within your gates."* Thus, an employer may not withhold the wages of a worker who is a *ger toshav*.

[The *ger toshav* is referred to in this Baraisa as an אוֹכֵל נְבֵילוֹת, *one who eats neveilos,* because of the above verse, which awards him carcasses of unslaughtered animals (see *V'Shav HaKohen* §37).]

4. The term *"in your land"* thus teaches that even payments due for renting an animal or utensils may not be withheld. [Although this term is commonly used to exclude lands outside Eretz Yisrael from the relevant commandment, that cannot be the case here because the commandment of withholding pay is not land related. Only laws pertaining to the land or its produce are limited to Eretz Yisrael (*Tosafos*).]

[Regarding rental payments for leased land or dwellings, see above, 111a note 37.]

5. This includes the laws mentioned in this verse and the next one, as well as the others mentioned in *Leviticus* that were listed above in the Baraisa (111a, see note 13 there). All of these laws apply to withholding the wages of a worker who is a born-Jew, *ger,* or *ger toshav*; and to withholding rental payments for an animal or utensils. The Gemara will explain below that this is derived from a *gezeirah shavah* (*Rashi*).

To help follow the various expositions that will be made, the relevant verses are presented here (see box):

Leviticus 19:13:
לֹא־תַעֲשֹׁק אֶת־רֵעֲךָ וְלֹא תִגְזֹל לֹא־תָלִין פְּעֻלַּת שָׂכִיר אִתְּךָ עַד־בֹּקֶר
You shall not retain what is due your fellow, and you shall not rob; the wage of a hired worker shall not stay overnight with you until morning.

Deuteronomy 24:14:
לֹא־תַעֲשֹׁק שָׂכִיר עָנִי וְאֶבְיוֹן מֵאַחֶיךָ אוֹ מִגֵּרְךָ אֲשֶׁר בְּאַרְצְךָ בִּשְׁעָרֶיךָ
You shall not retain [the wages of] an employee who is poor or destitute among your brethren, or from your convert who is in your land within your gates.

Deuteronomy 24:15:
בְּיוֹמוֹ תִתֵּן שְׂכָרוֹ וְלֹא־תָבוֹא עָלָיו הַשֶּׁמֶשׁ כִּי עָנִי הוּא וְאֵלָיו הוּא נֹשֵׂא אֶת נַפְשׁוֹ וְלֹא־יִקְרָא עָלֶיךָ אֶל־ה' וְהָיָה בְךָ חֵטְא
On his day shall you pay his hire; and the sun shall not set upon him, because he is poor and for it he risks his life; let him not call out against you to HASHEM, for it shall be sin in you.

6. *Deuteronomy* 24:15. This refers also to the prohibitions stated in that section against delaying payment and withholding wages (see below, note 15).

7. This is the prohibition mentioned in *Leviticus* (19:13). This also includes the prohibitions against retaining wages and robbing an employee mentioned in the beginning of that verse. Of course, the prohibition applying to delaying payment to a day worker does not apply to a night worker (*Rashi*). [That is, wages of a night worker will not be subject to the prohibition in *Leviticus* not to hold wages overnight. Similarly, the laws about delaying payment of a night worker found in *Deuteronomy* do not apply to a day worker.]

8. That is, according to R' Yose the son of R' Yehudah the wage of a *ger toshav* is subject only to the prohibitions stated in the section of a night worker in *Deuteronomy,* but not to the prohibitions found in the section of the day worker in *Leviticus.* The Gemara below will explain the reason for this distinction.

9. This is the verse (*Deuteronomy* 24:14) in which the term "in your land" is found. Since it is from this term that we derive the prohibition against withholding a rental payment, only this verse is applicable to such a violation. Even the very next verse, בְּיוֹמוֹ תִתֵּן שְׂכָרוֹ, *On his day shall you pay his hire,* does not apply to rental payments according to R' Yose the son of R' Yehudah (*Rashi*). The Gemara below will explain the reason behind R' Yose the son of R' Yehudah's view.

10. Our Mishnah ruled that the prohibition against delaying wages overnight (בַּל תָּלִין) found in *Leviticus* does not apply to a *ger toshav*; but the Tanna Kamma of the Baraisa states that *all* of the prohibitions that apply for a Jewish worker apply to a *ger toshav* (*Rashi*).

11. Our Mishnah ruled that the prohibition against delaying wages overnight (בַּל תָּלִין), found in *Leviticus,* as well as the commandment to pay during the day (בְּיוֹמוֹ תִתֵּן שְׂכָרוֹ), found in *Deuteronomy,* both apply to

The Gemara answers:

אָמַר רָבָא – **Rava said:** הַאי תַּנָּא תַּנָּא דְּבֵי רַבִּי יִשְׁמָעֵאל הוּא – **This Tanna** of our Mishnah **is the Tanna of R' Yishmael's academy.** דְּתָנָא דְּבֵי רַבִּי יִשְׁמָעֵאל – **For a Tanna of R' Yishmael's academy taught:** אֶחָד שְׂכַר אָדָם – WHETHER IT BE THE HIRE OF A MAN, וְאֶחָד שְׂכַר בְּהֵמָה – THE HIRE OF AN ANIMAL, וְאֶחָד שְׂכַר כֵּלִים – OR THE HIRE OF UTENSILS, יֵשׁ בּוֹ מִשּׁוּם ,,בְּיוֹמוֹ תִּתֵּן שְׂכָרוֹ'' – IT IS SUBJECT TO the verse pertaining to a night worker: *ON HIS DAY SHALL YOU PAY HIS HIRE,*[12] וּמִשּׁוּם ,,לֹא־תָלִין'' – AND TO the verse pertaining to a day worker: *THE [WAGE OF A HIRED WORKER] SHALL NOT STAY OVERNIGHT.*[13] גֵּר תּוֹשָׁב – The wage of A RESIDENT ALIEN, though, יֵשׁ בּוֹ מִשּׁוּם ,,בְּיוֹמוֹ תִּתֵּן שְׂכָרוֹ'' – IS SUBJECT only TO the verse pertaining to a night worker: *ON HIS DAY SHALL YOU PAY HIS HIRE,*[14] וְאֵין בּוֹ מִשּׁוּם בַּל תָּלִין – BUT IT IS NOT SUBJECT TO the prohibition NOT TO HOLD the wages of a day worker OVERNIGHT.[15] The Tanna of our Mishnah is thus identical to this Tanna of R' Yishmael's academy.

The Gemara now analyzes the views of the various Tannaim mentioned above:

מַאי טַעְמָא דְּתַנָּא קַמָּא דְּ,,מֵאַחֶיךָ'' – **What is the reason of the Tanna Kamma of** the Baraisa that expounds the term ***"among your brethren"*****?** Why does he hold that all of the laws that apply to a Jewish employee apply both to an employee who is a resident alien and to rental payments for animals and utensils? Those forms of payment are alluded to only in the section of the night worker.[16] – ? –

The Gemara answers:

גְּמַר ,,שָׂכִיר'' ,,שָׂכִיר'' – **[The Tanna Kamma] derives** a *gezeirah shavah* from the common terms ***"sachir"*** ["employee"] and ***"sachir"*** ["employee"] found in each of the two sections of a day worker and a night worker. Therefore all of the laws in both sections apply to the wages of a resident alien and to rental payments.[17]

The Gemara explains the reasoning of the other Tanna:

וְרַבִּי יוֹסֵי בְּרַבִּי יְהוּדָה – **But R' Yose the son of R' Yehudah** disagrees with the Tanna Kamma לָא גְּמַר ,,שָׂכִיר'' ,,שָׂכִיר'' – because **he does not derive** any *gezeirah shavah* from the terms ***"sachir" "sachir."***[18] Therefore, the laws found in the section of a day worker do not apply to the wage of a resident alien or to rental payments of an animal or utensils.[19]

The Gemara questions the opinion of R' Yose the son of R' Yehudah:

נְהִי דְּלָא גְּמַר ,,שָׂכִיר'' ,,שָׂכִיר'' – **Granted that he did not derive** a *gezeirah shavah* from the terms ***"sachir" "sachir"***; בְּהֵמָה וְכֵלִים – but for the rental payment of **an animal or utensils** why is one liable only for the prohibition against retaining wages? מִשּׁוּם ,,בְּיוֹמוֹ תִּתֵּן שְׂכָרוֹ'' נַמִּי נִיחַיֵּיב – **He should be liable also for** the commandment: ***On his day shall you pay his hire,*** since it is found in the very next verse.[20] – ? –

NOTES

rental payments. [This also includes the other prohibitions found in both sections (see below, note 15).] But R' Yose the son of R' Yehudah stated in the Baraisa that neither of those laws apply to rentals; only the prohibition against retaining payment (לֹא־תַעֲשֹׁק שָׂכִיר) applies (*Rashi*). See chart.

	RENTALS	*GER TOSHAV*
MISHNAH	ALL PROHIBITIONS APPLY	ONLY PROHIBITIONS IN THE SECTION OF A NIGHT WORKER APPLY
TANNA KAMMA OF BARAISA	ALL PROHIBITIONS APPLY	ALL PROHIBITIONS APPLY
R' YOSE	ONLY THE PROHIBITION OF לֹא־תַעֲשֹׁק APPLIES	ONLY PROHIBITIONS IN THE SECTION OF A NIGHT WORKER APPLY

12. This is the second verse in the section of the night worker, which is found in *Deuteronomy*. Certainly, the first verse in that section – *You shall not retain [the wages of] an employee* – applies to rental payments, because it is in that verse that these types of payment are included (see note 15).

13. This also includes the other two prohibitions mentioned earlier in that verse – *You shall not retain what is due your fellow; you shall not rob* (see note 15). Hence, according to this Tanna of R' Yishmael's academy, rental payments are subject to all of the prohibitions that apply to wages due an employee.

14. This is the second verse in the section in *Deuteronomy*. Certainly, the first verse in that section – *You shall not retain [the wages of] an employee* – also applies to the wages of a *ger toshav*, because it is in that verse that a *ger toshav* is included (*Rashi*).

15. The wages of a *ger toshav* are also not subject to the other two prohibitions mentioned earlier in that verse [in *Leviticus*] (*Rashi*).

The reason this Baraisa [and the Tanna of our Mishnah] mentions only the two verses about delaying payment is because those verses specify what kind of employee in being discussed in the respective sections. That is, the section in *Leviticus* is referring to someone hired for a day while the section in *Deuteronomy* is referring to someone hired for a night. The Baraisa thus uses this as a means of identifying the sections: The laws stated in the section of a night worker apply to a *ger toshav*, but the laws stated in the section of a day worker do not (*Rashi*). [Similarly, the first section of this Baraisa states that the laws in both the section of a day worker and the section of a night worker apply to rental payments.]

16. The Tanna Kamma used the terms מִגַּרְךָ אֲשֶׁר בְּאַרְצְךָ בִּשְׁעָרֶיךָ found in the verse prohibiting the retention of wages (*Deuteronomy* 24:14) to include wages of a *ger toshav* and rental payments for animals and utensils. It is understood that the prohibition against delaying payment of wages to a night worker found in the very next verse would also apply to those types of payments (see *Rashi* below ד"ה משום). But how does the Tanna Kamma know that those other types of payments are subject to the prohibitions listed in the section of a day worker in *Leviticus*?

17. In *Deuteronomy* the verse states: לֹא־תַעֲשֹׁק שָׂכִיר, *You shall not retain [the wages of] an employee*. The term שָׂכִיר, *employee,* is also used in the verse in *Leviticus*: לֹא־תָלִין פְּעֻלַּת שָׂכִיר, *the wage of a hired worker shall not stay overnight*. That term is thus used to expound a *gezeirah shavah* that links the two verses. Therefore, just as the section in *Deuteronomy* applies to the wages of a *ger toshav* and to the rental payment for an animal or utensils, so too the verse in *Leviticus* applies to all of these forms of payment (*Rashi*).

18. A general Talmudic principle dictates that one may not expound a *gezeirah shavah* on his own initiative. Rather, a tradition existed, passed on from teacher to student since the revelation at Sinai, as to which Scriptural words were meant to be expounded as part of a *gezeirah shavah*. If a Tanna had not been informed by his teachers that a given word was to be expounded in this way, he could not, on his own, expound a *gezeirah shavah* employing this word (see *Rashi* to *Kiddushin* 17a ד"ה מיכה; *Chachmas Manoach* here).

The term גְּמַר thus literally means "learned [the *gezeirah shavah*] from a teacher" (see *Rashi* to *Pesachim* 66a ד"ה הכי, and to *Sotah* 33b ד"ה עניה).

19. There is no Biblical reference in the verse of לֹא־תָלִין in *Leviticus* to wages of a *ger toshav* or to rental payments for an animal or utensils. Since R' Yose the son of R' Yehudah did not have a tradition to expound a *gezeirah shavah*, which would link this verse with the verse in *Deuteronomy*, these forms of payment are not subject to the prohibition of לֹא־תָלִין (*Rashi*).

20. The verse בְּיוֹמוֹ תִּתֵּן שְׂכָרוֹ directly follows לֹא־תַעֲשֹׁק שָׂכִיר in *Deuteronomy*. Since the term בְּאַרְצְךָ in that previous verse was used to include rental payments for animals and utensils, the commandments in the next verse should also apply in those situations (*Rashi*). One would then be liable for delaying payment for a night rental until after the next day, even if he did not intend to withhold payment indefinitely. [This question is especially difficult since R' Yose the son of R' Yehudah does state in the Baraisa that this second verse applies to the wages of a *ger toshav*, even though the reference to *ger toshav* was also made in the previous verse. Why then should rental payments not be subject to this second verse as well?]

The Gemara answers:

תָּנֵי רַבִּי חֲנַנְיָא – **R' Chananya taught a Baraisa** that resolves this question: אָמַר קְרָא – [THAT] VERSE CONTINUES: ,,וְלֹא־תָבֹא עָלָיו הַשֶּׁמֶשׁ כִּי עָנִי הוּא'' – *AND THE SUN SHALL NOT SET UPON HIM, BECAUSE HE IS POOR.* We thus infer that this verse applies only to מִי שֶׁהֵן בָּאִין לִידֵי עֲנִיּוּת וַעֲשִׁירוּת – THOSE WHO CAN COME TO A SITUATION OF POVERTY OR WEALTH. יָצְאוּ בְּהֵמָה וְכֵלִים – AN ANIMAL AND UTENSILS ARE thus EXCLUDED, שֶׁאֵינָן בָּאִין לִידֵי עֲנִיּוּת וַעֲשִׁירוּת – FOR THEY CANNOT COME TO A SITUATION OF POVERTY OR WEALTH.[21]

The Gemara asks:

וְתַנָּא קַמָּא – **Now, the Tanna Kamma** of the Baraisa holds that rental payments for an animal or utensil are in fact subject to that commandment too.[22] הַאי ,,כִּי עָנִי הוּא'' מַאי עָבִיד לֵיהּ – **What** then **does he do with the** clause ***because he is poor***? Why does he not use it to exclude rental payments from that verse?

The Gemara answers:

הַהוּא מִיבָּעֵי לְהַקְדִּים עָנִי לְעָשִׁיר – **That** clause **is needed to grant precedence to a poor** employee **over a wealthy** employee.[23] Therefore, it is not used to exclude rental payments from that commandment.

The Gemara explains how R' Yose the son of R' Yehudah derives that law:

וְרַבִּי יוֹסֵי בְּרַבִּי יְהוּדָה – **Now, R' Yose the son of R' Yehudah** needs that clause to exclude rental payments. He must therefore find another source to derive that an employer must give precedence to a poor employee over a wealthy one. הַהוּא מִ ,,לֹא־תַעֲשֹׁק שָׂכִיר עָנִי וְאֶבְיוֹן'' נַפְקָא – **He derives that** law **from** the previous verse: ***You shall not retain [the wages of] an employee who is poor or destitute.*** This verse then already emphasizes the importance of paying an impoverished employee.

The Gemara explains what the Tanna Kamma derives from the mention of a poor person in that previous verse:

וְתַנָּא קַמָּא – **And,** according to **the Tanna Kamma** חַד לְהַקְדִּים עָנִי לְעָשִׁיר – **one** verse *[because he is poor]* is used **to grant precedence to a poor** employee **over a wealthy** one, as stated above. וְחַד לְהַקְדִּים עָנִי לְאֶבְיוֹן – **And one** verse [*you shall not retain . . . who is poor*] is used **to grant precedence to a poor** employee **over a destitute** one.[24]

The Tanna Kamma has thus derived that a poor employee is granted precedence over both a destitute employee and a wealthy one. The Gemara explains why both expositions are needed:

וְצָרִיכָא – **And it is necessary** to teach both rulings. דְּאִי אַשְׁמְעִינַן אֶבְיוֹן – **For if [the Torah] informed us** only that a poor employee precedes **a destitute** one, מִשּׁוּם דְּלֹא בָּסִיף לְמִתְבְּעֵיהּ – I would say that is so **because [the destitute man] is not ashamed to demand** his wages from **[the employer];**[25] אֲבָל עָשִׁיר דְּבָסִיף לְמִתְבְּעֵיהּ – **but** with regard to **a wealthy man, who is ashamed to demand** his wages from **[the employer],** אֵימָא לֹא – **I would say** that a poor man does **not** precede him in receiving his pay.[26] וְאִי אַשְׁמְעִינַן עָשִׁיר – **And if [the Torah] informed us** only that a poor man precedes **a wealthy man,** מִשּׁוּם דְּלֹא צָרִיךְ לֵיהּ – I would say that is so **because [the wealthy man] does not need [the wages]** so much; אֲבָל אֶבְיוֹן דְּצָרִיךְ לֵיהּ – **but** with regard to **a destitute man, who** vitally **needs [the wages],** אֵימָא לֹא – **I would say** that a poor man does **not** precede him in receiving his pay.[27] צְרִיכָא – **[Both]** rulings **are** thus **needed.**

Having explained the Biblical sources behind the views of the two Tannaim of the Baraisa, the Gemara now analyzes the Tanna of our Mishnah:

מַה נַּפְשָׁךְ וְתַנָּא דִּידַן – **Regarding our Tanna,**[28] **whatever** possibility **you consider** is difficult. אִי יָלִיף ,,שָׂכִיר'' ,,שָׂכִיר'' – **If he derives** laws by linking the sections of a day worker and a night worker using the terms ***"sachir" "sachir,"*** אֲפִילּוּ גֵּר תּוֹשָׁב נַמִּי – he should include **even a resident alien as well** in all of the prohibitions.[29] Why then does he state that a resident alien is subject only to the laws in the section of a night worker? אִי לֹא יָלִיף ,,שָׂכִיר'' ,,שָׂכִיר'' – And **if he does not derive** laws from the terms ***"sachir" "sachir,"*** בְּהֵמָה וְכֵלִים מְנָא לֵיהּ – **how does he know** that the prohibitions found in the section of a day worker apply to the rental payments of **an animal and utensils?**[30]

NOTES

21. Therefore, even though R' Yose the son of R' Yehudah would ordinarily apply the entire section in *Deuteronomy* to rentals, he was forced to limit liability for rentals to the first verse.

Rashash questions this exposition, because although the animal or utensil cannot become poor, its owner can. The verse could thus very well be enjoining a renter to make his rental payments on time because the owner of that item is poor. See *Pnei Yehoshua* for a possible resolution.

22. As he stated explicitly.

23. That is, if someone hired two workers, one wealthy and one poor, and he has money to pay only one of them, he should pay the poor worker on time (*Rashi*). [We will learn below (112a) that an employer is not liable for delaying payment if he does not have funds available. This verse thus teaches that he should make his one timely payment to the poor employee.]

24. The term אֶבְיוֹן, *destitute,* connotes a deeper level of poverty than עָנִי, *poor,* being related to the word אוֹבֶה, *desire.* That is, an אֶבְיוֹן is one who desires items for his welfare but cannot fulfill any of those desires. Nevertheless, this verse grants precedence to a poor employee over a destitute one in collecting his wages, because the average poor person is embarrassed to claim his wages even though he vitally needs them. The destitute employee, on the other hand, is used to embarrassing situations and will have no reservation in claiming what he needs (*Rashi*). [Even though the employer does not have the funds now, he will probably one day have some available. It is then preferable to have the destitute employee claim them at that point.]

25. [Therefore, even if the destitute employee is not paid now from the employer's available funds, he will demand his wages until the employer finally procures new funds.]

26. [It is certainly more embarrassing for a wealthy man than a poor man to demand payment. I would therefore think that the wealthy employee would receive his wages first, while the poor employee would have to demand payment until the employer procured new funds. The Torah nevertheless grants precedence to the poor employee because of the overriding concern that he needs the money now.]

27. I.e. I would say that since a destitute person needs the money more than an average poor person, the destitute person should receive his pay first. The Torah nevertheless grants precedence to a poor employee because in addition to needing the money, he is too embarrassed to claim it from the employer (*Rashi*).

28. And the Tanna of R' Yishmael's academy, who follows the same view. Our Tanna [and the Tanna of R' Yishmael's academy] ruled that a *ger toshav* is subject only to the laws found in the passage of the night worker in *Deuteronomy,* but not to any of the prohibitions found in *Leviticus*. But our Tanna also ruled that rental payments of animals and utensils are subject to all prohibitions found in both sections. The Gemara therefore asks how he derives these rulings (*Rashi*).

29. If the Tanna of our Mishnah expounds the *gezeirah shavah* using the terms *"sachir" "sachir,"* he should derive that all prohibitions apply to a *ger toshav*, just as the Tanna Kamma of the Baraisa inferred.

30. The term בְּאַרְצֶךָ, which includes rental payments, is found in *Deuteronomy*, in the section of a night worker. The Tanna Kamma of the Baraisa used the *gezeirah shavah* to include rental payments in the prohibitions found in the section of a day worker (in *Leviticus*) as well. But if the Tanna of our Mishnah does not utilize that *gezeirah shavah*, how does he know that rental payments are subject to the prohibitions in that section of a day worker?

The Gemara answers:

לְעוֹלָם לֹא יָלִיף ,,שָׂכִיר'' ,,שָׂכִיר'' – **Actually, [our Tanna] does not derive** laws from the terms ***"sachir" "sachir,"*** but he nevertheless deduces that rental payments are subject to the laws found in the section of a day worker. וְשַׁאנֵי הָתָם – **For there** [with regard to rental payments] **it is different,** דְּאָמַר קְרָא – **since the verse states:** ,,[וְ]לֹא תָלִין פְּעֻלַּת שָׂכִיר אִתְּךָ עַד בֹּקֶר'' – **[And]** ***the wage of a hired worker shall not stay overnight with you until morning.*** The superfluous term *"with you"* includes כָּל שֶׁפְּעוּלָּתוֹ אִתְּךָ – **the hire of any thing** [even a rented item] **that is with you.**[31]

The Gemara asks:

אִי הָכִי – **If so,** אֲפִילּוּ גֵּר תּוֹשָׁב נַמִּי – **even** the wages of **a resident alien** should **also** be subject to the laws found in the section of a day worker.[32] Why then does the Tanna of our Mishnah state that wages of a resident alien are subject only to the prohibitions in the section of a night worker?

The Gemara answers:

אָמַר קְרָא ,,רֵעֲךָ'' – In the section of a day worker **Scripture states** the term ***your fellow,***[33] from which we derive that the prohibitions stated there apply **only** to רֵעֲךָ וְלֹא גֵּר תּוֹשָׁב – wages of **your fellow** Jew, **but not** to those of **a resident alien.**

The Gemara counters:

אִי הָכִי – **If so,** אֲפִילּוּ בְּהֵמָה וְכֵלִים נַמִּי – **even** the rental payments for **an animal and utensils** should **also** be excluded from the prohibitions found there because of that term.[34] – ? –

The Gemara answers:

הָא כְּתִיב ,,אִתְּךָ'' – **But** the term ***"with you"*** **is written** to include rental payments in those prohibitions.

The Gemara asks:

מָה רָאִיתָ לְרַבּוֹת בְּהֵמָה וְכֵלִים – **What do you see** that persuades you **to include** the rental payments of **an animal and utensils,** וּלְהוֹצִיא גֵּר תּוֹשָׁב – **and to exclude** the wages of **a resident alien?** Let the Tanna of our Mishnah rather include the wages of a resident alien in those prohibitions and exclude the rental payments of an animal and utensils.[35] – ? –

The Gemara answers:

מִסְתַּבְּרָא בְּהֵמָה וְכֵלִים הֲוָה לֵיהּ לְרַבּוֹת – **It is reasonable that he should include** the rental payments of **an animal and utensils** under these prohibitions, שֶׁכֵּן יֶשְׁנָן בִּכְלַל מָמוֹן רֵעֲךָ – **for they are included** at least **in the property of your fellow** Jew. גֵּר תּוֹשָׁב אֵינוֹ בִּכְלַל מָמוֹן רֵעֲךָ – The wage of **a resident alien,** however, **is not included** even **in the property of your fellow** Jew.[36]

Having offered this explanation of the Tanna of our Mishnah, the Gemara must now reexamine the view of the Tanna Kamma in the Baraisa cited above:

וְתַנָּא קַמָּא דְּ,,מֵאַחֶיךָ'' – **Now, the Tanna Kamma of** the Baraisa that expounds the term ***"among your brethren"*** ruled that the wages of a resident alien are subject to all the prohibitions that apply to a Jew. הַאי ,,רֵעֲךָ'' מַאי עָבְדֵי לֵיהּ – **What** then **does he do with** the limiting term ***"our fellow"*** found in the section of a day worker?[37]

The Gemara answers:

הַהוּא מִיבָּעֵי לֵיהּ לְכִדְתַנְיָא – **He needs that** term **for that which was taught in the** following **Baraisa:** רֵעֲךָ וְלֹא עַמָּלֵקִי – The prohibitions found in the section of the day worker apply only to YOUR FELLOW Jew, BUT NOT TO AN AMALEKITE.[38]

The Gemara asks:

עַמָּלֵקִי ,,מֵאַחֶיךָ'' נַפְקָא – The exclusion of **an Amalekite is** already **derived** from the term ***"among your brethren,"***[39] found in the section of a night worker. Why then is it necessary to exclude an Amalekite a second time?

The Gemara answers:

חַד לְמִשְׂרָא עוֹשְׁקוֹ – **One** exposition is needed **to permit retention of [an Amalekite's]** wages; וְחַד לְמִשְׂרָא גְּזֵילוֹ – **and one** exposition is needed **to permit robbery of his** property.[40]

NOTES

31. *Any* hire, even the rent of an animal or utensil, may not remain with you (*Rashi*). Therefore, if one benefits from the work of an object rented during the day, he must make the rental payments on time [that night]. Then, once that prohibition in *Leviticus* applies to rental payments, the two other prohibitions against withholding payment mentioned in that verse also apply.

32. Since the withheld hire of a *ger toshev* is "with you," it too should be subject to the prohibitions stated in *Leviticus*.

33. The verse begins (*Leviticus* 19:13): לֹא־תַעֲשֹׁק אֶת־רֵעֲךָ, *You shall not retain what is due your fellow* (*Rashi*).

34. That is, the term רֵעֲךָ should teach that only the wages due your fellow Jewish worker are subject to the prohibitions listed in the section of the day worker, but not rental payments for the use of his animal or utensils.

35. The verse under discussion contains both a limiting term (רֵעֲךָ, *your fellow*) and an inclusive term (אִתְּךָ, *with you*). The Tanna of our Mishnah apparently excludes a *ger toshav* from the prohibitions stated there because of the term רֵעֲךָ, and includes rental payments because of the term אִתְּךָ. But since there is no indication as to what form of payment should be included and what form excluded, why did the Tanna not arrive at the opposite conclusion? Perhaps wages of a *ger toshav* should be subject to the prohibitions in that verse while rental payments should be excluded.

36. Thus, when forced to choose between including wages of a *ger toshav* or including rental payments, our Tanna chose rental payments. This was preferable because rental payments can also be called *"what is due your fellow [Jew]"* since the rented object belonged to a Jew. Wages of a *ger toshav*, though, have no connection to Jewish ownership.

37. According to the Tanna Kamma of the Baraisa, a *gezeirah shavah* links the verses in *Deuteronomy* with those prohibitions stated in *Leviticus*. Therefore, since the wage of a *ger toshav* is included in the verses in *Deuteronomy* (from the term בִּשְׁעָרֶיךָ, *in your gates*), his wage is also included in the prohibitions mentioned in *Leviticus*. The Gemara therefore asks what form of payment he excludes because of the limiting term *"your fellow"* (*Ran*).

38. That is, the term *"your fellow"* excludes the wages of a an idolater such as an Amalekite. A *ger toshav* though, who renounced idolatry, is included in all of the laws of withholding wages that apply to a Jew.

39. The verse in *Deuteronomy* begins לֹא־תַעֲשֹׁק שָׂכִיר עָנִי וְאֶבְיוֹן מֵאַחֶיךָ, *You shall not retain [the wages of] an employee who is poor or destitute among your brethren.* The Baraisa above used the term *"among your brethren"* to exclude wages of an idolater from this prohibition. Furthermore, the Tanna Kamma of that Baraisa expounds a *gezeirah shavah* to link the section of the night worker in *Deuteronomy* with that of the day worker in *Leviticus*. Hence, why would he need the term *"your fellow"* in *Leviticus* to exclude the wages of an Amalekite from the prohibitions mentioned there? The wages of all idolaters are excluded in that section too as a result of the *gezeirah shavah* (*Ran*).

[This question is thus difficult only according to the Tanna Kamma of the Baraisa, who expounds the *gezeirah shavah*. But according to R' Yose the son of R' Yehudah, who does not link the two sections with a *gezeirah shavah*, the term *"your fellow"* is needed in *Leviticus* to exclude wages of idolaters such as an Amalekite from the prohibitions expressed there (*Ran*).]

40. This follows *Rashi*, who says the term גְּזֵל in this context should be understood according to its usual meaning – i.e. robbing something from a person. It is thus understood differently than above (111a, see note 15 there), where it meant withholding wages. [See *Tosafos* to 61a (ד"ה לעבור) for an explanation of how this ruling about actual robbery is derived from the same term that was earlier interpreted to be referring to withholding wages.]

וּצְרִיכִי – **And [both]** of these expositions **are needed.** דְּאִי אַשְׁמְעִינַן גְּזֵלוֹ – **For if [the Torah] informed us** only that **robbery of his** property is permitted, מִשּׁוּם דְּלֹא טָרַח בֵּיהּ – I would think that is so **because [the Amalekite] did not** necessarily **trouble himself for [the stolen item],**[41] אֲבָל עוֹשְׁקוֹ דְּטָרַח בֵּיהּ – **but** with regard to **retention of his** wages, **for which [the Amalekite] did trouble himself**[42] by working, אֵימָא לֹא – **I would say** it is **not** permitted. וְאִי אַשְׁמְעִינַן עוֹשְׁקוֹ – **And if [the Torah] informed us** only that **retention of his** wages is permitted, מִשּׁוּם דְּלֹא אָתָא לְיָדֵיהּ – I would think that is so **because [the money] never reached [the Amalekite's] hand,** אֲבָל גְּזֵלוֹ דְּאָתָא לְיָדֵיהּ – **but** with regard to **robbery of his** property, **where [the stolen item] did reach his hand,** אֵימָא לֹא – **I would say** it is **not** permitted. צְרִיכָא – **[Both]** expositions **are** thus **needed.**[43]

The Gemara questions the view of R' Yose the son of R' Yehudah:

וְרַבִּי יוֹסֵי בְּרַבִּי יְהוּדָה – **Now,** the view of **R' Yose the son of R' Yehudah** is difficult. הַאי ,,לֹא־תָלִין פְּעֻלַּת שָׂכִיר אִתָּךְ עַד־בֹּקֶר'' – **This** verse: ***The wage of a hired worker shall not stay overnight with you until morning,*** was used by the Tanna of our Mishnah to include rental payments for animals and utensils, because of the term *"with you."* But R' Yose the son of R' Yehudah holds that rental payments are not subject to those prohibitions found in the section of a day worker. מַאי עָבִיד לֵיהּ – **What** then **does he do with [that term]?**[44]

The Gemara answers:

מִיבָּעֲיָא לֵיהּ לְכִדְרַב אַסִּי – **He needs it for that** ruling **of Rav Assi.** אֲפִילּוּ לֹא שְׂכָרוֹ אֶלָּא לְבָצוֹר – **For Rav Assi stated:** דְּאָמַר רַב אַסִּי – **Even if someone hired [the worker] to harvest only one cluster of grapes,**[45] לוֹ אֶשְׁכּוֹל אֶחָד שֶׁל עֲנָבִים – **he transgresses** the prohibition **not to hold** wages **overnight** if he delays payment. עוֹבֵר מִשּׁוּם בַּל תָּלִין –

The Gemara explains how the Tanna of our Mishnah derives that law:

וְאִידָךְ – **And the other one** [the Tanna of our Mishnah], מִ,,וְאֵלָיו הוּא נֹשֵׂא אֶת־נַפְשׁוֹ'' נַפְקָא – **derives** this law **from** the verse:[46] And ***for it he risks his life,*** which he expounds to mean דָּבָר הַמּוֹסֵר נַפְשׁוֹ עָלָיו – any **matter for which [an employee] commits his life,** even a short job.[47]

NOTES

41. For this item can very well be something that the Amalekite found or received as an inheritance or gift (*Tosafos* above, 61a ד"ה לעבור).

42. This translation follows *Tosafos* (ibid). See also *Dikdukei Sofrim.*

43. *Meiri* (to *Bava Kamma* 113b) emphasizes that this discussion concerns only idolaters and primitive peoples that do not subscribe to the basic concepts of moral conduct. But a member of any civilized nation that believes in God and which governs itself in a moral fashion – even though its religious practices are far different from the Torah's – must be treated exactly as a Jew in all financial dealings. Furthermore, even with regard to an idolater, the law follows the view in *Bava Kamma* (ibid.) that prohibits stealing anything from him; this includes even non-payment of his wages. Only the prohibition against delaying payment past the time limit given for a Jewish employee is not applicable to an employee who is an idolater. This stringent view is accepted as definitive in *Shulchan Aruch* (*Choshen Mishpat* 359:1; see also 348:2 with *Shach*). [For further discussion of our Gemara, see *Tosafos* above, 87b ד"ה אלא; see also *Chacham Zvi* §26. For *Rashi's* view, see his commentary to *Sanhedrin* (57a), with *Shaar Ephraim* §2.]

44. The Gemara could have asked a similar question about the view of the Tanna Kamma of the Baraisa. He derives from the *gezeirah shavah* that rental payments are subject to all of the prohibitions in *Leviticus*. Accordingly, he does not need the term *"with you"* there to include such payments. The Gemara, though, prefers to question the ruling of R' Yose the son of R' Yehudah, for the exposition from *"with you"* actually *contradicts* his view that rental payments are not included. According to the Tanna Kamma, though, the term *"with you"* is merely superfluous, not contradictory to his view (*Ran*).

45. I.e. he was hired for just a few hours of work (*Rashi*). We would have thought that the term שָׂכִיר, *hired worker,* applies only to someone who works for an entire day or for at least half the day, because it is common to hire workers for that amount of time. But we would not have thought that this term applies to someone hired for less time, since such employment is unusual (*Tosafos*). The verse therefore states *"with you"* to include any employee, even one who worked for only a few hours. [See *Meiri* for an alternative interpretation of this Gemara; see also *Minchas Chinuch* 230:7.]

46. *Deuteronomy* 24:15. This apparently superfluous clause is expounded.

47. [According to this interpretation the clause does not convey its literal meaning, that the employee risks his life for the wage. Rather the term וְאֵלָיו, *and for it,* refers to the job, not to the wages. That is, the worker committed himself to carry out the job.] Thus, for any job that an employee committed himself – even a short job of a few hours – the employer must pay the wages on time (see *Rashi*).

[Even though this verse in *Deuteronomy* refers to a night worker, the same law applies to the day worker mentioned in *Leviticus.* Once we see that even someone hired for a few hours is considered by Scripture to be "a hired worker," this type of worker is included in the section of a day worker as well (see *Ritva* [old]).]

The Gemara states what R' Yose the son of R' Yehudah derives from that superfluous clause:

וְאִידָךְ – **And the other [Tanna]** הַהוּא מִיבָּעֵי לֵיהּ לְכִדְתַנְיָא – **needs that** clause **for that which was taught in a Baraisa:** ״וְאֵלָיו הוּא נֹשֵׂא אֶת־נַפְשׁוֹ״ – The verse states: *AND FOR IT HE RISKS HIS LIFE.*[1] מִפְּנֵי מָה עָלָה זֶה בַּכֶּבֶשׁ – WHY DID THIS worker CLIMB A high RAMP to work, וְנִתְלָה בְּאִילָן – OR SUSPEND HIMSELF ON THE TREE to collect its fruits, וּמָסַר אֶת עַצְמוֹ לְמִיתָה – PLACING HIMSELF IN MORTAL DANGER?[2] לֹא עַל שְׂכָרוֹ – Was it NOT FOR HIS WAGE?[3] דָּבָר אַחֵר – ANOTHER EXPLANATION translates the verse as follows: ״וְאֵלָיו הוּא נֹשֵׂא אֶת־נַפְשׁוֹ״ – *ON IT HE STAKES HIS LIFE.* כָּל הַכּוֹבֵשׁ שְׂכַר שָׂכִיר – WHOEVER WITHHOLDS THE WAGES OF AN EMPLOYEE כְּאִילּוּ נוֹטֵל נַפְשׁוֹ מִמֶּנּוּ – IS considered AS IF HE TOOK HIS LIFE FROM HIM.[4]

The Gemara debates the interpretation of the verse according to this last exposition:

רַב הוּנָא וְרַב חִסְדָּא – **Rav Huna and Rav Chisda** disagree. חַד אָמַר נַפְשׁוֹ שֶׁל גַּזְלָן – **One says** that the verse refers to **the life of the robber** [i.e. the employer], warning that his life is at stake if he does not pay the wages. וְחַד אָמַר נַפְשׁוֹ שֶׁל נִגְזָל – **And** the other **one says** that the verse refers to **the life of the victim** [i.e. the employee], stating that his life is in danger if he does not receive his expected wages.[5]

The Gemara explains the source of this dispute:

מַאן דְּאָמַר נַפְשׁוֹ שֶׁל גַּזְלָן – **The one who says** that the verse refers to **the life of the robber** derives this fact from דִּכְתִיב – **that which is written:** ״אַל־תִּגְזָל־דָּל כִּי דַל־הוּא וְאַל־תְּדַכֵּא עָנִי בַּשָּׁעַר״ – ***Do not rob an impoverished person though he is impoverished; and do not oppress the poor in the gate.***[6] וּכְתִיב – **And it is written** in the next verse: ״כִּי־ה׳ יָרִיב רִיבָם וְקָבַע אֶת־קֹבְעֵיהֶם נָפֶשׁ״ – ***For HASHEM will fight their battle, and rob the life of those who rob them.***[7] The term "life" is thus used in reference to the robber. וּמַאן דְּאָמַר נַפְשׁוֹ שֶׁל נִגְזָל – **And the one who says** that the verse refers to **the life of the victim** derives this fact from דִּכְתִיב – **that which is written:** ״כֵּן אָרְחוֹת כָּל־בֹּצֵעַ בָּצַע אֶת־נֶפֶשׁ בְּעָלָיו יִקָּח״ – ***So are the ways of anyone who is greedy of gain; he takes away the life of its owner.***[8] Thus, the term "life" refers to the victim.

The Gemara asks:

וְאִידָךְ נַמִי – **Now, the other one,** who explained that our verse refers to the life of the employer, must **also** contend with the following question: הָכְתִיב ״אֶת־נֶפֶשׁ בְּעָלָיו יִקָּח״ – **But it is written:** ***He takes away the life of its owner.*** This indicates that the term "life" refers to the victim! – ? –

The Gemara answers:

בְּעָלָיו דְּהַשְׁתָּא – That verse refers to **its *current* owner** – i.e. the robber.[9]

The Gemara questions the other view:

וְאִידָךְ נַמִי – **Now, the other one,** who explained that the verse refers to the victim, must **also** contend with the following question: הָכְתִיב ״וְקָבַע אֶת־קֹבְעֵיהֶם נָפֶשׁ״ – **But it is written:** ***[HASHEM] will rob the life of those who rob them.*** This implies that the term "life" refers to the robber! – ? –

The Gemara answers:

מַה טַּעַם קָאָמַר – **[The verse] is stating what the reason is:** מַה טַּעַם קָבַע אֶת־קֹבְעֵיהֶם״ – **What is the reason that [God] will rob** [i.e. punish] **[the robbers]?** מִשּׁוּם דְּנָטְלוּ נָפֶשׁ – **Because they took the life** of the one that they robbed.[10] The "life" referred to is thus that of the victim.

The Gemara cites the next section of our Mishnah, which set down a condition for when the prohibition against delaying payment of wages applies:

אֵימָתַי – WHEN is this so? בִּזְמַן שֶׁתְּבָעוֹ – WHEN [THE WORKER] DEMANDED his wage from [THE EMPLOYER]. לֹא תְבָעוֹ – But if [THE WORKER] DID NOT DEMAND his wage from [THE EMPLOYER], אֵינוֹ עוֹבֵר עָלָיו – [THE EMPLOYER] DOES NOT TRANSGRESS [THE LAW] against delaying payment.

A Baraisa elaborates:

תָּנוּ רַבָּנָן – **The Rabbis taught in a Baraisa:** ״לֹא־תָלִין פְּעֻלַּת שָׂכִיר״ – The verse states:[11] *THE WAGE OF AN EMPLOYEE SHALL NOT STAY OVERNIGHT.* יָכוֹל אֲפִילּוּ לֹא תְבָעוֹ – IT MIGHT BE thought that this applies EVEN IF [THE EMPLOYEE] DID NOT DEMAND his wages from [THE EMPLOYER]. תַּלְמוּד לוֹמַר ״אִתָּךְ״ – THE TORAH therefore STATES the next word: *WITH YOU,* לְרַעְתְּךָ – which is interpreted to mean WITH YOUR WILL; implying that the wage is being held against the will of the employee.[12] יָכוֹל אֲפִילּוּ אֵין לוֹ – IT MIGHT BE thought that the prohibition applies

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1. *Deuteronomy* 24:15.

2. The employee could fall off the high ramp or the tree and perish (*Rashi*).

3. The verse thus emphasizes the iniquity in not paying the wages to this worker in a timely fashion.

4. [That is, by having his wages withheld, the employee could quite possible die. Consequently, an employer who withholds wages will be punished for this infraction as if he were guilty of murder.] The Gemara next debates how this is derived from the phrase וְאֵלָיו הוּא נֹשֵׂא אֶת־נַפְשׁוֹ (*Rashi*). At any rate, R' Yose the son of R' Yehudah can use the clause for this exposition (see *Rashi* ד״ה ואידך).

[According to this second exposition, the verse does not refer to the dangerous nature of the work. Rather, the verse is concerned with the harm that can befall the employee if he does not receive his wages as expected. Thus, even if the employee was not doing dangerous work, it is considered a murderous act to withhold his wages. The first exposition, though, stated the severity of withholding payment for an employee who performed a dangerous job (*Iyun Yaakov*).]

5. According to one view, the term "his life" (נַפְשׁוֹ) in the verse refers to the life of the employee. The verse exhorts the employer to pay the wages because the employee's life depends on that money. Implicit in that statement is that if the employer does not pay as expected, he will be punished as severely as if he had caused the employee's death. According to the other view, the term "his life" refers to the life of the employer. The verse would then be stating that the employer's own life is at stake if he does not pay the wages [because of the danger in which he places the employee] (see *Rashi*).

6. *Proverbs* 22:22. That is, even though he is poor and has no one to come to his aid, do not rob him (*Rashi*). The second part of the verse, which discusses a poor person in the gate, refers to someone collecting the various portions of produce to which the poor are entitled [e.g. *maaser ani, leket,* etc.]. One should not make it difficult for the poor to collect these entitlements (*Rashi* to *Bava Kamma* 119a).

7. Ibid. v. 23. The term קָבַע is the Aramaic equivalent of the Hebrew verb גָּזַל (*Rashi* to this verse, from *Rosh Hashanah* 26b). The verse thus teaches that a robber brings harm upon himself; God will "rob" the very life of someone who robs another person (*Rashi*). This verse thus states that the נֶפֶשׁ, "life," of the robber is at stake. Similarly, our verse in *Deuteronomy* refers to the life of the robber with its term נַפְשׁוֹ.

8. *Proverbs* 1:19. The verse is interpreted to mean that the greedy person takes away the life of the owner of the item he desires. Here, the verse uses the term נֶפֶשׁ to refer to the victim's life, which is in danger.

9. The verse is thus interpreted to mean that a robber takes away the "life" of the one who owns the item *after* the theft – that is, his own life. Accordingly, in this verse too, the term נֶפֶשׁ can refer to the robber.

10. The verse thus means that God will rob [i.e punish] (וְקָבַע) those who "robbed" the life of their victims (אֶת־קֹבְעֵיהֶם נָפֶשׁ) [by robbing their money] (*Rashi*). Thus, the term נֶפֶשׁ in this verse too can be referring to the victim.

11. *Leviticus* 19:13.

12. [The term אִתָּךְ can be understood as "with your will." The verse would then mean, "The wage of an employee shall not stay overnight

EVEN IF [THE EMPLOYER] DOES NOT HAVE the necessary funds to pay his worker. תַּלְמוּד לוֹמַר ,,אִתְּךָ״ – THE TORAH therefore STATES: *WITH YOU,* שֶׁיֵּשׁ אִתְּךָ – which implies THAT YOU HAVE IT available.[13] יָכוֹל אֲפִילּוּ הִמְּחָהוּ אֵצֶל חֲנְוָנִי וְאֵצֶל שׁוּלְחָנִי – IT MIGHT BE thought that this prohibition applies EVEN IF [THE EMPLOYER] DIRECTED [HIS WORKER] TO A STOREKEEPER OR MONEYCHANGER. תַּלְמוּד לוֹמַר ,,אִתְּךָ״ – THE TORAH therefore STATES: *WITH YOU,* וְלֹא שֶׁהִמְּחָהוּ אֵצֶל חֲנְוָנִי וְאֵצֶל שׁוּלְחָנִי – which implies, NOT WHEN HE DIRECTED [HIS WORKER] TO A STOREKEEPER OR A MONEYCHANGER.[14]

The Gemara cites the next ruling of our Mishnah and analyzes it:

הִמְּחָהוּ אֵצֶל חֲנְוָנִי וְאֵצֶל שׁוּלְחָנִי – If [THE EMPLOYER] DIRECTED HIM TO A STOREKEEPER OR A MONEYCHANGER, אֵינוֹ עוֹבֵר – HE DOES NOT TRANSGRESS [THE LAW].

The Gemara asks:

אִיבָּעְיָא לְהוּ – **They inquired:** חוֹזֵר – **May [the employee] return** to the employer if he is not paid, אוֹ אֵינוֹ חוֹזֵר – **or may he not return?**[15]

The Gemara presents two views:

רַב שֵׁשֶׁת אָמַר – **Rav Sheishess says:** אֵינוֹ חוֹזֵר – **He may not return** to the employer. וְרַבָּה אָמַר – **But Rabbah says:** חוֹזֵר – **He may return.**

Rabbah explains why he holds that the employee may return to the employer if he is not paid by the storekeeper:

אָמַר רַבָּה – **Rabbah says:** מְנָא אֲמִינָא לָהּ – **From where do I** know to **say it?** מִדְּקָתָנֵי אֵינוֹ עוֹבֵר עָלָיו – **From that which [the Mishnah] taught:** [THE EMPLOYER] DOES NOT TRANSGRESS [THE LAW]. מְעַבֵּר הוּא דְּלֹא עָבַר – This implies that **[the employer] does not transgress** the law if the employee is not paid by the storekeeper, הָא מִיהֲדַר הָדַר – **but [the employee] may** still **return** to the employer in that case to collect his wages.[16]

Rav Sheishess responds to this proof:

מַאי אֵינוֹ עוֹבֵר – **What** does the Mishnah mean when it says: HE DOES NOT TRANSGRESS the law? אֵינוֹ בְּתוֹרַת לַעֲבוֹר – **He is not subject to the laws of transgressing** because he no longer owes the employee anything.[17]

Until now the Gemara has discussed the prohibitions that apply to an employee whose pay is based on the amount of time that he works. The Gemara now asks whether those prohibitions apply for other types of work:

קָבְּלָנוּת בָּעוּ מִינֵּיהּ מֵרַב שֵׁשֶׁת – **They inquired of Rav Sheishess:** עוֹבֵר – If an employer delays payment for **contractual work,**[18] עָלָיו מִשּׁוּם בַּל תָּלִין – **does he transgress** the prohibition **not to hold** wages **overnight,** אוֹ אֵין עוֹבֵר מִשּׁוּם בַּל תָּלִין – **or does he not transgress** that prohibition **not to hold** wages **overnight?**

The cause of the doubt is explained:

אוּמָּן קוֹנֶה בְּשִׁבַּח כְּלִי – **Does a craftsman acquire the improvement to the utensil** that comes about from his work?[19] וְהַלְוָאָה הִיא – **Then, [the money]** owed to the worker **is** similar to **a loan** and is not subject to the prohibition against delaying payment of wages.[20] אוֹ אֵין אוּמָּן קוֹנֶה בְּשִׁבַּח כְּלִי – **Or does a craftsman not acquire** that **improvement to the utensil?** וּשְׂכִירוּת הִיא – **Then, [the money]** owed to the worker **is a wage** and is subject to the prohibition against delaying payment.[21]

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with your consent."] We can now infer that this prohibition takes effect when the delay is with the consent of the employer alone, to the exclusion of the employee's consent. Accordingly, if the employer did not defy the will of the employee, he is not in violation of this prohibition. Therefore, if the employee did not ask to be paid, the employer never defied the will of the employee, and is consequently not liable for delaying payment. [*Shaar Mishpat* (339:2) points out, however, that the employer is nevertheless not *permitted* to hold the wages in that situation. He is only exempt from the Biblical violation.]

13. The verse states that the wages should not stay overnight *"with you."* This implies that you (the employer) have the wherewithal to pay. But if the employer does not have the necessary funds, he is not in violation of this prohibition.

Rosh understands this exposition to be referring to an employer who does not have the necessary *cash* to pay his worker on time. In that case, he is not obligated to sell some of his assets to make this payment. *R' Akiva Eiger* (to *Choshen Mishpat* 339:10), however, writes that the Baraisa appears to be referring to an employer who has no assets at all to use for payment. Only in that case does he not violate the Biblical prohibition against delaying payment. See also *Ahavas Chesed* (*Nesiv HaChesed* 7:13).

[Even when the employer is Biblically exempt from this prohibition, it is nevertheless an act of piety to borrow money in order to pay one's employee on time (see *Pischei Teshuvah* there).]

14. In that case the employer is no longer responsible for paying the worker. Consequently, he is not holding the wages at all, so he cannot be liable for holding them overnight. This ruling will be analyzed immediately below, in the Gemara's discussion about the next section of our Mishnah.

15. This refers to a case where the employee merely agreed to rely upon the storekeeper, and no stipulation was made. At issue is what the employee meant when he agreed to collect his pay from the storekeeper. Did he mean to accept this arrangement only if he received his pay or did he mean to free the employer of all obligations to him? If, however, the employee had stipulated that his agreement was based on receiving his pay from the storekeeper, he may of course collect his wages from the employer when the storekeeper fails to pay. By the same token, if the employee had explicitly freed the employer of his obligation, relying upon the storekeeper for his pay, the employee may not retract his agreement (first explanation of *Tosafos*; (see *Rashi* ד״ה חוזר and ד״ה אינו). [See *Tosafos* and *Rosh* for further discussion of this issue and for a discussion of the storekeeper's obligation and whether he can retract from his role in the agreement.]

16. The Mishnah does not say that the employer is free from obligation (e.g. פָּטוּר) when the storekeeper fails to pay; it says merely that he does not transgress the prohibition against withholding payment. It is therefore apparent that the employer still bears the responsibility to pay his employee.

17. That is, the Mishnah means that the employer no longer has any financial obligations whatsoever to the employee. He will thus not be liable for any prohibitions that apply to the wages of an employee (*Rashi*).

18. This refers to work done by a craftsman, who agrees to complete a specific task for a fixed sum of money. The amount of his pay is thus not dependent on how long he works (*Rashi*).

19. When a craftsman is hired to complete a specific job, there are two ways to view the method by which he earns his pay. The first is to assume that he is paid a wage for his work, much in the same way that a day-laborer is paid a wage based on the time that he spends. The second is to assume that he becomes a partial owner of the item, acquiring that portion of the utensil which he improved. According to this second view, the craftsman's pay does not take the form of a wage that is owed to him; rather, it takes the form of proceeds from a sale: When he returns the finished product to its owner, he in effect "sells" whatever stake he acquired in it back to its owner, and the money that he receives from this sale is his pay (see *Rashi* here and to *Kiddushin* 48b ד״ה והכא).

The Gemara now suggests that the inquiry posed to Rav Sheishess revolves around this very question: Does a craftsman contracted to complete a certain job acquire a stake in the item he works with or not?

20. If the craftsman acquires the improvement made in the utensil, he in effect sells the owner that portion when he returns the finished product to its owner. Consequently, the money that the owner owes the craftsman is not considered wages but a loan (*Rashi*). [See *Ketzos HaChoshen* 306:4 for a lengthy discussion about the craftsman's "acquisition" of this improvement to the utensil.]

21. According to this understanding, the wages owed a contracted worker are no different than wages owed to someone paid by the hour. Hence,

Rav Sheishess responds:

אָמַר לְהוּ רַב שֵׁשֶׁת – **Rav Sheishess says to them:** עוֹבֵר – **[The employer] transgresses** the prohibition if he does not pay on time.[22]

This ruling is challenged:

וְהָתַנְיָא – **But it was taught in a Baraisa** about such a case: אֵינוֹ עוֹבֵר – **[THE EMPLOYER] DOES NOT TRANSGRESS** the prohibition if he does not pay a contracted worker on time. – ? –

The Gemara answers:

הָתָם שֶׁהִמְחָהוּ אֵצֶל חֲנָנִי וְאֵצֶל שׁוּלְחָנִי – **There** the Baraisa refers to a case **where [the employer] directed him to a storekeeper or a moneychanger.** He is therefore not subject to any prohibitions if the payment is delayed.

The Gemara attempts to prove that the ruling of Rav Sheishess is correct:

נֵימָא מְסַיְּיעָא לֵיהּ – **Let us support him** from the following Baraisa: הַנּוֹתֵן טַלִּיתוֹ לְאוּמָּן – Regarding **ONE WHO GIVES HIS CLOAK TO A CRAFTSMAN** – גְּמָרָהּ וְהוֹדִיעוֹ – if **[THE CRAFTSMAN] FINISHED IT AND INFORMED [THE OWNER]** of that fact, but did not return the cloak, אֲפִילּוּ מִכַּאן וְעַד עֲשָׂרָה יָמִים – **EVEN FROM NOW UNTIL TEN DAYS** אֵינוֹ עוֹבֵר מִשּׁוּם בַּל תָּלִין – **[THE OWNER] DOES NOT TRANSGRESS** the prohibition **NOT TO HOLD** wages **OVERNIGHT.**[23] נְתָנָהּ לוֹ בְּחֲצִי הַיּוֹם – However, **IF [THE CRAFTSMAN] GAVE IT TO HIM IN THE MIDDLE OF THE DAY,** מִשֶּׁשָּׁקְעָה עָלָיו חַמָּה – **WHEN THE SUN SETS ON HIM** עוֹבֵר מִשּׁוּם בַּל תָּלִין – **[THE OWNER] TRANSGRESSES** the prohibition **NOT TO HOLD** wages **OVERNIGHT.**[24] וְאִי אָמְרַתְּ אוּמָּן קוֹנֶה בִּשְׁבַח כְּלִי – **But if you say a craftsman acquires the improvement of the utensil,** אַמַּאי עוֹבֵר – **why does [the owner] transgress** any prohibitions? The money owed is not considered wages! It is thus apparent that a craftsman does not acquire any share of the cloak. His wages are thus subject to the prohibition against delaying wages, as Rav Sheishess stated.[25]

The Gemara objects to the proof:

אָמַר רַב מָרִי בְּרֵיהּ דְּרַב כַּהֲנָא – **Rav Mari the son of Rav Kahana says:** בְּגַרְדָּא דְּסַרְבְּלָא – The Baraisa may refer to **teaseling a thick cloth.**[26] Since this procedure weakens the garment, the craftsman does not acquire any share in it.[27] The money owed him in this particular case would then be considered nothing other than wages. No proof then can be brought to the ruling of Rav Sheishess.

The Gemara responds to this objection:

לְמַאי יְהָבָהּ נִיהֲלֵיהּ – In that case **why did [the owner] give [the cloth] to [the craftsman]?** לְרַכּוֹכֵי – Obviously, **to soften** it. הַיְינוּ שְׁבָחֵיהּ – **This** softening then **is its improvement.**[28] Therefore, this is no different than any other case of contractual employment, where the product increases in value.

The Gemara raises another objection to the proof:

לֹא צְרִיכָא דְּקָא אַגְּרֵיהּ מִינֵּיהּ – **[The Baraisa] is needed only where he hired him** לְבַטּוֹשֵׁי – **to stamp** on his cloth,[29] בְּטָשָׁא וּבְטָשָׁא בְּמַעֲתָא – **each and every stamping for a *ma'ah*.**[30] It is therefore possible that the Baraisa is not referring to contractual work at all.

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the wages of the contractor would be subject to the regulations that apply to an employee whose pay is dependent on the time that he worked.

22. [*Tosafos* ask that Rav Sheishess himself states elsewhere that a craftsman does acquire the improvement to the utensil. See there for a resolution to this apparent contradiction.]

23. For as long as the craftsman continues to hold the cloak, he cannot demand payment (*Aruch HaShulchan* 339:8 in explanation of *Sma* ibid. 10; cf. *Meiri*).

24. Once the craftsman returns the cloak his work is terminated, with the laws requiring a timely payment in effect.

It should be noted that in the case stated by the Baraisa, where the work was completed before the end of the day, the employer is subject to the verse found in the section of the night worker (*Deuteronomy* 24:15): לֹא־תָבוֹא עָלָיו הַשָּׁמֶשׁ, *The sun shall not set upon him,* as the Mishnah stated above (110b). The Baraisa mentions the prohibition found in the section of the day worker (*Leviticus* 19:13) only because that prohibition was mentioned in its first ruling cited here. And that particular prohibition was mentioned earlier because the case of a day worker is more common than that of a night worker (*Shitah Mekubetzes*; see, however, *Rambam, Hil. Sechirus* 11:3 and *Kessef Mishneh* there).

25. *Chochmas Manoach* points out that the Gemara could have cited a direct proof to Rav Sheishess from the Baraisa's ruling that an employer is liable for the prohibition against delaying payment even in case of a craftsman. The Gemara need not have involved itself with the issue of whether a craftsman acquires a share in the utensil. See there for an explanation of this apparently unnecessary argument.

26. Teaseling raises the nap (the hairy surface of cloth) by gently plucking up the surface fibers. This is done by brushing the cloth with a special teasel brush made of thistle heads (*Ma'aseh Oreg* by Dayan I. Gukovitzki, p. 55).

27. The garment would have lasted much longer if it had not been teaseled. The Gemara therefore assumes that the garment did not gain in value from this work (*Rashi*).

28. There are people who prefer to teasel a garment to give it a soft finish. This enhances the insulating properties of the cloth, and gives it a more beautiful appearance (*Rashi*; see *Ma'aseh Oreg* p. 56).

29. That is, the Baraisa may be referring to the first stage of the finishing process, known as fulling, which precedes the teaseling stage. After weaving, woolen cloth is handed over to the fuller, who washes it in a tub containing [warm] water and fuller's earth. It is stamped on while in the tub to shrink and thicken in order to close the tiny gaps in the weave (*Rashi,* as explained by *Ma'aseh Oreg* p. 55). [Since the shrinking causes the cloth to harden, it is then teaseled to soften it.]

30. The owner hired the worker to stamp on the cloth. The pay was to depend only on the amount of times the worker stamped; it was not contingent on the cloth actually improving. Since the worker would receive his pay even if the cloth did not improve, he cannot be considered a contractor who receives pay for a finished job or product. He is thus no different than a worker hired per day, whose pay is subject to the prohibitions against withholding wages (*Rashi*; see also *Ketzos Ha-Choshen* 306:3).

[We have translated the Gemara according to the version found in our edition. In *Rashi's* edition, though, the Gemara's conclusion apparently stated דְּאַגְּרֵיהּ לְבִיטְשֵׁי. This would then be translated as, "He hired him per stamping." See also *Rashi* and *Tosafos* to *Bava Kamma* 99a.]

The Gemara cites the next section of the Mishnah and elucidates it:

שָׂכִיר בְּזַמַּנּוֹ – If A HIRED WORKER claims his wage WHEN IT IS DUE, נִשְׁבָּע וְנוֹטֵל וכו׳ – HE MAY SWEAR AND COLLECT it, etc.

Understanding this oath to be a Rabbinic institution, the Gemara examines its purpose:[1]

שָׂכִיר – With regard to a hired worker, אַמַּאי תַּקִּינוּ לֵיהּ רַבָּנַן לְמִשְׁתַּבַּע וְשָׁקִיל – why did the Rabbis institute on his behalf that he swear and take his wages from the employer?

The Gemara answers:

אָמַר רַב יְהוּדָה אָמַר שְׁמוּאֵל – Rav Yehudah said in the name of Shmuel: הֲלָכוֹת גְּדוֹלוֹת שָׁנוּ בָּאן – Major laws were taught here.[2]

The Gemara interrupts its explanation of the reason for the oath to question Rav Yehudah's wording thus far:

הֲנֵי הֲלָכְתָא נִינְהוּ – Are these Biblical laws? הֲנֵי תַּקָּנוֹת נִינְהוּ – These are Rabbinic enactments.[3] – ? –

Rav Yehudah modifies the wording:

אֶלָּא אָמַר רַב יְהוּדָה אָמַר שְׁמוּאֵל – Rather, Rav Yehudah said in the name of Shmuel: תַּקָּנוֹת גְּדוֹלוֹת שָׁנוּ בָּאן – Major enactments were taught here.

The Gemara objects again:

מִכְּלָל גְּדוֹלוֹת – By calling those Rabbinic enactments "major," דְּאִיכָּא קְטַנּוֹת – this implies that there are minor ones. Why should any Rabbinic enactments be considered minor?[4]

The Gemara again modifies Shmuel's statement and then continues with its explanation of the reason for the Mishnah's ruling:

אֶלָּא אָמַר רַב נַחְמָן אָמַר שְׁמוּאֵל – Rather, Rav Nachman said in the name of Shmuel: תַּקָּנוֹת קְבוּעוֹת שָׁנוּ בָּאן – Lasting enactments were taught here.[5] שְׁבוּעָה דְּבַעַל הַבַּיִת הִיא – The oath should actually have been made by the householder (i.e. the employer) to counter the challenge of the employee and free himself from paying. וַעֲקָרוּהָ רַבָּנַן לִשְׁבוּעָה דְּבַעַל הַבַּיִת – But the Rabbis uprooted the oath of the householder, וְשַׁדְּרוּהָ אִשָּׂכִיר – and transferred it to the employee, מִשּׁוּם כְּדֵי חַיָּיו דְּשָׂכִיר – because of [the employee's] livelihood.[6]

The Gemara asks:

וּמִשּׁוּם כְּדֵי חַיָּיו דְּשָׂכִיר – And because of the needs of [the employee's] livelihood, מַפְסְדָנָא לֵיהּ לְבַעַל הַבַּיִת – do we impose a loss upon the householder?[7]

The Gemara answers:

בַּעַל הַבַּיִת גּוּפֵיהּ – The householder himself נַיְחָא לֵיהּ דְּמִשְׁתַּבַּע שָׂכִיר וְשָׁקִיל – is satisfied that the employee should be the one to swear and then take his wages, כִּי הֵיכִי דְּלִיתַּגְּרוּ לֵיהּ פּוֹעֲלִים – in order that workers should be willing to hire themselves out to him.[8]

The Gemara asks that the reverse argument can also be made:

שָׂכִיר גּוּפֵיהּ – The employee himself נַיְחָא לֵיהּ דְּמִשְׁתַּבַּע בַּעַל הַבַּיִת וְיִפָּקַע – is satisfied that the householder should be the one to swear and have his (the employee's) claim to the wages be rejected, כִּי הֵיכִי דְּלִיגְּרוּהוּ – so that [householders] should be willing to hire him.[9] – ? –

The Gemara answers:

בַּעַל הַבַּיִת עַל כָּרְחֵיהּ אָגַר – A householder is forced to hire workers.[10] There is consequently no concern that a worker who

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1. A few introductory remarks about the laws of oaths are in order, to help one follow this section of the Gemara. Under Biblical law, a defendant who completely denies the monetary claim of a plaintiff [כּוֹפֵר הַכֹּל, *one who denies the whole*] does not have to support his denial with an oath. However, one who admits part of the claim [מוֹדֶה בְּמִקְצָת] must support his denial of the rest with a Biblical oath. [In Amoraic times, however, a Rabbinic oath was imposed (שְׁבוּעַת הַיֶּסֶת, literally: an oath of incitement), even on one who categorically denies the plaintiff's claim. These laws have already been discussed in the beginning of our tractate (3b ff.).]

Under Biblical law, there is no such thing as a claimant swearing to collect a disputed claim from a defendant [נִשְׁבָּע וְנוֹטֵל]. Whenever a Biblical oath is required, it takes the form of having a defendant swear to repudiate the claim against him and keeping the disputed money or item [נִשְׁבָּע וְנִפְטָר] (*Rashi* ד״ה תקנות, from *Exodus* 22:10). The oath in our Mishnah, which allows the employee to swear and collect his wages from the employer, must therefore be a Rabbinic enactment.

2. [This is one of the great enactments instituted by the Sages,] together with the other Rabbinic oaths listed in a Mishnah in *Shevuos* (44b), in which a claimant may swear and then collect the item under dispute (*Rashi*). [The Gemara will elaborate this answer below.]

3. The term "halachah" (law) usually connotes a law taught orally to Moses at Sinai (הֲלָכָה לְמֹשֶׁה מִסִּינַי). The Gemara therefore asks why Rav Yehudah used that term to describe the oath given to an employee. The rulings listed in that Mishnah in *Shevuos*, allowing a claimant to collect with an oath, are actually Rabbinic, as the Gemara explains there (*Rashi*).

4. By stating that major enactments were taught *"here,"* Rav Yehudah implies that institutions taught in other places are not major. The Gemara therefore asks why any Rabbinic enactment should be considered minor (*Tosafos*).

5. That is, these enactments are of such lasting importance that it was worthwhile establishing them even though they uproot a Biblical law (*Rashi*). The reason for this enactment will be explained below.

[See *Tosafos* here and *Ritva* to *Shevuos* 45a for alternative explanations of the term קְבוּעוֹת.]

6. Because the employee depends on this for his livelihood, sometimes even endangering his life to earn his wages, the Sages instituted that any dispute regarding the payment of the wages be subject to an oath (see *Nimukei Yosef*).

However, according to Biblical law, in monetary disputes subject to an oath the defendant swears to his claim and keeps the property under dispute. Hence, if our case of wages were dealt with according to the rules of Biblical law, the oath would be given to the employer to swear and free himself from the employee's claim. However, the Sages reversed the procedure and instituted that the employee swear to the truth of his claim and then collect his wages [because of his need for his livelihood] (*Rashi*).

As noted above, according to Biblical law a defendant is not subject to an oath unless he admits part of the claim lodged against him. Our Gemara's use of the phrase "uprooted the oath of the householder" means the oath that, according to Biblical guidelines, *should have been* given to the householder. It may also allude to a case in which an employer admitted owing some of the wages claimed by the employee but denied the remainder (*modeh bemiktzas*). Even though the Torah itself imposes an oath upon the employer in such a case to swear and free himself of liability for the disputed amount, the Sages took that oath away from the employer and shifted it to the employee, allowing him to swear instead and collect the disputed amount (*Ran,* who says that *Rashi* also appears to understand the Gemara this way; cf. *Tosafos*).

7. If the employer should really have the right to swear and exempt himself from paying, why would the Sages institute a procedure for the benefit of the employee at the employer's expense?

8. If a householder would ever free himself from his employee's claim of wages, workers, suspecting that he swore falsely, would be reluctant to work for him in the future, fearing that they too might be cheated out of their wages (*Rashi* to *Shevuos* 45a). The Sages therefore assumed that employers were willing to transfer the oath to the employee, and forgo their right to swear and be free of the claim.

9. If a worker would ever swear to collect his disputed wages, people would be reluctant to hire him in the future, suspecting that he would demand his wages again under oath even after having been paid (*Rashi*). It is therefore reasonable to assume that workers prefer to let the employer take the responsibility for the oath. Why then did the Sages institute that the employee take the oath?

10. When a householder needs workers for a job at hand, he has no choice but to hire them (*Rashi*). Therefore, the Sages were not concerned that a worker would have difficulty finding employment.

had taken an oath to collect his wages would have trouble finding work.

The Gemara asks that the opposite is also true:

שָׂכִיר נַמִּי בְּעַל כָּרְחֵיהּ אִיתַּגַּר – **A worker is also forced to hire himself out** to make a living![11] Thus, even an employer who took an oath to free himself from a claim of wages would have no trouble finding workers. Why then was the oath transferred from the employer to the employee?

The Gemara therefore gives another explanation of why the Sages instituted that the employee should be the one to swear:

אֶלָּא בַּעַל הַבַּיִת טָרוּד בְּפוֹעֲלִים הוּא – **Rather, a householder is preoccupied with** his **workers.** He might therefore mistakenly think that he already paid this employee and even swear to it. The Rabbis therefore transferred the oath to the employee and allowed him to collect his wages with it.[12]

The Gemara asks:

אִי הָכִי – **If so,** נֵיתַב לֵיהּ בְּלָא שְׁבוּעָה – **let [the householder]** be required to **give [the worker]** his wages **without** the employee having to take **an oath** at all.[13] – ? –

The Gemara answers:

כְּדֵי לְהָפִיס דַּעְתּוֹ שֶׁל בַּעַל הַבַּיִת – The Rabbis required the employee to swear **in order to put the mind of the householder at ease.**[14]

The Gemara asks why the Rabbis did not choose a different method for dealing with the problem:[15]

וְנֵיתַב לֵיהּ בְּעֵדִים – **Let [the householder] give [the employee]** his wages **in** the presence of **witnesses.** Then there would never be a need for an oath.[16]

The Gemara answers:

טְרִיחָא לְהוּ מִילְּתָא – **It would be** too **troublesome [for householders]** to have to find witnesses whenever they needed to pay a worker.

The Gemara suggests yet another method of avoiding the need for an oath:

וְנֵיתַב לֵיהּ מֵעִיקָּרָא – **Let [the householder] give [the employee]** his wages **at the beginning,** before he starts working. There would then be no need for an oath.[17]

The Gemara answers:

שְׁנֵיהֶם רוֹצִים בְּהַקָּפָה – **They both prefer credit.**[18]

Having stated its reason for the Rabbinic enactment, the Gemara asks why it was not applied more universally:

אִי הָכִי – **If so,** that the Sages took away the householder's right to swear because he is preoccupied, אֲפִילּוּ קָצָץ נַמִּי – the same consideration should apply **even if** the dispute concerned the amount of wages **he stipulated, as well.** אַלְמָה תָּנְיָא – **Why then was it taught in a Baraisa** to the contrary:[19] אוּמָּן אוֹמֵר שְׁתַּיִם קָצַצְתָּ לִי – IF A CRAFTSMAN SAYS, "YOU STIPULATED a fee of TWO *selaim* TO ME,"[20] וְהַלָּה אוֹמֵר לֹא קָצַצְתִּי לְךָ אֶלָּא אַחַת – AND THE OTHER ONE [the owner] SAYS, "I STIPULATED a fee of ONLY ONE *sela* TO YOU," הַמּוֹצִיא מֵחֲבֵירוֹ עָלָיו הָרְאָיָה – THE BURDEN OF PROOF RESTS UPON the craftsman, since he is THE ONE WHO SEEKS TO EXACT payment FROM HIS FELLOW.[21] Why did the Sages not allow the employee to swear and collect the amount that he claims to be owed?

The Gemara answers:

קְצִיצָה וַדַּאי מִידְּבַר דְּכִירִי לֵיהּ אִינָשֵׁי – **People certainly remember**

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11. Someone who needs money to buy food has no choice but to hire himself out (*Rashi*). A householder will therefore have no difficulty finding employees even if he has previously repudiated the claim of a worker with an oath.

12. Thus, the Rabbinic oath instituted to protect the livelihood of the employee was given to the employee to swear (and collect) because the employer is often preoccupied with his workers and will sometimes think that he has paid a particular employee his wages when in fact he has not (*Rashi, Ran, Nimukei Yosef;* see *Aruch HaShulchan* 89:2; cf. *Tosafos*).

This would apparently not be true for someone who has hired only one employee. In that case there should be no reason to prevent the employer from swearing. However, as with all Rabbinical institutions, the Sages made no exceptions (לא פְּלוּג) to their rule of transferring the oath to the employee (*Tosafos*). Furthermore, *Yerushalmi* states that a householder is generally preoccupied with various chores besides tending to his workers. Hence, even if the householder has only one employee, we can assume that the householder is nevertheless preoccupied (*Ran; Nimukei Yosef*; see also *Rambam, Hil. Sechirus* 11:6, and *Toras Chaim*).

[We have explained the Gemara according to *Ran* and *Nimukei Yosef,* according to whom the Gemara continues to follow its earlier statement that the reason the Sages instituted an oath in the case of a hired worker is to protect the worker's livelihood. The Gemara now merely revises its explanation of why the oath was given to the worker rather than to the employer (see *Ran*). *Tosafos,* however, understand the Gemara at this point to be rejecting its original explanation of the basis of the oath and to be explaining the source for the Rabbinic enactment to be the employer's uncertainty regarding payment (see *Pnei Yehoshua*). *Rashi's* silence at a number of critical points makes it difficult to establish which approach he follows. We have chosen to follow *Ran's* (and *Nimukei Yosef's*) approach because *Rashi's* comment at the very end of the sugya (113a ד"ה ולעולם) indicates that he too accepts the premise that the underlying reason for the oath is because of the Sages' concern for the livelihood of the worker and the only question throughout is who should take this oath.]

13. I.e. if we cannot give the oath to the employer (householder) because of his preoccupations, the Sages should simply have instituted that the employee take the disputed amount without even swearing (*Ran*).

14. [Although we assume that it is more likely that the employer, due to his many affairs, is the one whose memory has failed him on this occasion, the employer himself feels certain that he has paid. Were we to allow the worker to collect without an oath, the employer would feel that he had been cheated. We thus require the worker to swear in order to collect and thereby calm the employer's suspicions (since even dishonest people are reluctant to swear falsely).]

15. It is always preferable to avoid unnecessary oaths. The Gemara therefore suggests other ways of dealing with the problem of a worker's livelihood.

16. [If the Sages instituted that all wages be paid in the presence of witnesses, an employer could not claim that he had paid the wage unless he produced the witnesses.] If he claimed that he did not follow the standard procedure and instead paid his employee without witnesses, he would not be believed and the employee would be awarded his pay without having to take an oath (*Rashi*).

17. The Sages should have instituted that an employer pay wages before the work day starts [when the employer is not preoccupied]. An employee would then not be believed to say that he had worked all day and not been paid (*Rashi*). Furthermore, with such an institution in effect, an employee would have the option of refusing to work until he received his pay, and if he worked without being paid in advance, he would have brought about his loss himself (*Tosafos*).

18. The householder prefers to delay the payment because many times he does not have funds available at the beginning of the day. And the employee prefers not to worry about losing the money while he is working (*Rashi*).

19. The Baraisa discusses the case where someone gave his cloak to a craftsman to mend, and after the repair was completed the owner and the craftsman disagreed over what fee had been stipulated for the job.

20. See *Hagahos Yaavetz.*

21. The craftsman, who is the one seeking to exact payment from the employer, cannot collect without producing witnesses to substantiate his claim of two *selaim.* In the absence of such witnesses, the employer is believed and pays only one *sela.*

[*Tosafos* note that in the case presented by the Baraisa, the owner admits to owing half of what is claimed by the craftsman. The owner is therefore subject to the oath of *modeh bemiktzas,* which the Torah

the amount of **a stipulation.**[22]

The Gemara again questions the reason given for the Rabbinic enactment allowing the employee to take the oath and collect:

אִי הָכִי – If so, that an employer often mistakenly thinks that he has paid his employee, **אֲפִילּוּ עָבַר זְמַנּוֹ נַמִּי** – the same should be true **even if the time** for **its** payment **has passed, as well. אַלָּמָּה תָּנַן – Why** then **did we learn in our Mishnah: עָבַר זְמַנּוֹ** – If **ITS TIME HAS PASSED, אֵינוֹ נִשְׁבָּע וְנוֹטֵל** – **HE MAY NOT SWEAR AND COLLECT** it? In that case too the employee should be believed to collect his wages with an oath. – ? –

The Gemara answers:

חֶזְקָה אֵין בַּעַל הַבַּיִת עוֹבֵר מִשּׁוּם בַּל תָּלִין – There is a presumption that a householder would not transgress the prohibition **not to hold** wages **overnight.**[23] The employee is therefore not believed at that time to say that he was not paid.

The Gemara asks:

וְהָא אָמְרַתְּ בַּעַל הַבַּיִת טָרוּד בְּפוֹעֲלָיו הוּא – But you have said that a householder is preoccupied with his workers. How then can we presume that he paid them on time?

The Gemara explains:

הֲנֵי מִילֵּי מִקַּמַּיְיהוּ דְּלִימְטְיֵיהּ זְמַן חִיּוּבֵיהּ – That statement about the householder's preoccupation **is** true only **before the time of his obligation arrives,**

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imposes upon a defendant who admits partial liability. Nonetheless, the Baraisa is making the point that the oath in this case is left to the employer to swear and be free of the claim – and it is *not* transferred by Rabbinic decree to the employee to swear and collect.

Nimukei Yosef suggests that the employer in the Baraisa's case may be denying owing anything, e.g. in a case where he says he only stipulated one *sela* – which he already paid. See next note.]

22. An employer's recollection is mistrusted only in regard to whether or not he already paid the employee; but we do not assume that the employer is ever confused about the amount he agreed to pay. Thus, there is no reason to grant the craftsman the right to swear and collect.

[See, however, *Nimukei Yosef* who maintains that the employer would at least have to swear an oath to be free of the claim – either a Biblical oath for admitting part of the claim, or where he denies it entirely (e.g. where he claims he already paid what he stipulated), the Rabbinic oath enacted for the sake of the worker's livelihood. This Rabbinic oath was enacted for all cases of wage dispute. Where there is the additional factor of the employer's preoccupation and confusion regarding which workers he paid, the oath was given to the worker to swear and collect. Where there is no reason to assume an uncertainty on the part of the employer, he is granted the option of taking the oath and freeing himself from the claim. Compare *Tosafos*.]

23. The Sages assumed that an employer would not wish to transgress the Biblical prohibition against delaying payment of wages. Therefore, if the employee demands his wages after this time, we must presume that he is lying [unless he can substantiate his claim].

אֲבָל מָטָא זְמַן חִיּוּבֵיהּ – **but once the time of his obligation arrives,** רָמֵי אַנַּפְשֵׁיהּ וּמִידְּכַר – **he takes it upon himself** to concentrate **and remembers** whether he still has to pay.[1] Once the time has passed, therefore, he is believed to say that he paid the wages.

The Gemara counters:

וְכִי שָׂכִיר עוֹבֵר מִשּׁוּם בַּל תִּגְזֹל – **But would an employee transgress** the prohibition **not to rob?** Why then should we rely on the assumption that the employer would not violate the prohibition of delaying payment?[2]

The Gemara answers:

הָתָם תְּרֵי חֲזָקֵי – **There, two presumptions** support the householder, הָכָא חֲדָא חֲזָקָה – while **here,** only **one presumption** supports the employee. גַּבֵּי בַּעַל הַבַּיִת אִיכָּא תְּרֵי חֲזָקֵי – **In favor of the householder there are two presumptions** that he did pay the wages: חֲדָא דְּאֵין בַּעַל הַבַּיִת עוֹבֵר מִשּׁוּם בַּל תָּלִין – **one,** the presumption **that a householder would not violate** the prohibition **not to hold** wages **overnight,** וַחֲדָא דְּאֵין שָׂכִיר מַשְׁהֶא שְׂכָרוֹ – **and** a second **one, that an employee does not postpone** collecting **his wages.** וְהָכָא חֲדָא חֲזָקָה – **But here** there is only **one presumption** in favor of the employee: that he would not violate the prohibition against stealing by taking money a second time. The employer (householder) is therefore believed without an oath.[3]

The Gemara cites the next ruling of our Mishnah and analyzes it:

אִם יֵשׁ עֵדִים שֶׁתָּבָעוֹ – IF THERE ARE WITNESSES THAT [THE EMPLOYEE] DEMANDED his wage from [THE EMPLOYER], הֲרֵי זֶה נִשְׁבָּע וְנוֹטֵל – [THE EMPLOYEE] MAY SWEAR AND COLLECT it.

The Gemara asks:

וְהָא קָתָבְעוֹ לְקַמָּן – **But [the employee] is demanding** payment from **[the employer] in our presence** in court. What is added by his producing witnesses that he demanded payment previously?[4]

The Gemara answers:

אָמַר רַבִּי אַסִּי – **R' Assi said:** שֶׁתָּבָעוֹ בִּזְמַנּוֹ – The Mishnah means that there are witnesses who testify **that [the employee] demanded** his pay from **[the employer] when it was due.** Therefore, although the time for payment has passed, the employee may still swear and collect his wages.[5]

The Gemara objects:

וְדִלְמָא לְבָתַר הָכִי פָּרַע – **But** perhaps **[the employer] paid** the worker **after this** demand.[6] Why then is the worker believed to say that he was not paid?

The Gemara answers:

אָמַר אַבָּיֵי – **Abaye said:** שֶׁתָּבָעוֹ כָּל זְמַנּוֹ – The Mishnah refers to a case **where [the employee] demanded** payment from **him throughout the time it was due,** i.e. at the very end of the period. It is thus apparent that he was not yet paid.[7]

This would seem to indicate that if the employee pressed his demand through the end of the payment period, he is always believed afterwards to claim non-payment. The Gemara questions this:

וּלְעוֹלָם (לֹא פָּרַע לֵיהּ) – **But** will the employee **always** be believed

NOTES

1. The Sages were confident that even though an employer might temporarily forget to pay his employee as a result of his preoccupations, thinking that he had already paid him, he would in the end remind himself of his debt before the expiration of the time granted to pay that employee.

[The Rishonim ask that if the responsibility of having to fulfill his Biblical obligations forces him to concentrate and remember that he has not paid, then certainly the obligation to swear will cause him to do the same. Why then did the Sages take the oath away from the employer and give it to the worker? *Tos. HaRosh* answers that once an employer has been confronted by his worker and has denied owing him his wages, it is only human nature for him to become certain of this in his mind. Thus, even the pressure of having to swear will no longer make him remember what really happened (see also *Shitah Mekubetzes*).]

2. The Gemara questions the idea of basing legislation on the presumption that people do not violate Biblical prohibitions. For just as the employer would not violate the prohibition against delaying payment, so too the employee would not violate the prohibition against stealing. Based on this, we should presume that the employee is not attempting to collect his pay a second time, but is actually telling the truth that he was not paid. Why then should we rely more on the presumption that the employer would not violate the prohibition of delaying payment than on the equally compelling presumption that the worker would not steal? Since the employer and employee each have one presumption in their favor, the Sages should at least have required the employer to take an oath in order to keep the money (*Nimukei Yosef*; see *Rashi* below ד"ה ולעולם and note 8 below; cf. *Tosafos* and *Tos. HaRosh*).

[See *Tosafos* for an explanation of why the employer does not have the same presumption in his favor: He, too, would not want to steal! The employer should then win the case on the basis of having two presumptions in his favor while the employee has just one.]

3. [That is, the case was left to be treated according to Biblical law, under which a person who completely denies a claim against him does not have to pay or even swear (see 112b note 1). Since even on the face of it the claim of the employer seems stronger, the Rabbis did not act to change the law.]

It should be noted that this is true only under Mishnaic law. But in post-Mishnaic times the Amoraim instituted an oath known as a שְׁבוּעַת הַסֶּת, *hesseis oath,* requiring even one who denies a claim completely to swear a [lesser] oath (see *Choshen Mishpat* 87:18). Accordingly, even if the employee comes after the usual time to claim his wages, and the employer maintains that he has already paid him in full, the employer must swear a *hesseis* oath to rid himself of the claim (see *Choshen Mishpat* 89:3).

4. The Gemara now assumes that the Mishnah means that if witnesses testify that the employee pressed his claim even after the deadline passed, the employee can swear and collect. The Gemara therefore asks what advantage there is in these witnesses over the employee's current claim in court (*Tosafos*).

5. If the employee produces witnesses that he pressed his claim before the deadline and the employer refused to pay, he has the right to swear and collect his wages even after the deadline. And when the Mishnah states: *If its time has passed, he may not swear and collect it*, it does not refer to the time the claim is presented to the court, but to the time the claim is made to the employer.

6. The Gemara assumes that it is sufficient for the employee to have demanded payment at any time during the period when it was due. But this allows for the possibility that the employer in fact paid him during the allotted time *after* the employee made the demand – especially since the employer presumably would not transgress the prohibition against delaying payment of wages. Why then does the employee have the right to swear and collect just because he demanded his payment from the employer during the period when it was due?

7. For example, a day worker demanded his wages at the end of the following night, or a night worker demanded his wages at the end of the following day (*Rosh*). Therefore, although an employee's claim is not usually valid past the payment deadline – because we presume that an employer adheres to the law and pays on time – where the witnesses testify that he did not pay by the end of the allotted time, the worker may swear and collect his wages even afterwards.

According to this explanation, the Gemara does not mean that the employee must have repeatedly demanded payment during the twelve-hour time period. Rather, the employee must have pressed his demand in a way that demonstrated the employer's non-payment during the entire period. This is accomplished by demanding payment at the end of the period. Then, when the employer refuses to pay at that time, telling the employee to come back later, it is clear that the employee did not yet receive his wages (*Sma, Choshen Mishpat* 89:12).