That evening Sancho spent drawing up some ordinances touching the good government of what he supposed to be his isle. He decreed that there must be no cornering of provisions in the state, and that wine could be imported from anywhere at all, on condition that its place of origin was declared so that it could be priced according to its value, goodness and reputation; and anyone watering it or changing its name should pay for it with his life. He lowered the price of all footwear, especially of shoes, the current price seeming to him exorbitant. He fixed the rate of servants' wages, which were mounting unchecked at a headlong pace. He imposed the heaviest penalties on singers of lewd and disorderly songs either by night or by day. He decreed that no blind man should sing miracles in rhyme unless he could bring unquestionable evidence that they were true, as most of their tales were, in his opinion, fictitious and brought discredit upon the genuine ones. He created and selected an inspector of the poor, not to persecute them but to examine whether they were genuine; for under the disguise of poverty and counterfeit sores go sturdy thieves and hale drunkards. So good, in fact, were the laws he ordained that they are kept in place to this day under the name of "The Constitutions of the great Governor Sancho Panza."¹

The previous chapter reviewed the evidence for the use of sources and for redactional strategies in the composition of m. Baba' Mesi'a. This evidence, I have argued, suggests that the materials that make up our tractate were subjected to an editorial process of collection, adaptation, revision, and glossing. This, in turn, may reflect an effort at centralization and institutionalization of the Rabbinic movement. In the present chapter, I wish to turn to the contents of the texts themselves, and to consider the kinds of economic assumptions and interests that m. Baba' Mesi'a expresses in its discussion of rules relating to property and contracts. The chapter falls into two parts. The first considers economic and social institutions: money, markets, and banks. The second deals with such relationships as that between lender and borrower, or lessor and lessee.

The argument of this chapter proceeds on a number of levels. First, I am interested in identifying and elaborating the legal issues that the texts raise.

In this context I have tried not to efface redactional problems (for instance, places where contradictions remain, or where earlier material is glossed and thereby limited or extended). Moreover, considerable attention is focused on placing the tractate’s rules about civil law within the context of a wider field of early Rabbinic discourse, in particular within the Mishnah itself. This approach emphasizes the range of possible views within the Rabbinic communities who produced the Mishnah, as well as inherent inconsistencies or contradictions in the treatment of matters of property and contract within the Mishnah.

Second, this chapter addresses the extent to which the Mishnah’s civil laws can be used as a source or map for the social history of Roman Galilee in which it was finally edited. If Mishnaic “law” neither effectively proscribes nor simply describes economic practice in Roman Palestine, how are we to understand these rules? One dimension of this problem is the relationship between Mishnaic material and other, non-Jewish, evidence for economic practices and relationships. While a full discussion of this relationship would swell this chapter beyond its already unwieldy size, I have attempted (especially in the notes) to give attention both to the broad commonalities and the differences between the way the same institutions and relationships are reflected in our tractate and in Roman juristic texts and papyri from Egypt, Dura Europus, and the Judean Desert. The Digest and other juristic texts are hardly less “ideological” than the Mishnah, and not necessarily any more true to practice. In documentary remains we have evidence of what people claim to have done, but it is only occasionally possible to tease out underlying negotiations, deceptions or legal fictions. What is significant about these materials for the present discussion is that despite important differences, m. Baba’ Mesi’a present a battery of economic institutions and relationships that would be wholly familiar to the authors of the non-Rabbinic texts. Thus, for instance, while the Mishnah clearly prohibits interest and distinguishes between Jews and gentiles in the scope of its prohibition, the contracts that m. Baba’ Mesi’a uses to illustrate the prohibition (e.g., loans to be repaid in money or in kind, sales for advanced or delayed delivery, or various kinds of work contracts) are all well attested in Greco-Roman documents. This means that the Mishnah, however utopian its ultimate picture, responds to economic structures (fundamentally, an agrarian economy) and works with assumptions about those structures that were common throughout the Roman world.

My goal, therefore, has been to understand how Rabbis imagined the proper working of Jewish economic practices in such an economy. Moreover, in an effort to identify whose interests and concerns within the agrarian economy of Roman Galilee m. Baba’ Mesi’a reflects, I have paid attention to
the scale and settings of transactions as they are described and to the kinds of relationships that are presupposed. Which sales, for instance, take place in markets at the hands of professional marketers, which between private individuals? What kinds of items are lent or borrowed? Are loans assumed to take place between wealthy individuals or between a wealthy lender and poor borrower? What kinds of tenants or landlords are presupposed in discussions of tenant farming? The answers to these questions do indeed offer insight into such matters as the distribution of currency, the role of markets, or the social relationships in which economic transactions are embedded. However, ultimately, and disappointingly, we are on firmest ground in taking the Mishnah as a legal and religious program.

Thus, and this is the third level on which this chapter proceeds, I have attempted to outline some of the ideological choices made by the Rabbis who produced *m. Baba*? *Mesi*?a?. On the whole, the legal materials themselves, their organization, and their selection suggest that the audience to whom the redactors of our tractate addressed their work was by and large that of wealthy, town-dwelling landholders. In a broad sense, this is confirmed by the universe of discourse that Rabbis shared with, for example, the authors of Roman legal texts. At the same time, where literary sources from the Greco-Roman world in general (and the Roman legal texts are no exception) are quite comfortable with assumed distinctions between rich and poor, large landholders and peasants, *honestiores* and *humiliores*, *m. Baba*? *Mesi*?a? makes a conscious choice to present their materials as inclusive: its rules pertain to all Israelites, as opposed to gentiles. This insistence of the Mishnah to speak to and for all of Israel (and, elsewhere, to draw the primary distinguishing lines within Israel between those who do and do not observe rules incumbent upon all), indeed the attempt to construct a “Jewish” civil law at all, opens up the question, ultimately beyond the scope of this study, of how early Rabbinic discourse mapped the boundaries of Jewish ethnicity in late antiquity.

### A. Economic Institutions

This section considers the three primary institutional economic frameworks that are dealt with in *m. Baba*? *Mesi*?a?. The first, quite simply, is money, a good that is produced in this period by the state, and distributed, at least initially, through state institutions (payments to soldiers, for example). 2

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2 For a recent discussion of coinage in the Roman economy, together with bibliography, see C. Howgego, “Coin Circulation and the Integration of the Roman Economy,” *JRA* 7 (1994), 5–21.
As a result, the Mishnah can more or less take the existence of money for granted, although not without puzzling over some of the inconsistencies of a system of coinage in which coins function both as symbols (they represent relative units of value in a graded hierarchy) and as commodities in their own right. The other two areas to be discussed are markets and banks, two arenas of economic practice where the use of money is central. In all three cases, I am interested in elucidating how the Mishnah expected these institutions to function, and what this might tell us either of actual money, markets, and banks in Palestine, or (more securely) about Rabbis and their audience.

1. Money.

Money functions in m. Bābā ṭ Mesīḥa as a general medium of transaction and exchange. Thus, in general, a sale is thought of as involving the payment of coins. Similarly, transactions such as loans, leases, and the hiring of labor can be characterized as effected through the transfer of money. Nevertheless, in essentially all of these transactions payment can be, and is, described as taking place in kind.

The notion that much economic interaction takes place without the transfer of coinage is hardly unique to the Mishnah: the

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3 E.g., M4:2 [B–C], 5–6; M5:2, 3, 4.
4 Loans: M5:1 [B–F], 10 [K–N]; 6:7; similarly, pledges are assumed to be not merely appropriated by the creditor, but sold for cash to pay back the monetary amount of the loan (M9:13 [II]). Leases: M8:8 [F–H] (lease of a house); M9:3, 6 [G], 10 (lease of farmland; of the examples cited, the first two are somewhat exceptional: in M9:3 we are dealing with assessment of penalty in a case where there was no produce from the leasehold; in M9:6 payment of money is raised as a special case). Hire: M7:5; 9:12 [G]; 10:5 [G–M] (hire of labor); the hire of a paid depositary is not explicitly said to be paid in money in the Mishnah, although this is implied by the term šākār (wage) in šōmēr šākār or nēʾēt šākār (but the comparison of paid deposits with other types of contracts, as in, e.g., M6:6–7, especially M6:6 [C], suggests that the “payment” could be understood as some other form of non-monetary benefit). The characterization of the renter of an animal as a sōkēr similarly reflects the presumption of a transaction based on the payment of money (M6:3–5).

5 All of these contracts will be discussed below in greater detail. For the present, the following may be noted. An example of barter (the exchange of a cow for an ass) occurs in M8:4; see also M4:1 [F]; M5:1 [H–K]. The problem connected with loans of commodities (especially produce) for consumption, for food or for seed, to be repaid in kind, is dealt with in M5:8–9; a related problem is raised in M5:1, 7. Leases of land are more characteristically thought to be contracted in terms of payment in kind (see M9:1–8, and the notes to M9:1 and 2 in Appendix I). The hire of labor seems to involve both payment in money (this is presumed to be the worker’s right unless specifically waived, M10:5 [G–M]) and supplementary payments in kind (subject, among other things, to local custom, M7:1–8 [A]). For paid deposits see the preceding note.
prevalence of payment in kind is well documented, for instance, in Roman Egypt.\(^6\)

Even where money is not described as changing hands, it serves as a measure of value. Thus, for instance, M4:7 gives minimum values above which liabilities or obligations apply. This role of money in the Mishnah’s conception of transactions is perhaps best illustrated by the following dictum attributed to Hillel (M5:9):

[D] For thus Hillel used to say:

[E] “Let a woman not lend a loaf to her fellow until she has calculated its monetary value,

[F] “lest wheat become more expensive,

[G] “and they will come to commit usury.”

In a world in which prices are assumed to vary in the marketplace, calculating the amount of a loan in terms of money protected the parties from engaging in a potentially usurious loan. This is because Hillel’s dictum presupposes another assumption about money: money creates a standardized scale against which the value of commodities is measured.\(^7\) A loan of money,

\(^6\) The relationship between these contracts as described in the Mishnah and papyrological remains will be discussed later in this chapter. For the time being, see, for instance, the discussions of labor and leases in D. Rathbone, *Economic Rationalism and Rural Society in Third-Century Egypt* (Cambridge Classical Studies: Cambridge: Cambridge University, 1991), chapters on “Permanent labour” (88–147), “Occasional labour” (148–74) and “Lessees and other contractors” (175–212) and, more generally, A. C. Johnson, *Roman Egypt*, in *An Economic Survey of Ancient Rome II*, ed. T. Frank (Baltimore: Johns Hopkins, 1936), 83–105 (leases), 306–10 (wages, showing payment in money, in kind and a combination), 460–6 (loans of seed grain).

\(^7\) The idea that money serves as a stable marker of value underlies M5:8–9 more generally. That informal and customary rights of workers might be rethought in monetary terms is shown by M7:5 (whether a monetary ceiling is placed on the right of the worker to eat in the fields), and by M7:6 (a head of household can agree to receive a higher wage for members of his family, in exchange for their waiving their right to eat). The way in which the authors of the Mishnah conceive of the execution of transactions involving commodities is neatly illustrated by M5:1 [H–K]:

[H] He bought wheat from him at a golden dinār to the kōr, and such was the market price.

[I] Wheat [later] stood at thirty dinārīm [to the kōr].

[J] He said to him: “Give me wheat, for I am going to sell it and buy wine with it.”

[K] He said to him: “But lo, your wheat is valued with me at thirty dinārīm. And lo, you have a claim against me with them for wine.”

After an initial payment of cash, the amount of wheat owed to the buyer is reevaluated in terms of the higher price of wheat, and this new amount is converted into an amount of wine.
paid back in money, is not subject to appreciation or depreciation, according to this conception, but a loan of produce is (e.g., grain is more expensive at certain times of the year than others). The conceptual distinction between “money” and “commodities” (Hebrew, mitzat el, “moveable goods” or pérōt, “produce”) is made explicit in our tractate at the beginning of Chapter 4: “moveable goods acquire the coin, but the coin does not acquire moveable goods” (M4:1 [E]). That is to say, in any non-barter transaction it is clear which party is the buyer and which is the seller: it is the delivery (symbolically or actually) of the commodity that effects completion of the sale.⁸

The pericope just cited is fascinating because it deals also with the exchange of coins in precisely the same terms: certain types of coins are “commodities” with respect to the “money” with which they are purchased. By and large the Mishnah assumes a standardized system of exchange for an equally standardized set of coin denominations for coins of gold, silver, and bronze:⁹

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⁸ See M4:2, and the discussion of sale below (section B.3). The rigid conceptual distinction between “money” and “commodity” occurs also in the Roman jurists: Gaius, 3.139–41, D 18.1.1.pr. (Paul); 18.1.2.1 (Ulpian). The treatment of the question of the relationship of barter to sale (which requires an item for sale and a price) both in terms of the views of traditional schools, and also through the exegesis of Homer (Iliaid, 7.472–5; Gaius, loc. cit., D 18.1.1.1 [Paul]) forms a fascinating parallel to Rabbinic procedure.

⁹ This system of coinage can be worked out from the various places within the Mishnah in which relative values of coins are referred to. An example of this kind in m. B. Mes. is M4:2 [A]: “Hônâyâ is four silver coins at twenty-four silver coins to the selâ.” (The “silver coin” is identical with the mā’ā.) For a survey of the Rabbinic and secondary literature see E. Schürer, A History of the Jewish People in the Age of Jesus Christ, rev. ed. G. Vermes et al. (Edinburgh: T. and T. Clark, 1973–87), 2, 62–7. The most complete tabulation of relative values of coins comes from the Tosept (t. B. Bat. 5:11–12, cf. y. Qid. 1:1 [58d]; b. Qid. 12a):

5:11

[A] [The] pérōs that they said (še-lêmru) [is] one of eight to the Ḥâšâr.
[B] [The] Ḥâšâr: one of twenty-four to the dinâr.

5:12

[C] A pôndîbîn: two Ḥâšārîn (cf. Lat. as, Gk. assarion).
Institutions and Relationships


[H] Three hadres: a māʿāt.

[I] Two hansin: a hadres.


[I suspect that these pericopae are the product of some sort of redactional revision. t. B. Bat. 5:11 and 5:12 [G] together form a perfectly matched anonymous rule with a disputing attributed tradition, and are worded differently than the rest of t. B. Bat. 5:12 (they express the smaller denomination as a fraction of the larger [e.g., “one of eight to the ṭisār,” 5:11 (A)]). 5:11 itself adds nothing to 5:12 [A–F], and 5:11 [A], at least, circulated elsewhere without connection to 5:12 [A–F] (cf. m. Qid. 1:1). If t. B. Bat. 5:12 introduces [H–K] (as Sperber and Ben David have taken it; see the next paragraph) it fits awkwardly into that scheme (in [G] the pērūṭā is valued in terms of the ṭisār, which does not appear in [H–K], and which is three quarters of a hadres and one and one half times a hins whereas all other coins are in a ratio of one to a whole number with one another). As a disputing position to that of [A–F], the view attributed to R. Simeon b. Gamaliel [G] is awkward as well, and may not presuppose the values for the mismes and the qontronq given in [D–F]. The two lists of coins in t. B. Bat. 5:12 are also worded differently from one another. t. B. Bat. 5:12 [A] and [H–K] (which picks up where [A] left off) list smaller denominations first (n x A = B), whereas [B–F] lists the larger coins first (B = n x A), and may reflect the joining of two separate lists (perhaps the interpolation of the conventional list [B–F] into an already existing, but now non-standard, list). I suggest, therefore that t. B. Bat. 5:11–12 reflects the joining of at least two, if not more, units of material.

In t. B. Bat. 5:12 [A–F] and [H–K] two different systems of coins are presented. The second [H–K] is otherwise unattested and therefore somewhat mysterious. Sperber has surmised that this text corresponds to the coinage system of the Hasmonean kings. (D. Sperber, “Palaestinian Currency Systems During the Second Commonwealth,” JQR 56 [1965–6], 284. Sperber’s suggestion is dependent, in part, on the use of “purely Semitic terms” in [H–K]; but since what these terms mean in any language, Semitic or other, is far from clear, it is difficult to use the names of the denominations as linguistic “evidence” of age. For possible Greek and Latin derivations for some of these denominations see Sperber, 274 n. 2; Lieberman, TK, 10, 394 [to t. B. Bat. 5:12].) Following the attribution in [G], A. Ben-David took this currency scheme to be the official one of “Jewish Palestine in the time of Rabban Shim’on son of Gamaliel II (135–160 C.E.)” (A. Ben-David, “Jewish and Roman Bronze and Copper Coins: Their Reciprocal Relations in the Mishnah and Talmud from Herod the Great to Trajan and Hadrian,” PEQ 103 [1971], 115). However, the attribution of the list in t. B. Bat. 5:12 [H–K] to R. Simeon b. Gamaliel seems unlikely in light of the redactional problems discussed in the preceding paragraph. See also F. M. Heichelheim, Roman Syria in (An Economic Survey of Ancient Rome IV, ed. T. Frank: Baltimore: Johns Hopkins, 1938), 212–5.

The first system of denominations, 5:12 [A–F], corresponds to the system used most commonly in the Mishnah, although the denominations qôntres and mismes are not attested in the Mishnah. (Their Roman namesakes, the quadrans, and semis seem to have disappeared by the early third century as well: see M. H. Crawford, “Finance, Money and Coinage from the Severans to Constantine,” ANRW2.2 [1975], 561.) The terms used clearly correspond to Roman terminology for coins (Sperber, 274, and the literature cited there; Ben-David, 113–4;
Despite terminological and denominational links with the official Roman coinage, the two systems are not identical. The scale of bronze to silver and gold is different: the Roman as was officially worth one sixteenth of a denarius, not one twenty-fourth. While it is possible that the monetary system is entirely a theoretical construct, I suspect that it is based on actual practice, although streamlined for computational ease. That the bronze to silver exchange rate differs from the official one need not prove an unsurmountable obstacle (in our case, perhaps the difference reflects a “correction” for the relative value of bronze to silver in Palestine as opposed to Rome). References to a “Tyrian” standard that is based on the silver tetradrakhma of the independent Tyrian mint (coinage which ceased in the early part of the second half of the first century CE), or the frequent use in the Mishnah of the pērātā, a coin that is not part of the official Roman system, need not imply that the Mishnah’s monetary system is entirely theoretical (in that it is based on essentially non-existent coins), or that it is the persistence in literary form of a coinage system that was once, but is no longer, current. In both cases it is possible that the coins in question are used as “units of account,” and in

Lieberman, *TK*, 10, 393–4). Moreover, the absence of denominations above the dinār (such as a selā’ [tetradrakhma] and segel [didrakhma]), suggests that what we have in [A–F] is an explicit presentation of a Roman scheme of coinage. However, the absence of the Roman ses-tertius, and the presence of the mā’tā (corresponding to the Greek obol) shows that the system is somewhat more complex.

10 Properly speaking, the golden dinār is worth 25 dinārim (e.g., *m. B. Qam.* 4:1, in which half of 50 xūz are said to equal a golden dinār), as in the Roman system. But in other passages (e.g., *m. Me’il* 6:4; and the bāratā’ cited in *y. Qid.* 1:1 [58b]), the ratio is said to be 1:24. This latter ratio is clearly the more convenient for the “theoretical” purposes to which the system is put in the Mishnah since all of the denominations can be expressed as simple fractions of the golden dinār.

11 See, for instance, *OGIS* II 484 = *IGR* IV 352, a letter (from Hadrian?), which rules concerning the abuses of money changers in Pergamum. What is not in question, and at no point prohibited, is that the money changers were changing copper to silver coinage at the rate of 17 or 18, and not 16, assaria to the denarius, depending on the direction of the exchange (the money changers took a surcharge of one assarion to the denarius when they gave out silver coins). The text is quoted in full and translated in *T. R. S. Broughton, Roman Asia in (An Economic Survey of Ancient Rome IV*, ed. T. Frank: Baltimore: Johns Hopkins, 1938), 893–5; see also the discussion in S. Bolin, *State and Currency in the Roman Empire to 300 AD* (Stockholm: Almqvist and Wiksell, 1958), 238–42. Further variations from the “official” exchange rate are cited by M. H. Crawford, “Money and Exchange in the Ancient World,” *JRS* 60 (1970), 43.
Institutions and Relationships

the case of the “Tyrian” coinage it is quite conceivable that “Tyrian” is another way of saying “quality.”

12 The problem of establishing correlations between literary denominations and actual coins discovered through survey, excavation or less methodical means is a vexing one which it is impossible to discuss here. See E. W. Klimowsky, “Monetary Function of City Coins,” in A. Kindler ed., International Numismatic Conference (1963) (Jerusalem: Schocken, 1967), 129–79.

As for the pērūṭā, the fact that in the official Roman system no such denomination existed does not mean that such coins (the product of local city mints) did not circulate. Mk. 12:42 tells of a poor woman who cast ἐπτα διδρας (“two lepta, which are a quadrans”) into the treasury. Thus, Mark’s lepton corresponds to the Rabbinic pērūṭā. A denomination by the name of a lepton appears in P. Babatha II 16. 20, 27, 32 (127 C.E.) as a division of a hitherto unattested denomination (melas, “black”; perhaps a Nabatean denomination; N. Lewis takes melas to be a corruption of mina, and translates lepton as “sixtieth,” line notes ad loc. and P. Babatha II 5 introduction) so there is probably no connection between this lepton and our pērūṭā. Despite the fact that Sperber (perhaps correctly) minimizes the importance of the evidence, he does recognize the existence of city coins that are arguably small enough to correspond to the pērūṭā (1965–6, 277–8 and n. 16, building on Heichelheim, 1938, 212). L. I. Levin argues that in the second century Caesarea supplied “minims” for use as pērūṭās throughout Palestine (L. I. Levine, Caesarea Under Roman Rule [SJLA 7: Leiden: E. J. Brill, 1976], 41–2). Even if coins of the pērūṭā denomination did not circulate in Roman Palestine (Schürer [rev. ed. Vermes et alii], 2, 66), however, the term pērūṭā could easily persist as a unit of account.

In m. Bek. 8:7, certain obligations based on prescribed payments outlined in the Pentateuch are pegged to a Tyrian standard: “The five ἕλμύμ for [the redemption of] the son [are calculated] according to the Tyrian māneb. The thirty ἑκατόμ of the slave ... [are] all according to the sacred ἑγέλ, according to the Tyrian maneh.” All of the obligations are taken to be payable in “sacred ἑγέλ” (cf. Num. 18:16), which is in turn taken to be equivalent to a Tyrian tetradrakhma, four dinārim (as opposed to a mishnaic ἑγέλ, which is equal to two dinārim). See also t. Ket. 12 (13):6: “Money about which the Torah speaks in every case (ב-קול מִקּוֹם): this is Tyrian money (keesep sōr). Tyrian money, this is Jerusalemite money.”

That the Mishnah, or, for that matter, documents from the second century continue to calculate in σέλατιμ or the equivalent does not imply as Ben-David concluded (1971, 120), “that this currency [referring to the actual silver coins from the independent city mint of Tyre] continued to be used for business purposes for more than a century after the closure of the mint ....” since tetradrakhmas (four denarius coins) continued to be minted in Syrian and Phoenician mints well into the third century (witness the many tetradrakhmas found at Dura Europus from various cities including Tyre, although these seem to have been minted at Antioch: see A. R. Bellinger, Dura Europus Final Report VI: The Coins [New Haven: Yale, 1949], and Bellinger’s note in C. B Welles et alii Dura Europus Final Report V, Part I: Parchments and Papyri [New Haven, Yale, 1959], 9 n. 14). (A very fragmentary Aramaic document from the Judean desert may have a reference to κεσαπ σέλατιμ DJD II 23.5; DJD II 30.20–1 reads, in Hebrew, “I have sold it to you for money, eighty-eight סאצ [i.e.,] twenty-two σέλατιμ”; analogues appear in the documents published by Milik in Biblica 38 [1957], 259, lines 7–8; 264, lines 5–6; and in a document reported but not published in full by Y. Yadin, “Expedition D” IEJ 12 [1962], 244–5 [presumably to be published as P. Babatha I 44]; Greek analogues [the
The idea that one form of currency “acquires” another raises the question of how Rabbis understood money to function. In M4:5, the maximal amount that a coin may vary from its appropriate weight is placed between one sixth and one twenty-fourth (this is the subject of the debate in this pericope). In other words, a valid coin circulates according to its face value, and the disputants in M4:5 debate how far from the face value the metallic value of the coin may vary before the party giving the short-weight coins is deemed to be deriving unfair profit (hônâyâ). By contrast, in m. Kelim 12:7 the permissible range of variation is considerably higher: “How much may a selâ’ [=4 dinârîm, i.e., denarii] be worn and he will [still] be able to uphold it? Up to two dinârîm; more than this let him cut it.” It is certainly possible that the sole point of contradiction between these two pericopes is the amount by which a coin may be underweight. I wish to suggest, however, that m. Kelim 12:7 implies an entirely different approach to the value of coins: the reason that one may accept a coin weighing as little as one half of its appropriate weight is that its value is taken to be proportional to its weight, and not fixed by its face value. If m. Kelim 12:7 nevertheless sets an upper limit for wear

value in denarii also stated in terms of the stater] appear in P. Babatha II 11.3, 15; DJD II 114.5; cf. 114.10–11 and verso; this documentary practice is referred to in m. B. Bat. 10:2: “If he wrote [in a document] ‘One hundred zu+zim, which are twenty selâ’im [and not twenty-five],’ he has only twenty [selâ’im]; ‘One hundred zu+zim which are thirty selâ’im’ he has only a mâneh [i.e., 100 zu+z].”)

More tantalizing are references to Tyrian coins (Yadin, 1962, 244–5 [=P. Babatha 17]; P. Babatha II 5 b i. 5; 11, 3, 15; DJD II 114.10–11 [171 CE?]; 115.5 [124 CE]; cf. P. Dura. 17 D.42, restored [180 CE]; 20.6 [121 CE]; 23.4–5 [134 CE]). This does not mean, that actual Tyrian coins were in regular circulation. It is quite possible that a “Tyrian” denomination was a unit of account, against which circulating coins would be valued, or even that it was a way of saying that the document ought to be paid in “good” coin (Bellinger in the note to Welles et alii, 1959, 9 n. 14, cited above, suggests that the expression was nearly meaningless at Dura). Compare the analogous references in Egyptian documents from the second half of the third century to old Ptolemaic coins (P. Coll. Youtie II 71.25; 72.8; P. Oxy. XXXI 2587.6–8; XLI 2951.25; P. Stras. VI 557.20; P. Vind. Bosw. 12.7–8; Stud. Pal. XX 71.11–12; 72.10–11). Opinion on the references to Ptolemaic coins ranges from the assumption that actual Ptolemaic coins are referred to (C. Wessely, MPER IV 144ff.; Grenfell and Hunt, P. Oxy. XII 1411 [intro.]; M. Rostovtzeff, Social and Economic History of the Roman Empire, rev. ed. P. M. Fraser [Oxford: Oxford University, 1957] 2, 737 n. 5); to the suggestion that “Ptolemaic” refers to a standard of value (J. Rea, P. Oxy. XXXI 2587 [intro.]), or “merely a conventional wish that the coins are of good quality” (M. Crawford, cited in the note to P. Oxy. XLI 2951.25).

13 See above, Chapter II.C.2. Alternatively it is possible that m. Kel. 12:7 and M4:5 deal with different issues: the former may be concerned with visibly worn (or clipped) coins, while the latter rules on coins that appear to be of full size or weight. However, the interpretation proposed here may underlie T3:17–8 (also cited above) as well. T3:17–8 adds to a parallel to
of the coins, this is presumably because they remain "coin" and have not been demonetized. If this interpretation is correct, m. Kelim 12:7 attests to a refusal to accord coins their nominal value, without, however, rejecting the currency system entirely. It is attractive to see this refusal as a reflection of the debasement of currency that began in the later second century (and therefore, perhaps, an attestation to an early stage in the monetary crisis of the third century).

This takes us beyond the evidence the Mishnah can

M4:5 ("How much may a selā [be lacking and there not be hōnāyā in it? 'For a] selā, four ʾssārōt ..., the words of R. Meir....") the following comment: "More than this he would spend it according to its [intrinsic] value (jiyāh): the selā [until it weighs as much as a] šeqel ..." (i.e., as in m. Kel. 12:7). The Tosepta's harmonization implies that coins lacking one sixth (or one twelfth or one twenty-fourth) the proper weight are taken at face value (T3:17), but beyond that amount they are accepted only by weight (T3:18). For this interpretation see Lieberman, TK, 9, 180; D. Sperber, Roman Palestine, 200–400: Money, Prices, 2ed. with supplement (Ramat Gan: Bar Ilan, 1991), 80, 375. Whether this merely removes an apparent conflict from two contradictory traditions (as I believe) or whether it reflects the correct relationship between M4:5 and m. Kel. 12:7, it is striking that the Tosepta implies that one is constantly weighing the coins in a transaction to see how to value them.

According to Lieberman, TK, 9, 180 and Sperber, 1991, 80, 375–6, this is because at a certain point worn (or clipped) high denomination coins may be confused with full-value smaller denomination coins.

See, in general, A. H. M. Jones, "Inflation Under the Roman Empire," Economic History Review 5 (1953), 293–318. Documents dating from around the turn of the century have been taken to imply a failure of confidence in currency beginning around 200. Some possible examples follow. (1) In a bilingual (Palmyrene and Greek) dedicatory inscription from 193 we know that the honoree was thanked for having expended "three hundred old golden denarii" for expenses for those travelling in a caravan with him, reflecting, perhaps, unwillingness among people outside of the Roman empire (Hyspasinou Kharax) to receive debased imperial coinage (IGR III 1050 = CISM III.3.1 3948; see G. A. Cooke, North Semitic Inscriptions [Oxford: Clarendon, 1903], no. 115). See F. Heichelheim "New Light on Currency and Inflation in Hellenistic-Roman Times From Inscriptions and Papyri," Economic History 10 (1935), 8–9. However, this might only mean that pure metal, and gold in particular, rather than "coin" was preferable outside the empire. (2) At the very end of an inscription from Mylasa in Asia Minor detailing a decree of the council concerning unauthorized trade in currency (OGIS II 515, 208–9), there may be an (unfortunately fragmentary) reference to a lack of coins. This Bolin, 1958, 246, takes as a reference to the hoarding of copper coins because "a stage was reached at which the metallic value of copper coins corresponded to or exceeded the value given them by the official rate of exchange" (Bolin, 1958, 245). This inscription may refer to a local crisis. Moreover, if copper coins had mere token value in the empire even a light wash of silver on "silver" coins would prevent copper coins from exceeding their nominal value relative to "silver" coins. (3) In the apokrimata of Septimius Severus there is a record of a decision prohibiting the payment in silver of taxes that were owed in kind (P. Col. 123.43–4). Just why this is so is not entirely clear but it has been suggested that it is related to the government's interest in receiving full value for its taxes (see Westermann's commentary on pp. 33–4; R. S. Bagnall, personal communication, argued that this had nothing to do with
provide, however, especially since *m. Kelim* 12:7 deals with the wearing of coins, a normal process in the use of coins. At any rate, it is striking that neither passage takes the value of a coin as simply that of the face value.

The very fact that one type of coin "acquires" another suggests, moreover, that the authors of M4:1–2 are aware that the actual market value of coins may vary. This is substantiated from the gloss to M4:1 in M4:2 (admittedly talking only generally about *mārdōti, "money," and *pērot, "produce"), which explains the legal significance of a commodity "acquiring" the money in terms of the right of the buyer to withdraw from the sale—presumably because the price was no longer to the buyer’s advantage. If the official value of coins were taken to be the actual value, the exchange of coins would, in a sense, be a kind of barter between bigger and smaller units of the same type of thing (with the legal implication that in an exchange, after one side

currency problems). Later in the third century (260) we hear of bankers having closed their doors, and being ordered to open and receive all but the most debased coinage (*P. Oxy. XII* 1411.10–3; it is not entirely certain whether what is at issue here is the refusal of the bankers to receive the coinage of Quietus and Macarinus for more or less political reasons [Johnson, 1936, 449], or whether this was a refusal to accept Roman Imperial coinage, which by this time was highly devalued, in exchange for Egyptian coinage at the official exchange rate [Bolin, 1958, 287–8]). See also Crawford, 1975, 566 n. 27, who cautiously cites D 46.3.99 as possible evidence of "disquiet over the coinage." In general, however, Crawford (p. 568) argues that in the first part of the third century there is no inflation, but merely the adjustment of prices for the actual metalic value of the debased coins.

The weighing or testing of coins in the case of doubt was likely to be common practice even in periods of stable currency (the production of ancient mints was never entirely uniform, and coin testing was one of the standard tasks of bankers, see, for instance J. Andreau, *La vie financière dans le monde romain* [Bibliothèque des écoles françaises d'Athènes et de Rome: 265: Rome: École Française, 1987], 485–525 and passim, and the discussion below in Section A.3). It is striking that the Mishnah, in both *m. B. Mes.* and *m. Kel.,* discusses the variations in the value of coins in terms of diminution of weight and not the debasement of currency.

A rather more positive view is expressed by Epictetus, *Diss.* 3.3.3 where the requirement on the part of the grocer or banker to accept official coinage (*to tou Kaisaros nomisma*), whether willing or not, is compared with the soul, whose nature it is to recognize the good. That money could shift in value, and not only in the third century, is clear from *P. Bad. II* 37 (ca. 110 CE), in which a letter-writer informs his addressee that the price of a *khrysovs*, presumably an aureus, had fallen from "15" to "11" (whether the figures should be taken as shorthand from 115 and 111 or as something else is debated, see Johnson, 1936, 425–6, Bolin, 1958, 92–3). The writer goes on to say that the prefect of Egypt had promised that he would intervene and fix the price (*timēn stēsein*), but that he had not yet done so.

A pericope that might reflect this attitude towards coinage occurs in *m. Sebu.* 6:3 [A–G]:

[A] [Plaintiff:] "There is a pound (*litrā*) of gold of mine in your hand (γεύ σ νί ῥ έ β- yādēkā...)."

[B] [Defendant:] "There is only a pound of silver of yours in my hand (ἐν λάκ β- yādi 'elā...)."
Institutions and Relationships

transfers the coin to be exchanged both sides would immediately be bound by the contract\(^9\)). Moreover, since values would be guaranteed not to change in such a case, the importance of being able to withdraw from the contract would diminish, since with minimal difficulty one could find someone else with whom to conduct the reverse transaction.

An early variant to M4:1 [A] underscores the historical importance of the idea that one form of coinage is considered a commodity with respect to another. In the manuscripts of the Babli the opening clause of M4:1 reads “Gold acquires silver.” That is, in an exchange between gold and silver coinage it is the gold coin that is considered a commodity. Since passages in the Tosepta already reflect the tradition “gold acquires silver,” and both the Babli and Yerushalmi preserve traditions attributing both variants to R. Judah the Patriarch, under whose auspices the Mishnah is traditionally thought to have been redacted, it stands to reason that this is an early variant.\(^\)\(^10\) It is possible to explain the variant “gold acquires silver” as stating that

\[C\] He is exempt [from taking an oath].

\[D\] [Plaintiff:] “There is a golden dinar of mine in your hand.”

\[E\] [Defendant:] “There is only a silver dinar, a tēritis (cf. Lat. tresis = 3 assēs/ tēritēs), a pōndēn, and a pērubtē of yours in my hand.”

\[F\] He is required [to take an oath],

\[G\] for all [of the coins listed in [D] and [E]] are forms of one coin.

Without entering into the legal issues of this pericope (see the discussion of M4:7 [A–C] and m. Sebu. 6:1 in Chapter II.A.2), it should be noted that the Mishnah makes a sharp distinction between claims and denials stated in terms of unminted metal, and those made in terms of coins. Whereas unminted metals of different types are considered different types of property [A–C], when coins of gold are claimed, and the denial put in terms of both silver and copper coinage [D–E], both parties are considered to be talking about the same type of property: coins.

\(^{19}\) On barter, see M4:1 [F]: neither party is exchanging money, and therefore, on the principle of M4:2, neither may withdraw. The classic, but difficult, assessment of the rules of barter occurs at m. Qid. 1:6: “... once this one has gained possession, this one has become obligated with respect to it” (see below Section A.3, and t. Qid. 1:9; Rashi and Tos. to b. Qid. 28a.)

\(^{20}\) T3:13; Y4:1 (9e); B44a-b. The Yerushalmi tradition reads:


Said his father to him: “Recant, and teach thus: ‘Gold acquires silver.’”

Said he to him: “I will not recant; for while your vigor was still upon you [i.e., while you were young], you taught me: ‘Silver acquires gold.’”

See also t. Ma‘as. Ш: 2:7, involving a dispute between R. Judah the Patriarch and R. Eleazar b. Simeon over whether one may redeem second tithe money in the form of gold that now cannot be used (e.g., it has become mingled with sacred money) with silver coins (whereas there is no disagreement over the redemption of silver coinage with gold). At issue in the dispute seems to be the status of some coins as “commodities” with respect to one another (see Lieberman, TK, 2, 734; Sperber, 1991, 81–3.)
silver coinage, in light of its general utility as a coin, is always considered “money.”\(^{21}\) In light of the increasing debasement of coinage in the late second century and beyond, however, it is possible that the variant “gold acquires silver” reflects the operation of Gresham’s Law: debased silver coinage was forcing gold coinage out of circulation. People might indeed wish to buy gold coins, not for use as money, however, but rather as a commodity to be hoarded (because it could be counted on to retain its value) or to be melted down and sold as bullion.\(^{22}\)

\(^{21}\) Cf. the explanation given in the Babli for this version of M4:1 [A]: “silver, which is current (\(h\acute{a}r\acute{a}p\), lit.: “sharp”), is ‘coin’; gold, which is not current, is ‘produce.’”

\(^{22}\) This seems to have been the view of Heichelheim, 1938, 220–1, although this passage is not quite as explicit as it might be. See E. Kleiman, “Bi-Metalism in Rabbi’s Time: Two Variants of the Mishna ‘Gold Acquires Silver,’” [Hebrew] Zion 38 (1973), 48–61. While recognizing that the conditions for the “de-monetization” of gold had long been in the making, and were greatly advanced by the devaluation of the silver coinage by Septimius Severus, Kleiman attempts to date the variant “gold acquires silver” to the introduction of the new Antoninianus by Caracalla in 215 (pp. 56–9). Kleiman further suggests that the “Palestinian” variant, “silver acquires gold,” assigned according to tradition to R. Judah the Patriarch’s youth, similarly reflects the de-monetization of silver during the course of the middle second century due to the influx of gold into the economy after Trajan’s conquest of Dacia in 107 (pp. 55–6). Kleiman himself notes that silver never was truly de-monetized in the second century. Moreover, in context, the rationale for the variant “silver acquires gold” is reasonably straightforward, and does not need to be related to a specific event: M4:1 treats coins of less precious metal as “commodities” with respect to coins of more precious metal. In the language of the Yerushalmi: “This is the principle of the matter: Everything that is inferior to its fellow acquires its fellow” (Y4:1 [9c]). What does require explanation, and Kleiman has persuasively suggested one, is the variant that disrupts the obvious logic of the passage: “gold acquires silver.” Compare Sperber, 1991, 69–83. On the basis of internal evidence from the Babli and Yerushalmi Sperber suggests that R. Judah the patriarch held that “gold acquires silver” for at most twenty-four years (195–219) (pp. 75–6), and concludes that it is precisely the confidence in silver coinage (resulting from the tremendous output of silver under Septimius Severus [!] that led to the variant, before inflation created lack of confidence and R. Judah reverted to the opinion that “silver acquires gold” (pp. 77–8). According to Sperber, there are other, Ushani (ca. 135–70), traditions that also echo the idea that gold is “coin” with respect to silver, precisely because of the strength of silver during this period (pp. 79–81). Sperber’s analysis is problematic (1) because it starts with the premise that we can use anecdotal material in Rabbinic literature to reconstruct accurate biographical chronologies; and (2) because it borrows the Babli’s criteria of whether one coin is “money” with respect to another because it is “current” (\(h\acute{a}r\acute{a}p\)) or of higher inherent value (\(h\acute{a}t\acute{h}\)), which may not be relevant to the analysis of the Mishnah itself. (3) As Kleiman, 1973, 61 noted, Sperber seems to miss the fact that issuing vast amounts of debased silver will make silver more “current” as coinage, but not because of the “strength” of silver. Finally (4) his evidence that it is stable currency in the middle of the second century that yields the ruling “gold acquires silver” is somewhat weak:
The discussion of the treatment of money in *m. Baba* /Mesi‘a* leaves room for a number of tentative suggestions. The tractate uses a standardized system of coinage, but at the same time reflects an awareness that using that standardized system to serve as a marker of value is complicated by the fact that coins themselves may vary with respect to one another. Here we have an important point of contact with a functioning Roman provincial economy. The rather rigid formal distinction between “commodity” and “money,” which becomes extremely important in connection with the problem of usur, suggests a conceptualization of a purchase not as an investment but as the acquisition of goods for use or consumption. However, this should not be overstated. M5:1 reflects the fact that Rabbis were indeed capable of

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a. T3:19 (Sperber p. 80): “... In [connection with] what are these things said? [In connection] with [silver] *se‘arim* and *dinarin*. But [in connection] with golden *dinarin* and copper coins he would spend them according to their weight [i.e., even if worn past half their weight].” At best this pericope glosses an Ushan tradition (T3:17 presents a version of our M4:5, which is an Ushan dispute form; T3:18 is related to the anonymous *m. Kel.* 12:7; the construct T3:17 + 18 is presumably later; moreover, it is not quite clear to which clause in the preceding material the cited passage from T3:19 refers: in the version in the Yerushalmi the clauses in question appear in a different position; and where the Tosepta reads “copper coins,” the Yerushalmi reads “silver coins” [Y4:4 (9d)]; see Lieberman, *TK*, 9, 181-2). Furthermore, the passage cited may well imply that as opposed to silver, copper and gold are essentially demonetized, since due to the debasement of silver people are unwilling to use copper or gold coinage as if they had only their face value. If this is so, and if it is to be linked to a specific historical situation, T3:19 would appear to reflect a later (i.e., ca. 200, or later still given the uncertainty of the date of materials in the Tosepta), rather than earlier (135–70), situation.

b. T3:23 (Sperber p. 81). This passage explicitly glosses the variant “gold acquires silver.” Once again, the passage cited is anonymous and, since it otherwise appears only in connection with R. Judah the Patriarch or members of his generation, is likely to be late.

c. Sperber is on strongest grounds with t. *Ket.* 6:5 (cf. b. *Ket.* 67a) (Sperber pp. 80–1): “Said R. Simeon b. Gamaliel: ‘And the matter is thus: in a place where it was customary (*le-nahago*) not to exchange golden *dinarin*, he [the groom] leaves them as they are, and the gold, lo, it is like utensils.’” This is admittedly an Ushan text, and seems to imply that gold coin might not be readily exchangeable for silver. The matter is not as unambiguous as it might be, however. First, the formulation of the tradition of R. Simeon b. Gamaliel suggests that this might be a local phenomenon, and does not reflect the general circulation of coinage. Second, as Lieberman suggested (with no connection to the problem of monetary policy), what is at issue here is a place where it was customary to not use gold coins brought into the marriage as part of the bride’s dowry (*TK*, 6, 276). If Lieberman is correct, the passage may be dealing specifically with localized practices concerning the bride’s property, but may not be relevant to the circulation of coinage in general. If this is so, what this reflects is not the strength of silver currency, but confidence in gold to retain its value over the long term (that is, some of the property brought by the wife is not for consumption but for storage). A preference towards gold might occur in periods of relative monetary stability, but is certainly also consistent with what one might expect in a period of uncertainty.
conceptualizing the profitability of trading in futures, and—assuming that
the distinction between "commodities" and "money" (M4:1 [E]; M4:2)
underlies the exchanges of coins in M4:1 [A–C] as well—silver coinage can
be either "produce" or "coin" depending on the kind of transaction. Finally,
a preliminary observation on the distribution of money is in order. Although
I noted above that many transactions can be effected either in kind or in
cash, it is striking that, as these relationships are described in the Mishnah,
agricultural workers receive at least part of their wage in kind (through
meals, or the right to eat in the fields) and leases of agricultural land gener-
ally do not involve the payment of cash (although these cases are raised),
while landowners sell their produce for cash, and tenants of dwellings pay in
cash. Thus, the Mishnah may presuppose a distinction between people who
have a greater use for money as well as greater means for gaining wealth in
the form of coin, and others, further down the economic scale, for whom
physical wealth in the form of coins plays a relatively small part in their day-
to-day lives.23

Markets involve the meeting of people for the exchange of goods and ser-
vices, and as such form a primary area for the study of human interactions
against the background of the distribution and circulation of wealth. Analy-
ses of the regional distribution of markers and their hierarchical articulation
can provide considerable information about social and economic structure:
the extent to which trade is carried out "horizontally" between peasants on a
local level to cover individual shortfalls or surpluses, or to which markets are
used to funnel agricultural produce to towns for the use of an urban, non-
farming class, are important indicators of the level of dominance the town
has over the surrounding agricultural territory.24 Similarly, the way in which
peasant communities are oriented towards the market (e.g., whether all the
farmers in a region produce the same goods or different goods) has implica-
tions for how "closed" (i.e., exclusive of outsiders, "conservative" in agricul-
tural practice, and distinctive in religious practice) or "open" the peasant
society is.25 Unfortunately, m. Baba' Meşi'a, and the Mishnah more generally,

monetization seems to have reached quite far down the social scale.
24 See C. A. Smith, "Regional Economic Systems: Linking Geographical Models and
Socioeconomic Problems," in Regional Analysis, ed. C. A. Smith (Studies in Anthropology. New
25 See E. R. Wolf, "Closed Corporate Communities in Mesoamerica and Central Java,"
Southwestern Journal of Anthropology, 13 (1957), 1–18; idem, Peasants (Englewood Cliffs:
Prentice Hall, 1966); C. A. Smith, "Exchange Systems and the Spatial Distribution of Elites."
Institutions and Relationships

provide little information on these matters. An examination of the tractate, asking how the people who produced it perceived markets and how they wanted them to be run, shows essentially three things: first, that the Rabbis who produced the Mishnah treated agricultural produce as the basic stuff of the marketplace; second, that trade was carried out at least in part by specialists; third, and finally, that markets are assumed to have a “market price,” that is, a legally enforceable ceiling on prices. On one level, this restricted range of material is as it should be: the Mishnah is not an ethnographic study, nor a regional survey, nor even a practical guide for doing business; it is a compendium of legal materials on topics that raised legal questions. Still, we will have to ask, after a survey of the information that is available in the


For methodological reasons, the present study focuses on the evidence that can be provided from the Mishnah itself. Some hints of market articulation are found in M4:6 (which distinguishes between a city [kērak] and a village [kēpār] on the basis of the availability of a banker) and m. Arak. 6:5 (which recognizes that “a pearl, if they take it up to the city [kērak] it increases in value,” presumably because there is greater demand—as well as concentrated wealth—in urban centers). It should be pointed out that a careful study of the legal and anecdotal material inside and out of the Mishnah, combined with archeological and geographical surveys, can yield important results for the economic history of Roman Galilee. Z. Safrai, in particular, has done important work in this area. See the following publications: “Lē-tī‘el ha-mibneh ha-merḥabī šel ha- yiššūb ha-galīl bi-tṣiqṣaf ha-miṣnā wē-ha-talmūd,” in In the Lands of Galilee [Hebrew], ed. A. Shemueli et alii (Haifa: University of Haifa, 1983), 269–88 [cited below as “Ha-mibneh ha-merḥabī”; “Ha-kēpār bi-tṣiqṣat ha-miṣnā wē-ha-talmūd,” in Nation and History [Hebrew], ed. M. Stern (Jerusalem: Zalman Shazar Center, 1983), 1, 173–95 [cited below as “Ha-kēpār”]; “Fairs in Eretz Israel in the Mishnah and Talmud Period” [Hebrew] Zion 49 (1984), 139–58 (with a critique by E. Kleiman, and a rejoinder by Safrai, Zion 51 [1986], 471–84, 485–6 respectively): “Ha-miṣhar bē-ma‘areket ha-dērāḵim ha-kēpāriyyōt bi-tṣiqṣat ha-miṣnā wē-ha-talmūd,” in Commerce in Palestine Throughout the Ages [Hebrew], ed. B. Z. Kedar et alii (Jerusalem: Yad Izhak Ben Zvi, IES, 1990), 108–39 and 159–180 respectively. Much of this is now reworked in Z. Safrai, The Economy of Roman Palestine (Routledge: 1994). A thorough critique of Safrai’s method is beyond the scope of this study. In general, however, Safrai emphasizes the necessity and wide diffusion of trade due to the “development” and “sophistication” of the economy of Palestine and of the Roman empire in general, a view that may be somewhat anachronistic. Secondly, his analysis of regional structures in Galilee tends to break regions into sub-units rather than emphasizing the integration of these units into a regional system. See also I. W. J. Hopkins, “City Regions in Roman Palestine,” PEQ 112 (1980), 19–32.
tractate, to what extent the “topics that raised legal questions” are themselves products of a particular social or economic perspective.

We should at the outset distinguish between “markets” on a conceptual level and material marketplaces. To speak of markets merely in the conceptual sense (a framework for exchanging goods, or, in more doctrinaire terminology, an institution for allocating limited resources) does not tell us which members of the society participated in markets as physical and social institutions, whether as buyers or sellers, and what the implications of a differential participation in the marketplace had for the distribution of wealth and power in the society. Moreover, to ask how the Mishnah viewed “the market” is to risk asking a question for which the Mishnah can supply no answer. However, it is precisely about physical marketplaces, which people congregated there, and what was permissible or forbidden there, that the Mishnah, with the basic casuistic approach of its legal traditions, offers us information, or at the very least, offers us a picture we are asked to take as information.

Turning first to the evidence outside of *m. Baba* Mesi’at, it should be noted that the Mishnah refers to essentially two market institutions: the *hānut*, “store,” and the *ṣāq*, “market place.” The *hānut* is located in some 27 Within the Mishnah itself we find reference to an additional institution, the *ḥ̄ila* (or *ḥ̄ilīz*, the spelling and pointing of this word are variable). That it is a place and not the description of a function seems clear from *m. Ker.* 3:7, a story about two Rabbis in the *ḥ̄ila* of Emmaus, where one of the Rabbis was buying an animal to slaughter for a feast. In two other passages in which the term appears it is in the stereotyped expression “they are sold in the *ḥ̄ila*, and slaughtered in the *ḥ̄ila*, and sold by the pound (bē-līṭrā)” (*m. Bek.* 5:1; *m. Tem.* 3:5). Finally, *m. Arak.* 6:5 refers to the increase in price one receives by waiting to sell one’s cow at the *ḥ̄ila*. One suggestion is that the term may transliterate the Greek *katalysis*, which, though it may refer to a camping spot (and arguably to a caravan station), does not seem to carry the sense of “market” in Greek (for this view see S. Krauss, *Griechische und lateinische Lehnwörter im Talmud, Midrasch und Targum* [Berlin, 1898–9], vol. II, s.v. [p. 30]; criticism by S. Lieberman, “‘Eler milin,” *Eskolot* 3 [1959], 75–81). (*Katalysis*, incidentally, is not an inappropriate translation of the Hebrew *ḥānut*, literally a camping or stopping spot.) Lieberman, 1959, 77 (followed by Z. Safrai, 1984, 139) took the term to be the Greek *ateles*, a fair in which taxes (presumably market taxes) had been remitted (cf. *IGRIV* 144 [Cyzicus, I CE] , cited by Broughton, 1938, 870, in which reference is made to the *panγyris kai atelēia*, “fair and tax-freedom,” taking place in the city; see also IG*V.2* 18 B.9–12 [under Trajan]). Since all that the Mishnah states about the *ḥ̄ila* is that animals were sold there, particularly for consumption, neither explanation is altogether satisfactory, although a periodic encampment of local herdsmen with their flocks may not be inappropriate. (In later sources the term has a more generic sense: *Pesiq. Rab Kah.*, *Aišer ta’attēr* [ed. Buber, 98b; ed. Mandelbaum, 162]: one selling a garment in the *ḥ̄ila*. *Gen. Rab.* 79, to 33:18 [ed. Theodor, Albeck, 940]: Jacob “began to erect *ḥ̄ilēsin*, and sell cheaply.” In light of the suggested reading as *katalysis*, it is notable that the Rabbinic comment glosses the Biblical expression, “And he
Institutions and Relationships

passages of the Mishnah in a public place, and is the locus for small purchases of foodstuffs. Šāq is a somewhat more generic term: it can mean merely “out of doors,” “in public.” Here too, the basic material for sale is agricultural produce and related goods. A review of the sources that deal with marketing in *m. BabaʿMesiʿa* confirms that in our tractate as well, it is basic foodstuffs largely deriving from agricultural production (together with such general requirements as pottery utensils) that make up the core of marketed goods. One of the Mishnaic terms for “commodities” is simply *pērōt*,...
“produce.” In M4:11–2, the rules regarding how merchandise is to be handled by merchants (whether it can be mixed, dressed up, or given away free as a promotion) are stated in connection with produce (pērōt), wine, grain, parched grain, nuts, and beans (although a final note about slaves, animals and utensils is added). Similarly, the rules of advanced payment for goods are worked out for grain, grapes, olives, pottery, and dung (M5:7), and the example given of a usurious “increase” (tarbīt) is based on the shift of market prices for grain and wine (M5:1). This is not to say that other, non-agricultural merchandise is not thought of as being sold or exchanged (slaves have already been mentioned), but that, at least in m. Baba2 Mesē’a2, transactions involving land, trees, animals, and slaves are not usually described as taking place in a marketplace (M5:3; M8:4, 5). Such transactions require considerable outlay, may involve a more or less lengthy period of negotiation or makers of yarn: bakers of two kinds; butchers; sellers of rushes, wood, fruit, olives, garlands, and vegetables; dealers in crops, wool and grain; and importers of spices, beans, natron, rock salt, pottery, fodder, wood, dung, and dates. The paucity of “manufactured” goods in comparison with agricultural produce and raw materials, even in a nome metropolis, is remarkable. Since the document records the taxes for a specific market (lines 3, 5: the market of the Serapeion at Oxyrhynchus), it may be that these other activities are carried out elsewhere. The document may suggest, however, that it took fewer (and less diversified?) “manufacturers” to supply the needs of a town than it did sellers of produce.

E.g., M4:2; compare the language of M4:1 and see the discussion of these pericopae in Chapter II.C.2. See also M5:4 [B]: “let him [the householder] not give him [the shopkeeper] money with which to purchase produce for half profit ....”

The reference to slaves, animals and utensils, M4:12 [G], may be a supplementary note to these pericopae (the syntactical pattern shifts to an impersonal negative construction: ἐν μὴ παραλείψοιν ...; this is, however, the same construction as used in M4:11 [A, D]).

Cf. P. Lond. Inv. 1562 verso, line 15 (Rea, 1982; see his comment to this line, p. 202), which lists a market tax for the guild of shepherds, who presumably sell sheep in the market and the discussion of ἵλις, above, n. 27.

Compare m. B. Qam. 8:1: in calculating damages to a human, “they evaluate him as if he is a slave being sold in the market (σῶξ).” See also t. Ab. Zar. 1:8, in which real estate purchases seem to take place at still another market institution, a fair:

[A] One may go to the fair (γαίρηθ) of the gentiles, and be healed by them a monetary healing (rippūi māmōn),

[B] but not a personal healing (rippūi nepēf)

[C] and one may purchase from them houses, fields, vineyards, male slaves and female slaves,

[D] because he is like one saving [this property] from their [the gentiles’] hands,

[E] and he writes it and deposits it in the archives (ἐρχαίημ, cf. Greek arkhēia).

I have followed S. Lieberman, TR, 2, 186, ad loc., in reading “and one may purchase” in [C], against the reading “and one may not purchase” in the ms. The reading adopted here is also that of the Tosepta in the parallel at t. Mo’ed Qat. 1:12 (2:1 in the Erfurt ms.), and of the citations of bāratīt parallel to t. Ab. Zar. 1:8 at y. Ab. Zar. 1:1 (39b); 1:4 (39c); b. Ab. Zar. 13a.
before a deal can be made, and are likely to be recorded in a deed.\textsuperscript{37} Thus, such purchases constitute a different order of magnitude from those involving, say, the buying of produce from a grocer, and are pictured as taking place in a different institutional framework. This may, perhaps, be one of the reasons that the rules of hōnāyā (over- or under-charge) do not apply to “slaves and documents and lands and consecrated goods” (M4:9 [B]).

In the treatment of markets in \textit{m. Baba' Meši'a}, at least some market activity is attributed to market specialists, of which the two most common in the tractate, and in the Mishnah in general, are the \textit{henwani} (shopkeeper) and the \textit{tāgār} (merchant).\textsuperscript{38} The shopkeeper can be an independent marketer

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\textsuperscript{37} For examples from the Judean Desert see \textit{DJD} II 22, 25, 26, 27. See also \textit{P. Dura} 25–8, and the list of documents in Johnson, 1936, 150–4, 157. The Hebrew letter from the heads (\textit{parnāsin}) of Bet Meshiko to Joshua b. Galgula about a cow that Yehosep b. Ariston bought from Yaaqob b. Yehudah, \textit{DJD} II 42, may have been necessitated by the failure of Yehosep to draw up or hold on to a deed.

\textsuperscript{38} There are references to still more specialized sellers: a baker (\textit{nahbom}) (M2:1); potter (\textit{qaddēr}) (M6:1 [D]), according to the text of the Kaufman ms. [see Appendix I]) and so on. \textit{m. B. Bat.} 2:3, for example, presupposes this further specialization:

- Let a man not open a bakers' shop (\textit{hanūt šel nahbōmim}) or a dyers' (\textit{sabbātîm}) [shop] below the storehouse of his fellow,
- and not a cattle shed.
- Indeed, in the case of wine [i.e., of a wine merchant] they permitted, but not a cattle shed.
- A shop (\textit{hanūt}) that is in the courtyard:
- He [a neighbor who shares the courtyard] may prevent him and say to him:
who buys produce from the producers and resells it in a store (ḥānātī) for a profit. Alternatively, the shopkeeper may be a kind of agent of the householder, as in the following pericope (M5:4).

[F] “I cannot sleep from the sound of those entering, and from the sound of those leaving.”

[G] One who makes utensils goes out and sells them in the market (ṣūq);

[H] but he [the neighbor] cannot prevent him and say to him:

[I] “I cannot sleep from the sound of the hammer, or from the sound of the mill-stones, or from the sound of the children [at a teacher’s ‘shop’].”

This kind of specialization is seen in far greater detail in papyri from Egypt. See, once again, P. Lond. Inv. 1562.9–20 (Rea, 1982), which lists rate of market taxes for some eighteen categories of selling establishments, from bakeries to brothels; W. Chr., nos. 311–21; Johnson, 1936, 361–76, and nos. 234 (P. Bour. 13), 237 (P. Oxy. III 520) and 241 (P. Oxy. XII 1461). Compare PSIVL 692 (Oxyrhynchite nome, I CE), which records the cession of a pantopolikon ergasterion, loosely, a “general store” (Johnson no. 233, p. 383).

Z. Safrai, “Ha-mibneh ha-merhābi,” 271, has stressed the role of the ass driver (hammār) in the local trade of Palestine. Within the Mishnah itself I have found only one unambiguous reference to a hammār as merchant, m. Dem. 4:7 (see, however, references to a ṭokēl, m. Ma’āṭi. 2:3; m. Šab. 9:7). More typically, the hammār is simply a porter. Nor are all the sources from outside the Mishnah cited by Safrai probative. For instance, in T3:25 (telling ass drivers to go to a certain person who will sell them wine or oil when one knows that this person does not have it to sell is a form of verbal hōnāyā), the ass drivers are not necessarily buying up local produce; they may be seeking provisions for themselves (i.e., they may function here as “travelling strangers” and not “marketers”). Granting Safrai’s contention about ass-drivers and donkey caravans in the local trade of Galilee, Safrai has tended to minimize the traditions presupposing a Monday-Thursdays market pattern as reflecting an earlier, and, less economically developed, period (“Ha-kepar,” 181–4). In this connection it should be pointed out that a marketing system characterized primarily by rotating traders (as Safrai depicts it) is likely to reflect a less developed system than one in which the marketplace is fixed (since in the former case demand is not high enough to support fixed markets, and merchants must rotate to meet their “minimum demand threshold”; see S. M. Plattner, “Periodic Trade in Developing Areas Without Markets,” in Smith, 1976, 1, 72–81). Nor is it necessarily the case that the economy of Palestine progressed from one “stage” to another: different models of trade may reflect the development of different localities.

39 References in the Mishnah to the henuwāni selling his own produce are not as self-evident as one might like. The shopkeeper discussed in M4:12 [D–I] may own the produce being sold, although this is hardly self-evident. Similarly, the shopkeepers in m. Dem. 2:4 may own their own stock (which might explain why they are not permitted to sell demai [produce that is suspected of not having been tithed], rather than requiring them to inform the purchasers [cf. M4:11 [E–F]; cf. t. Dem. 3:15]).

40 A reflex of the institution of using a henuwāni as agent appears in m. Ket. 9:4, in which a man sets up his wife as shopkeeper (ha-māṭiḥ ‘et ‘īṭṭo henuwāni). The demands that a householder who sets up a shopkeeper is permitted to make of that shopkeeper according to T4:12–13 (not pursuing a craft; not buying or selling anyone else’s produce) suggests that a kind of agency is envisaged. On the seller as agent, compare the discussion of D. Rathbone, 1991, 278–306, esp 287–93, of the role of wine merchants on a well documented estate in Egypt.
Institutions and Relationships

[A] One does not set up (‘en mōšibim) a shopkeeper [to sell merchandise] at half profit;
[B] let him not give him money with which to purchase produce for half profit;
[C] unless he gave him his wage as an idle laborer.

Similarly, the emphasis on a store in the rule that one whose wine has become mixed with water ought “not sell it in a store unless he informs” (M4:11) may imply a case where the owner has turned the wine over to a shopkeeper, although it is possible that what is meant is that it is the owner who will “set up shop” to sell the adulterated wine. One of the functions attributed to the henuwānī, however the stock is received, is that of a credit institution. Thus, for instance, an employer might send a worker to a shopkeeper who is to advance payment (in coin or in produce).

The tāgār figures in M4:3 [C] as one who has the expertise to know the market price for an item in a case where one party (on the basis of [D–H], apparently the buyer) suspects the other of cheating, just as the sālhānī (“banker”) is the expert to whom one appeals to evaluate a coin (M4:5 [B]). In M4:4, however, just whether a tāgār himself can bring a claim of hōnāyā is disputed [B–C]. Over and against this image of tāgār as expert is the image of tāgār as cheat: “Whoever’s wine has become mixed with water—let him not sell it ... to a merchant (tāgār) even if he informs him [the merchant?], for it is only to cheat with it” (M4:11 [E–H]). That is, as opposed to a shopkeeper [F], in this instance, the tāgār is presumed to misuse information on

41 See the note to M4:11 in Appendix I. That the shopkeeper also owns the produce may be implied by the language of the Tosepta: “Let the shopkeeper not mix them [i.e., wine and water as in M4:11] and sell them in his store, unless he informs them” (T3:27). The Mishnah dealt with an accidental case where water and wine have become mixed (M4:11 [E]); in the Tosepta the presumption is that the shopkeeper might do this on purpose. Such liberality with produce may suggest (but hardly proves) that the produce belongs to the shopkeeper (since it is presumably not good business practice to do things that might reflect badly on one’s suppliers or lead them to believe that they are being cheated; it is, after all, the shopkeeper, and not the producer, who pockets the increased revenues from selling diluted wine as full strength wine).

42 M9:12 [G]. See m. Šebu. 7:1, 5–6 (the case of ha-henuwānī ‘al pinqōb, “the shopkeeper [swearing] on [the basis of the entry in] his ledger (pinqas; cf. Greek pínax”). See also m. Ma’āši. Š. 2:9 (=m. ‘Ed. 1:10); m. Bes. 3:8; m. Ned. 4:7. In this connection it is interesting to note a letter from Egypt sent to a “retail trader” (kapēlos), in which the trader is asked to recover a debt from a baker and to use it to buy provisions for the sender (P. Oxy. VII 1158). Note also the question raised about the status of a deposit of money with a shopkeeper in M3:11 and m. Me’iš. 6:5: are shopkeepers who accept deposits “bankers” or “householders”?
the true quality of goods. More important for understanding the Mishnah’s conception of the economic function of the tāgār is the following passage (M4:12 [A–C]):

[A] The merchant (tāgār) takes from five threshing floors and puts them in one bin,
[B] from five wine presses and puts them in one cask;
[C] so long as he does not intend to mix them. 44

The impression given is one of a merchant who deals in large quantities of

43 Shopkeepers, too, are accused of cheating. In M4:12 [D–L (M?)] the sages are presented as disputing (with R. Judah throughout?) the permissibility of certain practices of shopkeepers that are considered “misleading” (free distribution of nuts to children, undercutting, and dressing up merchandise to attract customers) while they agree that other practices are downright deceitful (literally, they “steal the eye” [L]). See R. A. O. Ohrenstein, “Economic Thought in Talmudic Literature in the Light of Modern Economics,” American Journal of Economics and Society 27 (1968), 190–1, who discusses this passage in terms of Rabbinitic awareness of “analytic criteria in dealing with market forces of supply and demand,” without stressing that the major analytical distinction the Mishnah makes is between “honest” (or, according to the Sages, useful), and “deceitful”; cf. E. Kleiman, “Just Price’ in Talmudic Literature,” History of Political Economy 19 (1987), 34, who took the view of R. Judah as reflecting “an anti-market, competition-restricting sentiment.” Yet, R. Judah’s view is not “anti-market” in the sense that the view attributed to him necessarily requires that all prices be set centrally and be conformed to (as Kleiman seems to take it); rather, it expects competition to be based on the quality and price of the goods and not on practices that attract attention by other means.

The theme of the deceitful merchant appears elsewhere in Rabbinitic literature:

Let a man not teach his son [to be]: an ass driver, or a camel driver, or a ship’s pilot, a waggoner (qārāt), a shepherd [or] a shopkeeper, for their craft is the craft of brigands (Hebrew listūm; cf. Greek lēstē).

[The text is introduced as a bāraitā in y. Qid. 4:11 (66b); the passage appears in some texts of the Mishnah in m. Qid. 4:14; see MePekef tēlomoh ad loc., and Epstein, Nūsah, 977. Before “a waggoner” (qārāt) the Yerushalmi text includes also “a potter” (qaddār), which may stem from an erroneous duplication of qārāt, “waggoner,” which are easily mistaken for one another.] With the exception of the shepherd, all of the “crafts” mentioned are at least related to commerce (cf. n. 38 above). On Rabbinitic disapproval of trade see Krauss, 1911, 350, and 687 n. 307 (who minimized the importance of this disapproval). Such attitudes towards merchants are quite conventional in the Greco-Roman world: see Aristotle, Politics, 1256b–1258a, Econ. 1343a; and, more strikingly, Cicero, de Officiis, 1.150–1 who lists among livelihoods that are sordidus (“dirty,” “dishonorable”): “... those who buy from merchants to sell immediately. Indeed, they would not be successful unless they were to lie very much. In truth, nothing is more repulsive than falsity.”

44 This clause is slightly problematic. See the discussion in Appendix I.
produce (a wholesaler) as opposed to the henwānī, who deals in retail sale.\textsuperscript{45}

This image of the tāgār as wholesaler may also be reflected in m. Baba'\ Batra\textsuperscript{2} 6:6: “One who has a garden within his fellow’s garden ... may not bring merchants (tāgārim) into it [i.e., across the neighbor’s field].”\textsuperscript{46} Presumably, the merchant has come to buy up produce to sell elsewhere, such as a nearby large town.\textsuperscript{47}

The third aspect of the system of markets and marketing that emerges clearly from m. Baba'\ Meşi'\textsuperscript{a} is the notion of the market price. According to one passage, one cannot contract to pay in advance for later delivery of produce unless there is an existing market price at which this contract can be negotiated (M5:7). It is presumably this price that is meant when the Mishnah states that over- (or under-) charge by one sixth constitutes hōnāyā (M4:3–4). This is not to say, however, that the Mishnah views the market price as an absolute fixed amount reflecting the inherent value of the thing itself.\textsuperscript{48} On the contrary, speculation in futures is prohibited in M5:1 precisely because the market price is variable. Acknowledgment of this capacity of the market price to shift underlies the explicitly supererogatory care with

\textsuperscript{45} For the henwānī as small-scale trader see m. Dem. 2:4 in which the henwānī is opposed the “grain merchants (sitōnāt; cf. Greek sitōnēs) and sellers of grain” who sell with a “large measure” (middā gassā).

\textsuperscript{46} The implication of m. B. Bat. 6:6 is that the tāgār is contracting for produce still unharvested. Cf. the reference to a karpōnēs (“produce purchaser”), P. Lond. Inv. 1562 verso, line 13 (Rea, 1982, 202, note thereto); and P. Oxy. IV 728 (142 CE) the sale of crop (karpōneia) in which a buyer agrees to harvest and dispose of a crop of hay on 20 arourai of land. For the use of kapōnai in the management of estates in Egypt see D. Kehoe, Management and Investment on Estates in Roman Egypt (Bonn: Habelt, 1992), 84–6 and index, s.v.

\textsuperscript{47} It is perhaps not accidental that in the interchange presented between R. Tarfon and a group of merchants, the merchants are located in Lydda (M4:3 [D–H]). In the same pericope, the clause stating that the time limit for verifying the price of merchandise, “long enough to show it to a merchant or to his relative” [C] corresponds to the analogous rule in the case of coins “long enough to show it to a moneychanger,” which is set specifically in a city (kērāk) as opposed to a village (M4:6 [C]).

\textsuperscript{48} This is the view of J. Neusner, The Economics of the Mishnah (Chicago Studies in the History of Judaism. Chicago: University of Chicago, 1990), 82–9. Throughout this book, Neusner sees the Mishnah’s treatment of economics as the product of a conscious and ideologically motivated insistence on subordinating what he assumes to be a real flourishing “free market” economy (despite laudatory references to studies by M. I. Finley, A. H. M. Jones, R. MacMullen, Karl Polanyi, and Max Weber all of whom limit the importance of trade and markets in the ancient world) to the “redistributive” conception of the world stemming from the belief that God owns it. While Neusner presents a fascinating, and indeed, useful, interpretive model for the theology of the Mishnah, he fails to note that the Mishnah’s attitude towards the economy largely corresponds to that of the ancient wealthy classes (as described, e.g., by Finley, 1985), who are surely not subject to the Mishnah’s theological constraints.
which R. Gamaliel is said to have lent his tenants seed grain (M5:8). In addition, the Mishnah is aware that there may be different price levels running simultaneously (presumably reflecting the level of the transaction, such as whether produce is bought wholesale or retail). 49 What the Mishnah does not tell us explicitly is how this price is to be determined, although there is no inherent reason why the price upon which the rules of the “just price” are based should not be thought to derive from the practice of marketing, that is, from the balancing of supply with demand. 50

Sale can take place on a number of levels and at a number of different venues. To be sure, the heuwani sells in a store (hanu). What of the producer? When a farmer sells to someone other than a market specialist (such as a tāgār) where does this take place, and, more importantly, to whom is the produce being sold? In m. Baba2 Meši’a2 itself, there are no unambiguous

49 E.g., M5:7 [K]: once the market price has been determined “he may make a bargain with him according to the lower market price (tā’ar ha-gabōha).” See also m. Ma’asī. Ś. 4:2 [A–B], in which the “cheaper market price” (tā’ar ha-zol) is defined: “such as the shopkeeper buys, not such as he sells.” (On m. Ma’asī. Ś. 4:2 see Section A.3. [on banks] below.)

50 See E. Kleiman, 1987, 35–9. In at least one story in the Mishnah, attributed to Temple times, the price of doves necessary for certain sacrifices was reduced by a revision of the law stating how many offerings were necessary, i.e., by a reduction of demand, rather than by an administrative ruling on the appropriate price (m. Ker. 1:7). Compare T6:14: “There were agoranomoi (yanmin) in Jerusalem, but they were not appointed for market prices, but rather for measurements alone.” On the other hand, T11:23 records the tradition that “the members of the town (为抓) are permitted to stipulate (lāhatnōt ‘al) prices, measurements, and the wages of workers.”

On the intervention of the city (and occasionally the provincial) government in the functioning of the marketplace, especially the availability and affordability of staples, see A. H. M. Jones, “The Economic Life of the Towns of the Roman Empire,” Receiving de la Société Jean Bodin, 6 (1954), rpt. The Roman Economy ed. P. A. Brunt (Totowa: Rowman and Littlefield: 1974), 46–51, and idem, The Greek City from Alexander to Justinian (Oxford: Oxford University, 1940), 215–9. In general, the documents adduced by Jones reflect not the direct control of prices, but attempts to guarantee supply (see P. Oxy. XII 1454 [117 CE]: bakers receive grain with which to mill flour and bake bread, and undertake to supply a certain amount of bread; and although the amount that the bakers may receive is specified, far from setting the market price, the government here uses the difference between the market price and the bakers’ commission as a source of revenue). This presumably motivates the requirements of authorized merchants to take an oath that they will faithfully pursue their business (e.g., P. Oxy. XII 1455, cited above, and PSI III 202; for oaths see also BGU I 92; II 649, III 730; compare, however, Syll. 799 [Cyzicus, 38 CE], which empowers the agoranomoi to prevent sellers from raising prices, and outlines severe penalties; with respect to the relative price of gold to silver, at least, P. Bad. II 37 expresses the hope that the prefect will intervene to fix the falling price of gold). One interesting example of this type (admittedly, relatively late for our purposes, 327 CE) records the oath of an egg seller to sell eggs daily, and to refrain from selling them secretly or in his house (P. Oxy. I 83).
Institutions and Relationships

examples of direct sale from producer to consumer.\footnote{In addition to M5:5 and M5:1, which are referred to below, the following passages should be noted. M4:4 [A–B] can be taken to imply that a non-specialist, such as a producer, might be seller as well as buyer ("Whether [it is] the buyer or whether [it is] the seller, they have ḥōnāyā. Just as a non-professional (ḥedīyō) has ḥōnāyā, so a merchant (tāḏār) has ḥōnāyā"). While it is possible that M4:11 [A–D] originates in the context of rules for traders by profession (M4:11 [F–H] discusses only sale "in a store" [see below] or to a merchant, and M4:12 is concerned with the practices of these specialists), the rules in [A–D] could as easily apply to householders selling produce as to traders. The proposed sale of deposited produce that is going bad (attributed to R. Simeon b. Gamaliel in M3:6 [C–D]), in which the depositary stands in for the owner, may be something of a special case necessitated by the spoilage of the produce. Notably, the transaction takes place "before the court," and makes more sense as a lump sale to a buyer than as retail sale in a market.} More explicit testimony comes from elsewhere in the Mishnah, for instance m. Demai 5:7:

[E] A householder who was selling vegetables in the marketplace:
[F] when they were bringing him [stock] from his gardens he tithes from one [basket of produce] for all of them.
[G] But [if] from other gardens, he tithes from each and every one.

This pericope is interesting in this connection because it not only allows for the possibility of a householder selling the produce he has grown on his own land, but also suggests the ease with which a householder can turn into a marketer engaged in selling other people’s produce.

In m. Baba' Mesi'a\(^2\), however, and in the Mishnah more generally, direct sale from producer to consumer through a marketplace is conspicuous for its absence,\footnote{One apparent example is m. Baba' Batra\(^3\) 5:8:
[A] One who sells wine or oil to his fellow—
[B] and they became more expensive or cheaper:
[C] [if the price changed] before the measuring utensil was filled: [it changed] for the seller;
[D] [if] after the measuring utensil was filled: [it changed] for the buyer.
[E] If there was a broker (sīrāṯ) between them [and] the jar broke: [it broke] for the broker.
[F] And he is required to let three drops drip [from the measuring utensil].
[G] [If] he bent and drained [the measuring utensil afterwards], lo, it is the seller’s.
[H] And the shopkeeper is not required to let three drops drip.
[I] R. Judah says: "On the eve of the Sabbath at dusk, he is exempt [from letting three drops drip]."

This pericope seems to describe sale for consumption which takes place between one householder (the context presupposes that he is not a shopkeeper) and another ("his fellow"). In addition, the fact that in mid-transaction the parties are informed that the price has changed suggests that the transaction takes place in the marketplace (although this is hardly a necessary

}\footnote{52 On the eve of the Sabbath at dusk, he is exempt [from letting three drops drip].}
small farmers marketed their own produce in Roman Galilee (although the passage just cited from *m. Demai* suggests that this was at least possible, and to the extent that land was held by freeholding peasants and not tenants [and even in such a case] it seems likely). To be sure, it is the householders on whose land the produce in question was grown who are presupposed in the discussion of a potentially usurious transaction in M5:7: “If he was the first of the reapers he may make a bargain with him [to accept payment now for later delivery] for [grain on] the threshing floor” [B–C]. It is by no means clear, however, that the buyer in this case is envisioned as a consumer: he may be a merchant (professional or occasional) buying up produce. At any rate, the buyer has sufficient disposable capital to pay now for later delivery. We are given no indication of the economic position of the seller: he may be a small farmer producing primarily for subsistence and selling off surplus production or a small cash crop, but a larger householder producing primarily for the market is not excluded. (It is worth noting that in the kind of transaction depicted the seller presumably sells at a discount [cf. M5:7 [K–

However, [E] envisions a scale of transaction in which a broker might be involved. Moreover, *m. B. Bat. 5:8* should be compared with the other pericopae with which it appears. In *m. B. Bat. 5:6–7*, there is nothing to place the case described specifically in a marketplace. Indeed, in 5:7 the Mishnah recommends renting the place in which the produce is located to guarantee transfer of ownership without a possessory act, and considers the case of produce that has not been harvested yet. Neither of these sound like small “retail” consumer transactions. In *m. B. Bat. 5:10–11*, a discussion of proper care for weights and measures (cf. Lev. 19 35–6; Deut. 25:13–19), a householder (*ha'al ha-bayit*) needs to clean his measuring utensils of residue only once yearly as opposed to the grain merchant (once monthly) and the shopkeeper (twice weekly). Since the point of this differential ruling is not merely the presumptive honesty of the seller but also the actual volume of buildup of residue, the householder seems to be involved in more casual selling. Finally, in *m. B. Bat. 6:1–3* there is no necessity to locate the transactions in a marketplace. In particular, *m. B. Bat. 6:2* includes the case of one who sells a cellar full of wine.

Elsewhere in the Mishnah, producers appear at first glance to be likely to market their produce themselves. These cases are not unambiguous, however. *m. Pe' a 3:3*: “One who harvests moist onions for the market, and maintains dry ones for the threshing floor [i.e., for storage]....” In this passage there is no way of knowing that the way the vegetables will make it to market will not be through the agency of a specialist. *m. Šebi. 7:3*: “let him not be one who picks (lōqē) field [i.e., wild?] vegetables [in the Sabbatical year] and sells them in the marketplace (šāq)” (the reading lōqē follows Epstein, *Nusah*, 229; Lieberman *TK*, 2, 554 [to *t. Šebi. 5:10*]). Since unsown seventh year produce is at issue and not regular agricultural produce, this may be something of a special case. *m. Ma' aš. 1:5*: “What is the threshing floor [of vegetables] for tithes [i.e., when are vegetables considered “completed,” and thereafter prohibited for the lay Israelite until tithed].... When are these things said? When he brings [them] to the market; but if he [brings] them to his house....” The language “he brings them” (*molik*) suggests that it is the owner who will actually bring them to the market, but this may be a way of expressing the choice of destination for the produce.
Institutions and Relationships 147

In order to guarantee a purchaser for the produce and to minimize risk. Thus if M5:7 presupposes producers oriented towards market sale, these may be householders who can afford the luxury of taking a lower price.) Similarly, the transaction in M5:1 [H–K], in which a buyer who has acquired produce later wishes to sell it at a profit, may be seen as a transac-
tion between relatively wealthy actors. If nothing else, the transaction is described in terms of wheat priced at a golden dinār to the kōr (a substantial measure, some 400 liters), and not in terms of qābīm of wheat per Ḫissār. Neither party in the series of transaction in M5:1 need be a professional marketer: both may engage in this sort of trade only when the opportunity arises. In this case, too, since the sale does not involve immediate delivery, there is no reason for it not to occur in some other place.

If the Mishnah is relatively unconcerned with the questions of small farm-
ers selling their produce when it deals with the rules for markets—although such farmers undoubtedly did—this may betray something of the world-
view of the Mishnah’s framers. The primary foci of legislation on markets reflects ambivalence towards market specialists, who are both experts in valu-
ing merchandise and cheats, and a concern for fair pricing. In contrast to the kind of speculative transactions described in M5:1, the marketplace is where basic consumer goods are acquired—i.e., a place that is conceived of as pri-
marily providing a service, goods at an appropriate cost—and our tractate reflects a distinct interest in keeping it running fairly. Beyond this, as m.
Demai 5:7, cited above, suggests, Rabbis are concerned with small farmers and markets primarily when questions of ritual are raised. It may be worth suggesting that the people about whom the rules of m. Baba’ Mesi’a speak, whatever the source of their wealth (it may well have been land), did not live directly from the produce of fields, but bought their food from marketers, and stored their disposable wealth in the form of money.


A “banker” (šulhānī, from šulhān, “table”; compare the Greek trapezitēs and the Latin mensularius), in m. Baba’ Mesi’a, as elsewhere in the Mishnah, is a professional handler of money. Bankers evaluate the quality of coins,

54 Indeed, outside of m. B. Mes., there are only two passages (m. B. Bat. 5:8, 10) that deal with the marketer in connection with the rules of the marketplace. The bulk of the contexts in which references to markets appear are related to ritual (tithing, oaths, etc.), with a few cases where markets are discussed in the context of the rules of damages or property relations (e.g., m. B. Qam. 8:1 [valuing the damage done to a person by considering the damaged per-
son a slave for sale in the market]; m. B. Bat. 2:3 [where an artisan may open a shop; and whether neighbors can prevent or restrict an artisan]).
exchange coinage, accept deposits, and act as agents in the transfer of money.55 With the exception of the lending of money at interest, which we ought not to expect in the Mishnah’s exposition of the role of banks since this is prohibited by the Mishnah in general, these functions correspond quite closely to the patterns of the professional handling of money in the Greco-Roman world.56 This is one of those many situations in which we should like to know to what extent the Mishnah’s understanding of civil law was determinative for a more or less broad sector of Jewish society in Galilee—or at least expresses assumptions about what civil law consisted of.

55 In addition to the passages from m. B. Meṣ. cited in the text, the following should be noted: m. Ma’atī Ś. 4:2 (exchange); m. Šēbu. 7:6 (exchange). m. Me’il. 6:5 basically parallels M3:11 (deposit) (see Section II.A.2). If the “nail of the šulḥān” referred to in m. ‘Ed. 3:8 and m. Kel. 12:5 refers to a nail upon which the moneychanger’s scale was hung (as Maimonides took it) and not to some other fixture (as Rabad understood it) we have reference in these pericopae to the practice of exchange or testing. The reference to showing betrothal money “on the table” (m. Qid. 3:2) presumably refers to a “banking” establishment; the gloss in the Tosepta: “For he said only that he would show her [betrothal money] from his own” (t. Qid. 3:3), implies that the bridegroom in question is a banker who holds other people’s money. More ambiguous is the reference to the man who says to his wife: “Lo, your divorce document is placed on the table” (m. Ket. 8:8), which may be a reference to documents deposited with a “banker.” See also t. Ma’atī. Ś. 1:1 (deposit); 3:3 (a variant of m. Ma’atī Ś. 4:2, dealing with exchange); t. B. Qam. 10:10 (exchange); the passages from t. B. Meṣ. are discussed below. See also Sipre Deut. 13 (ed. Finkelstein, p. 22) (examination of money).

In this section I refrain from discussing passages that deal with the “temple bankers” as they are described in the Mishnah (m. Šeq. 1:3; cf. t. Šeq. 1:8; 2:13; compare the references to the trapezai of the kollybistai that Jesus overturns [Mk 11:15; Mt. 21:12; Jn. 2:15; also a variant to Luke 19:45]; see A. Gulak, “Banking in Talmudic Law” [Hebrew], Tarbiz 2 [1931], 165–71) since these sources, even if historically accurate, describe an institution that had been destroyed with the destruction of the Jerusalem Temple itself in 70, and that was, at any rate different from that of moneychangers not tied to a temple or governmental institution.

56 See L. Mitteis, “Trapezitika,” ZRG (Röm. Abteilung), 19 (1898), 198–260; R. Bogaert, Banques et banquiers dans les cités grecques (Leiden: Sijthoff, 1968); R. S. Bagnall, R. Bogaert, “Orders for Payment from a Banker’s Archive: Papyri in the Collection of Florida State University,” Ancient Society 6 (1973), 108; Andreau, 1987. For the relationship of Rabbinic tradition to ancient banking practice see, in addition to the article by Gulak cited above, S. Krauss, 1911, 411ff. (I have not found the corresponding section in idem, Qadmōniyyāt ha-talmūd [Berlin, Vienna, 1924], the Hebrew translation); and S. Ejges, Das Geld im Talmud (Vilna/Vilnius, 1930). The question of the extent, role, and economic significance of bank loans in the ancient world in general is currently debated, with the minimalist position articulated by M. I Finley (e.g., 1985, 141–2). Bogaert is inclined to limit the importance of bank credit in the Greek speaking world to consumer loans; Andreau argues that in the Latin part of the Empire the bankers were involved in commercial loans but limits the clientele of the bankers to those below the wealthiest members of society. For a more positive evaluation of the extent and role of banking, at least in fifth century Athens, see E. Cohen, Athenian Banking (Princeton: Princeton, 1992).
shared with other, non-Rabbinic groups in the society — and to what extent, from the point of view of actual praxis, Rabbinic legislation developed in a vacuum. While it is quite possible that the Mishnah chooses to overlook the existence of moneychangers who might lend money at interest, it is worth noting that when the Mishnah lists those people liable in any given transaction involving interest, there is nothing about the list to suggest that it is professional money handlers who are particularly involved in lending at interest (M5:11).\(^{57}\) This may reflect the greater interest in non-professionals on the part of the people who produced the Mishnah (a tendency noted in connection with markets above), but may also point to a limited role for the šulḥānī in matters of credit in general.

To begin with the question of evaluation of coins, in the case of a coin suspected of being underweight, it is to a moneychanger; and not to a magistrate, that one brings the questionable coin (M4:6):

[A] Until when can one return [such a coin]?
[B] In the towns (ba-kērākīm), long enough to show [it] to a moneychanger;
[C] and in the villages (ba-kēparīm) until Sabbath eves.

This pericope points out another feature pertaining to bankers: they are thought to be concentrated in towns, or rather, they can be expected to be found functioning in their official capacity every day of the week in towns, but not in villages.\(^{58}\)

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\(^{57}\) Similarly, in the documents from the Judean Desert, there is no indication that the lenders are professional money lenders (see, DJD II 18, 114 [fragmentary]; P. Babatha 11; H. M. Cotton, “Loan With Hypothec: Another Papyrus from the Cave of Letters?” ZPE 101 [1994], 53–9 [fragmentary]).

\(^{58}\) Cf. the versions of M4:6 in T3:20 and Sipra Bē-har 3:8 (107d) which add after [D]: “For it is the manner of the marketplace (ṣūq) to stand (ʿomēd) in the small towns (ṣayyārōt) from eve of Sabbath to eve of Sabbath.” (Jastrow, s.v., ṣīr is presumably correct in listing ṣayyārōt as a variant plural of ṣīr; I could find no examples in ancient Rabbinic literature to the ṣayyārā in the singular.) This gloss (it begins with an explanatory formula, ṣē-kēn, and has a shift in terminology: the Mishnah discusses the kērāk and the kēpar, but these bāratōt explain [A–D] in terms of an ṣīr) requires that ʿomēd be taken as “be suspended” (as argued by Krauss, 1924, vol 1.1, 74), although the language itself might be taken to imply that the market “continues” from Friday to Friday. At any rate the testimony of the bāratōt with respect to M4:6 [A–D] seems to place the availability of “bankers” in clear relationship to the articulation of marketplaces. Safrai’s claims (Z. Safrai, 1994, 292), that “the šulḥānī was found only in the polis,” and that “In the rural sphere ... there was no šulḥānī,” citing M4:6 and T3:20, seems to me a misreading of these passages.
Although not referred to in *m. Baba* Mesi’a*, a closely related aspect of professional money handling attributed to the *sulḥâni* is the exchange of coins.59 This is best expressed by *m. Ma’dser Šeni* 4:2:

[A] They redeem second tithe according to the cheaper market price (*kē-ša’ar ha-zol*):

[B] as the shopkeeper (*henwâni*) buys, and not as he sells;

[C] as the moneychanger (*sulḥâni*) breaks up (*pôrê’ê*), and not as he combines (*mēṣârêp*).61

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59 Compare, once again, OGIS II 515 (Mylasa), illustrating the role of *trapezistai* in exchange, but also their official status: only they may exchange (foreign) currency, and they maintain a special right of exaction against unofficial exchangers in accordance with special guarantees (*exousia pratesthai katha ἐσφαλισταί*; partially restored); and OGIS II 484 (IGR IV 352; Pergamum) in which, too, the official character of the professional moneychangers, and their apparent power over the marketplace are notable.

60 In a citation of this pericope (but not in the text of the Mishnah itself preceding the chapter), the Leiden ms. of the Yerushalmi, and following it the Venice *editio princeps*, read *sulḥâni*, “moneychanger,” here (y. Ma’at. Ś. 4:2 [54d]). This is presumably an error since (1) this citation retains the terminology of buying and selling in *y. Ma’at. Ś. 4:2 [B] and of coin exchange in [C], and (2) the passage is cited again shortly afterwards using *henwâni* in [B].

61 Clause [C] is difficult to translate. The transaction presupposed is that the owner of second-tithe money in small denomination coins may “redeem” them for an equivalent value in higher denomination coins (just as one may redeem second tithe produce, Deut. 14:22–7), and take these coins to Jerusalem (see, e.g., *m. Ma’at. Ś. 2:7–8*). [A] states that second tithe is redeemed at “the cheaper market price,” and the parallel construction between [B] and [C] suggests that they are both explications of the same principle, the former ruling in the case of second tithe produce, and the latter in the case of second tithe coins. The problem is that if we understand the terms *pôrê’ê* and *mēṣârêp* to take their expected meanings of “give change” and “give a higher denomination coin for several lower value coins” respectively (as Gulak, 1931, 155 and n. 3 insists we must) [B] and [C] appear contradictory. (On *pôrê’ê* see: *m. Ṣebi*. 5:8; *m. Ma’at. Ś. 2:9* [m. Ṣebi. Ed. 1:9] [cf. *m. Ma’at. Ś. 2:8* = m. Ṣebi. Ed. 1:10]; in *m. B. Qam.* 10:1 *pôrê’ê* may have as its subject one who wishes to receive change, but the basic sense of “breaking up” a high denomination coin is retained; see also *t. Ma’at. Ś. 4:13; t. Ket. 6:5; t. B. Qam. 10:22. For *mēṣârêp* as “combining” coins [i.e., and replacing them with a higher denomination coin] see *m. Ṣebi*. 2:1. See further below, however.) If OGIS II 484 (IGR IV 352) is any indication, moneychangers accept more copper coins when selling *denarii* (i.e., when they are *mēṣârêp*), than they give out when they give change (*pôrê’ê*) (this was also the view of the traditional commentaries, e.g., Maimonides, R. Samson of Sens, Bertinoro, *TY*, and *TYT*, MēPekeš Ἴελωμον ἄδ λοκ). Thus, [C] states that one who redeems second tithe money (corresponding to the “produce”) does so at a rate at which the purchasing power of the higher denomination coin (the “money”) is relatively low (i.e., a rate at which one will need to spend more silver to redeem the same amount of copper). By contrast [B] rules that one exchanges second tithe produce for coins at a wholesale rate, where the purchasing power of the coin is high. The introductory clause [A] also implies that we should expect in [C] a ruling that
It is this difference in exchange rates that constitutes the wage of the moneychanger. As in the case of markets, there is no discussion of governmental administration of moneychangers. It is impossible to tell to what extent this reflects the reach of economic administration in Roman Galilee on the part of either the local or imperial government, and to what extent it reflects the absence of concern for (or, indeed, the conscious and ideologically motivated removal from consideration of) this topic. As the Mishnah has come down to us, a central distinction is made between professional money handlers and non-professionals with respect to deposits: when money is deposited, unbound moneychangers may make use

works to the advantage of the householders (i.e., by assigning a relatively lower value to the second tithe coins to be exchanged), and not to their disadvantage. (Cf. Gulak, 1931, 155, who argued that "the lower market price" in [A] works to the disadvantage of the household undertaking the redemption; compare m. Ma’as. §. 4:1.)

It should be noted that the traditional commentaries on this pericope unanimously took pôrêṣ and mešárep to mean the exact opposite of their expected definitions: pôrêṣ is taken to refer to the purchase of copper coins by the banker, while mešárep is understood as "when the moneychanger combines pûrêṣ in order to give them to people in exchange for a selâ" (Ber
tinoro; in addition to the commentaries cited above, see Lieberman, TK, 2, 751 to t. Ma’as. §. 3:3 [II. 6–7]). In favor of this interpretation is the fact that the terms pôrêṣ and mešárep are not entirely stable in Tannaitic literature. For instance, in m. Ma’as. §. 2:8, pôrêṣ is used to mean "combine second tithe coins into a larger coin (selâ); while in a closely parallel pericope in 2:9 the same verb means "to change into smaller denominations." Similarly, in t. Ma’as. §. 3:2–3 the same transaction (exchanging smaller second tithe coins for a larger denomination) is described with the participle pôrêṣ when exchange for silver coins is concerned, and again with mešárep when gold coins are involved (see Lieberman, TK, 2, 751, n. 2) (It is possible that t. Ma’as. §. 4:9 uses pôrêṣ in the sense of accept small coins in exchange for a larger.) If we wish to retain the sense of "give change" for pôrêṣ and "combine [in exchange for a higher denomination coin from the banker]" for mešárep in [C] and still resolve the problems associated with [C], we might perhaps consider [C], like [B], to deal with the exchange of produce for (cop-
p]perr) coins and to rule that one values the copper coins at the higher rate at which the banker values them when making change (see Maimonides, Code, Ma’asêr Šeni 4:18: "... and he should provide the coins [for the redemption of produce] as the banker gives change (pôrêṣ); see also t. Ma’as. §. 3:2–3, which, despite the problematic usage of pôrêṣ and mešárep noted above, and assuming that it agrees with the rule in m. Ma’as. §. 4:2 and echoed in t. Ma’as. §. 3:1, may offer an analogous case: where one redeems second-tithe money with higher denom-
ination coins it is that higher denomination coin that is to be converted into second-tithe that is valued "as the shopkeeper buys ... as the moneychanger breaks up ....").

62 Compare three documents to which reference has already been made: (1) P. Oxy. XII 1411 (Oxyrhynchus, 260), in which the strategos intervenes to force moneychangers to open their doors and receive coins; (2) OGIS II 515; and (3) OGIS II 484 (JGR IV 352), in both of which the running of the banks and the charge that the moneychangers charge for exchange are intimately tied to the town administration.
of it while lay depositaries in the same situation are prohibited from using the deposited money.\textsuperscript{63} Since in the passage in which this distinction arises the non-professional depositary with whom the banker is compared is not paid, it follows that the banker, too, is assumed not to be paid directly for his care. It follows, too, that when the Mishnah explicitly distinguishes between the cases of bound and unbound money on deposit in connection with a šulḥānī (M3:11 [B–C]), the permission to use the unbound deposit should carry with it an increase in liability\textsuperscript{64} corresponding to the increased risk to the deposit, but perhaps also in compensation for the benefit that the moneychanger is thought to derive from this use. Unfortunately the Mishnah does not specify what this benefit consists of.\textsuperscript{65}

\textsuperscript{63} M3:11, with a close parallel at m. Me'il. 6:5. See above, Chapter II.D.2, n. 150, in which I suggest that the Yabnean dispute in M2:7 may have originally been a general dispute about the use of deposited money by non-professional depositaries. At any rate, this dispute is now localized in a discussion of the proceeds of the sale of a lost object, and in M3:11 (and m. Me'il. 6:5) that a “householder” may not use money deposited unbound is taken as settled. Compare the institution of depositum irregulare in Roman law: see the passages from the Digest cited in Chapter II, and Mitteis, 1898, 209–12; F. Schulz, Classical Roman Law (Oxford: Clarendon, 1951), 519–20; W. W. Buckland, A Textbook of Roman Law, 3 ed., P. Stein (Cambridge: University Press, 1963), 469–70 (these last two argue that the institution was a post-classical one in Roman law); and the detailed review by Andreau, 1987, 533–44 (who tries to locate the institution within the classical law). Reference should also be made to the interest bearing account with a trapezites referred to in the Gospel parable of the talents (Mt. 25:14–30) or of the pounds (mnai; Lk. 19:12–27). The matter-of-fact assumption that the servant ought to have given the money to a banker and derived interest is fascinating in light of the later Christian understanding of usury (and of medieval Jewish moneylending).

\textsuperscript{64} This increase in liability is made explicit in some manuscripts of the Mishnah, which add: “Therefore if they were lost he is liable for them” after M3:11 [C]. See the note to this pericope in Appendix I (and brief discussions in Sections A.2 and D.2 of Chapter I), and cf. the language of M2:7 [J–M], which also makes the principle of greater liability explicit and may be the source for the interpolations (if they are such) into M3:11.

\textsuperscript{65} One possibility is investment of funds in a “partnership” that avoids the prohibition of usury. See, e.g., M5:4 [B–C]: “let him [the householder] not give him [the shopkeeper] money with which to purchase produce for half profit, unless he gave him his wage as an idle laborer” (see also T4:14–22). The other transactions in M5:4–6 (and Chapter 4 of t. B. Mez.) involve the provision of raw materials (produce, animals to be raised) and not liquid capital, which implies that the party providing the capital is thought to be a householder and not a professional money handler. Nevertheless, this possibility is an interesting one, especially in light of the current debates about the role of bankers in the commerce of the ancient world in general.

The Tosepta offers another possibility, in connection with funds designated second tithe money (t. Ma'as. Š. 1:1):

[G] And let him not give them to the banker [so that the latter might] adorn himself with them (lēhitnā'št bāhen), or lend them to glory in them (lēhīt'sṭēr bāhen);
In M9:12 [G], the šulhānī has on deposit money belonging to a householder, but the issue at hand is not whether the money is bound or not but the keeping of accounts by the professional money handler for the householder, and, in particular, the authorization of the moneychanger to make payments on behalf of his client. Alternatively, the banker or shopkeeper advances money to the worker (cf. n. 68). The passage is especially important since it is one of the few occasions on which the arcana of Rabbinic law have found their way into the work of classical historians: it has been asserted that for specific legal reasons Jews developed the institution of the check.66 In the context of a discussion of the liability of an employer to pay the wages of the laborer (and, according to M9:12 [A], any payment covered by the word ṣēkār) “on that day” (Deut. 24:15; see also Lev. 19:13) the ruling is given

[H] [but] if [the householder gave them] so that rot might not arise on them, lo, this is permitted

It is the status of the money as second tithe that raises the possible prohibition in [G]; by implication, bankers are permitted to engage in these activities with profane money. In this passage, the šulhānī is not deriving direct monetary benefit from his use of the money, but prestige by lending money interest free, or by appearing to be wealthy. A related tradition is worth citing in this context (T4:2):

[F] How does a person lease (matkīr) money to a banker?

[G] To adorn himself with them (lēhitāvūt bāhen), or to teach himself with them (lēhitlāmmēd bāhen), or to glory in them (lēhirātēr bāhen).

[H] If they were lost or stolen he is not liable for them.

[I] If they were taken from him by violence (bē-ōnes), lo, he is like a paid depositary.

[J] If he was made a third party trustee (niṣṭālē) on their basis (ʿalehem), it is prohibited because of [prohibited] interest.

[K] And if he [the householder (?)] did thus with sacred goods [i.e., leased out sacred money], lo, this one has stolen sacred goods (maʿād).

[J] is difficult to interpret. The reading niṣṭālē follows Gulak, 1931, 163, and Lieberman, TK, 9, 193–4. Lieberman took [J] to mean that if, because of the money that the banker leased (i.e., because of his apparent wealth), he became a paid trustee for another persons’ property, he has used the initially leased money as security for the trusteeship, and put it at risk. Therefore the banker would become liable for any accidental or violent loss (ʿōnes), as in any case of loan, and would no longer be “renting” the money, but borrowing it at interest. If Lieberman is correct, we have here reference to another source of income for bankers: paid deposits. At any rate, the kinds of uses to which a banker is thought in [G] to put money—for which, in fact, the banker is considered willing to pay a fee [F]—are either related to prestige (which, if Lieberman is correct, leads in turn to a banker’s ability to receive fees from others), or to furthering his knowledge of coins in circulation. In neither of these two passages is lending money at interest, or investment in commercial enterprise one of the expected uses to which a šulhānī might put money deposited with him.

that: "If he sent him over to the shopkeeper or to the moneychanger he has not transgressed it [the Scriptural commandments]." First, it should be noted that there is no inherent connection between the "sending over to a shopkeeper or banker" and the specific Scriptural obligation to pay one's worker. Rather, the pericope merely considers whether an employer's obligation has been fulfilled if rather than handing over coins the householder has sent the laborer to a banker. Second, while it may well be that the transaction in question does not take place with all three parties (banker, employer, and employee) present, this does not mean that the institution involved was what we conventionally call a check: a document addressed to the payee in place of payment, which the recipient can redeem for money at the bank. There is no hint in our pericope that the transaction involves a written document on the part of the employer (although the professional presum-

67 Hebrew: himhāhā. Eiges, 84, n. 5, reading the verb as "erase," took it to be the translation of the Greek diagraphe, with the sense of both "cross out" and "pay" (überweisen). This identification is difficult in light of the use of the verb in Greek in connection with banking practices. Although the imperative diagrapson is used in Ptolemaic orders for payment up to the middle of the third century (Bagnall, Bogaert, 1973, 94–5) the use of the verb or of the noun diagraphe in the context of banking does not convey the sense of "erasure" (on these terms see Mitteis, 1898, 213–18; Bogaert, 1968, 51–4, 57–9; and P. Drewes, "Die Bankdia-
graphe in den gräco-ägyptischen Papyri," JJP 18 [1974], 103, who argues that diagraphe as the term for a document does not refer to orders for payment, the closest analogy to the transaction in M9:12). The root mhhly can also have the sense of "hit, strike" and in this context probably means "shoved him off."

68 Certainly, the Babylonian tradition (B112a, views attributed to Rabbah and Rab Sheshet), which asks whether having been refused by the banker the worker can now go back (hōzer) to his employer, makes most sense if the worker appears unaccompanied with his employer. Nevertheless, as Gulak noted (1931, 159), elsewhere transactions through a money specialist take place with all three parties together. One particular example, very similar to ours is worth citing, because it offers a rather different version of paying workers through a sulhātī (T4:9; Y5:2 [10b]; cf. B73a):

[A] Ass drivers and workers were standing over him (ṭdmīm ṭĀlāyv) in the mar-
kerplace,

[B] and he said to the moneychanger:

[C] "Give me a dinār worth of coins (māṣiḥ) and I will see to them (ṯāparsēm),

[D] "and I will pay you the equivalent of a dinār and a tērisit (cf. Latin tresii),

which I have in my pouch."

[E] If he had [that much] in his pouch, it is permitted.

[F] But if not, it is prohibited.

The employer appeals to the banker on the spur of the moment, to advance money to him for workers who are present at the time. This transaction is, it should be noted, not one based on an "account" at the bank, but a short term loan. (Gulak, 1931, 163–4, thought that this passage is evidence of credit and clearing transactions for traders removed from their residences. The context, however, implies a local householder and not a trader, and the instant credit that the employer receives reflects local and personal, as opposed to institutional, trust.)
ably has a written register), nor is there any reason why the moneychanger or shopkeeper should not be considered to be acting on direct instructions from the employer. Third, even if the form of payment outlined in M9:12 [G] should be taken to be a check, it is likely that this reflects not financial development, but the rather narrow scope of transactions involving bankers or shopkeepers who are familiar with both payer and payee, and (in light of the fact that a shopkeeper is as good an example as a moneychanger) of the small scale of the transaction as well.

If nothing else, the discussion of banks in *m. Baba*\(^{2} Mesi'\)\(\)a\(^{2}\) presupposes a society, or at least an audience within the society, for whom use of money, especially verification, exchange, and deposit, are important parts of everyday life. The absence of discussion of the involvement of moneychangers in loans may reflect the theological program of the Rabbinic movement, but if it may also be taken to result from actual practice, this absence also sheds some light on the real scale of activities available to the *šulhānā*, who may conceivably have been incapable of making loans for more than small amounts or beyond the very short term because of the risks involved. (If wealthy householders did typically borrow money from bankers, it may be argued, we should have expected rules about when such loans are or are not prohibited.) One by-product of a system in which loans are undertaken by individuals is that economic obligations take on a personal character, so that the differential distribution of wealth and power is played out in a very immediate way. Another possible indication of the scale of banking is the proximity of rules concerning moneychangers and shopkeepers, and parallel discussions of these professionals, in a number of sources.\(^{69}\) This suggests that for the producers of the Mishnah, bankers played the same role in society as did shopkeepers: the provision of a service that allowed the "householder" to live the appropriate lifestyle. This same proximity also suggests that when we use the word "banker" we should not imagine a powerful institution controlling substantial assets, but a rather limited establishment involved in "retailing" money.

**B. Economic and Social Relationships**

The previous section focused on the extent, and especially the limitations, of economic institutions as they are described in *m. Baba*\(^{2} Mesi'\)\(\)a\(^{2}\). In part,

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\(^{69}\) M2:4 [A–D]; 3:11 (*m. Mešil* 6:5); 9:12 [G]; see also *m. Ma'at*  Ṣ. 2:9 (which, although it does not refer to bankers, opposes the exchanging of coins with the establishment of an account with a shopkeeper); *m. Ma'at* Ṣ. 4:2; *Šebu* 7:6.
but only in part, this forms the background for an examination of the economic and social relationships in the tractate: for example, which transactions are executed by means of money, take place in the marketplace or are mediated by professionals? In the present section, I review these relationships to elucidate their connection to economic institutions, but also, and more importantly, as face-to-face relationships both between equals and between non-equals in which divisions of order, status or class may be played out. Where possible, I have also examined the economic interests that may be reflected in the rules of the Mishnah. Since this study focuses on relationships described in the m. Baba Mesi'a, I have chosen to leave out of consideration for the present relationships within the household (such as husband-wife, parent-child, or master-slave), which are referred to only sporadically in m. Baba Mesi'a. This exclusion is not meant to minimize the importance of household relationships, or to imply that one type of relationship is more “economic” or less “social” than the other. Indeed, in Rabbinic law a marriage is nothing if not a contractual relationship, while in relationships outside the household personal status can have legal implications. The distinction does take into account the fact that the forces that play a role in structuring relationships of both kinds do so differently within the household than outside of it. To take one example: relationships between buyers and sellers, especially where trade is mediated between professionals, can become impersonalized in a way that household relationships, in particular where wives and slaves are few, are far less likely to. Thus, manifestations of hatred, love, fear or loyalty may be expected to be different in the context of a marriage than in an arrangement to buy or sell produce, and it is the latter type of relationship that m. Baba Mesi'a deals with. The discussion roughly follows the order of presentation in the tractate.

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71 See, e.g., M1:5; 3:10; 7:6. The last of these is particularly interesting, since it implies that even adult male children could be described as financially part of the household of their father. See further, J. R. Wegner, Chattel or Person: The Status of Women in the Mishnah (Oxford: Oxford, 1988); P. V. M. Flesher, Oxen, Women or Citizens? Slaves in the System of the Mishnah (BJS: Atlanta: Scholars Press, 1988).

72 See e.g., m. B. Qam. 8:6 (where a list of compensations for various kinds of abuse is glossed: “This is the general rule: it all follows his [the plaintiff's] honor”).
1. Finder and loser.

The discussion of the treatment of lost objects in *m. Baba' Mesi'a* is surprisingly long: it comprises the first two chapters of the tractate. As the numerous references to passages from Chapters 1–2 in the previous chapter indicate, the material on lost objects seems to show traces of considerable redaction from sources, sources that seem at times to approach the legal problems from rather different perspectives. There are essentially two legal issues that are dealt with in connection with lost objects: (1) whether and how one can acquire an object that one has found; and (2) what obligations arise for the finder who may not acquire the object, but must care for it instead. The first of these two topics shares a good deal with the way Roman jurists deal with similar problems and suggests a common set of concepts for discussing possession, ownership, and how they are acquired. Notably, these rules are discussed in *m. Baba' Mesi'a* without recourse to Biblical citations. The second topic derives ultimately from Scripture and is particularly characteristic of the Jewish legal traditions.73

The first two pericopae of Chapter 2 form a rhetorical frame in which objects that one finds are distinguished by whether one may acquire them, or whether one is obligated to proclaim the find publicly (“Which found objects are his, and which is he obligated to proclaim?” M2:1 [A]). The core of the pericopae consists of two matched lists of objects (M2:1 [C]; 2:2 [B]). The principle that determines the distinction is not made explicit, and seems to be a rather loose one: if an object can be presumed to have been consciously placed where it was found, it is considered not to be lost and must be proclaimed; and if it is readily identifiable, even if it can be presumed lost, it cannot simply be appropriated.74 An Ushan gloss to M2:1 (M2:1 [E])

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73 There is some analogy between the obligation to care for a lost object and the Roman institution of *negotiorum gestio*, the intervention into the affairs of another person for that person’s benefit and without their knowledge (see Buckland, 1963, 537–9; Schulz, 1951, 620–4). However, as Schulz already noted (p. 624, drawing an explicit contrast with the same verses that form the Scriptural basis of the Mishnaic rulings) the Roman institution protects the one who intervenes to save another’s property, but does not require it. Moreover, the original focus of the Roman rules seems to have been the management of the affairs of individuals who were absent (see Schulz, 1951, 621) or dead (cf. D 3.5.3.pr. [Ulpian quoting the praetorian edict]), and the kinds of intervention imagined on the part of the gestor (see, e.g., D 3.5.1 [Ulpian] and throughout the title) are hardly so mundane as the feeding of a lost animal or the dutiful rolling or unrolling of a scroll.

74 Presumably, if the finder is required to proclaim the find, the loser will be required to identify it in some way. What is not clear, however, is what criteria the finder is supposed to use in determining his obligation. (Any item might have distinguishing marks, but these may not be apparent to the finder.) For some items on the lists in M2:1–2 the reasoning seems to be that there are clear identifying marks (e.g., home made loaves, in contrast to bakers' loaves,
emphasizes that items that have some variation (this is exemplified by variations in such typically "generic" articles as fig rounds or loaves, M2:1 [G]) must be proclaimed. While the rhetorical and legal presupposition of M2:1–2 is that found objects fall into two categories, those that must be proclaimed and those that may be appropriated, M2:3 [A–E] introduces a third category: those things that one should leave where they are. Presumably this is because they have no distinguishing marks, but clearly have been placed where they are: if the finder removes them the loser will be unable to identify them. More explicit is the tradition presented in M2:5:

[C] Just as the garment [in Deut. 22:3] is unique in that it has identifying marks and has claimants,
[D] so everything that has identifying marks and has claimants, he is required to proclaim.

This pericope invokes two criteria. The first is that the found object have identifying marks (this criterion is picked up in M2:7 [A–D]). The second, that the object have “claimants,” seems to imply that the object be something (a) that the previous owner would want to retrieve, but also (b) something that the owner should still expect to be able to retrieve. This is as close as the Mishnah gets to articulating the principle of ye’ud, despair on the part of the owner of ever regaining his lost object, as determining lapse of possession or ownership. which are standardized). For at least one item, the small sheaves (kērikōb), the determining factor is place: were these found in a public domain or a private one? As for bundles of coins or produce, or a stack of coins, distinguishing marks such as number or place (as Babi understood from this passage, B25a) or perhaps the knots themselves (cf. B25b, in connection with "bound fledglings," M2:3 [A]) are hardly the most stringent of criteria (cf. the dispute attributed to Rab Judah and R. Leazar in Y2:3 [8b] in which the former insists that the stack of coins in M2:2 [B] be made of “three coins from three kings,” and the latter that the stack be made “like a tower” [gōdālōm; E: gōdālōm; cf. T2:7 migdalōn; see Lieberman, Yerushalmi Neziqin, 134 n.1]; both seem to require some distinctive characteristic for the stack itself). If nothing else, however, a stack of coins has clearly been placed where it is; scattered coins may well have fallen.

75 So B25b.
76 Cf. the minimum value of a pērāṭā assigned to a lost object for the requirement of proclaiming the find to arise, M4:7 [H].
77 In a disputing gloss attributed to R. Simeon, m. Kel. 26:8, the criterion of niyya’ataḥ haḇeṭālūm, “the owners have despaired,” is used to correct a rule distinguishing between property in the hands of a thief and that in the hands of a robber. m. B. Qam. 10:2 invokes the concept in connection with tax collectors, robbers, military forces, and brigands (lūṣīm), property washed away in a river (cf. t. B. Qam. 10:24 = t. Ket. 8:4), or a flock of bees that migrates. Roman jurists also considered the problems of possession in similar cases (see, e.g., D
From the perspective of the loser, the issue of intention or will is only hinted at in M2:5. In M1:3–4 this same problem is approached from the perspective of the finder, with the result that the determinative power of human will is greatly limited. When a person picked up a lost object on the demand of another, the one who picked it up can only claim it as his own if he did not hand it over (M1:3 [C–E]). Where the one who picked it up has already handed it over, the mere statement “I have gained possession over it first” is not sufficient (M1:3 [F–G]). Similarly, the owner of property cannot

41.1.5.2–4 [Gaius], the ability to possess a flock of bees; 41.1.44 [Ulpian], retention or loss of possession of property carried off by force [wolves]).

Elsewhere in Tannaitic literature explicit connection between “despair” and lost objects occurs only rarely. See T2:2 (attributed, perhaps not accidentally, to a late Tannaitic figure, R. Simeon b. Eleazar), which includes “one who finds [something] on the road (vía; cf. Latin (via) strata or the street (pēlātanyá; cf. Greek plateía),” together with one who saves something from wild animals or the surge, with the general ruling: “lo, these are his, for the owners despair of them.” In the Amoraic literature, the concept is further fleshed out in terms of lost objects (see, e.g., Y2:1 [8b], a tradition attributed to R. Yohanan in the name of R. Simeon b. Yehosadaq that derives “despair on the part of the owners” from Deut. 22:3; and the stories about sages who lost coins in the market place and did not take them back when offered because of yĕḥāl, Y2:3 [8c]). The notion of yĕḥāl is somewhat analogous to the principle articulated in a number of Roman juristic texts, such as D 41.2.3.13 (Paul), which distinguishes between objects that diligent search would turn up (quia praesentia eius sit et tantum cessat interim diligens inquisitio, “because it is still present for him, and merely a diligent search in the meantime is lacking”), and those that are so lost that they cannot be found, for which possession lapses; and 41.2.25.pr. (Pomponius), which states that possession ceases when the object is so lost that it cannot be found; see also the text by Ulpian cited above (D 41.1.44). Although the tradition attributed to R. Yohanan in the name of R. Simeon b. Yehosadaq, cited above, identifies “despair” as a case where the object is “lost from him and from everyone” (not unlike the Roman juristic texts just noted), the Rabbinic concept of despair tends to have a distinctly subjective point of view (note the case cited from Y2:3 [8c], and see B26a-b [attributed to R. Nahman]): what is at issue is not only whether the object can be found, but whether the owner is (or can be presumed to be) still looking for the object. Compare D 41.1.57 (Javolenus): someone who finds something in the sea cannot get ownership until the original owner considers it abandoned.

Lieberman, Yerushalmi Nesiqin, introduction, p. 33, offers another interpretation of this pericope: in [F–G] the one who picked up the object hands it over thinking that it belonged to the one who asked him to pick it up; but in [C–E], he hands it over knowing that it was a found object. Thus, Lieberman locates the statement “I have gained possession over it” [D, G], in both cases, after the delivery of the object, and therefore in both cases the “finder” claims the object despite the fact that he has already handed it over. I confess that I do not understand this interpretation. (Is the claim “I have gained possession of it first” specific to [F–G], or is this implied in both cases [cf. TTY]; Lieberman cites only “’abārōnim’?”) On what basis should the “finder” in [C–E] retain a claim to the object after having turned it over? Lieberman’s wording is quite terse, but he apparently concluded that it is from the request of the rider, “Give it to me” [C], that in [C–E] the one who picked up the object realized that it did
will wild animals (gazelles or birds) that are on his property into his possession, and preempt others who were actually chasing the animals, unless the animals cannot move freely enough to run or fly off the property (M1:4 [D–J]). In the case of inanimate objects (such as money or utensils) the property on which they were found is partially determinative of who now owns the find (M2:3 [C]–4). In this case, too, it is not the property owner’s intention that establishes ownership of, for example, a utensil that someone else has found in the innermost part of a wall of a house (M2:4 [H]), but the fact that the property owner owns the house.

As noted above, the second aspect of the Mishnah’s treatment of lost objects is the obligation to care for items that are not deemed open for appropriation. In a sense, the finder of a lost object becomes a kind of depositary. Unlike a depositary, M2:7 [E–H] implies that the finder has limited rights to the use of the find, at least to set off the expenses of maintenance (“Let everything that produces and eats produce and eat ...”). On the other

not belong to the rider.) At any rate, however, the pericope seems to turn on what the finder does or says, and not on the information that he receives from the other party. Nor does the distinction that Lieberman makes between [C–E] and [F–G] follow from M1:3 itself in which both [D–E] and [F–G] deal with the implications of the same case [C].

For the ownership of wild animals, and the requirement that they be physically captured, compare, e.g., Gaius, 2.67–8; D 41.1.3.1; 41.1.5.1 (Gaius); 41.2.3.14 (Paul). The Mishnaic rule differs in that it considers animals that cannot get away to be acquired by intention if the finder owns the land on which they were found.

Compare thesauri inventio (i.e., finding a treasure) in Roman law. See Buckland, 1963, 218ff.; and D 41.1.3.1 (Paul); 41.1.63 (Tryphonius); 41.2.3.3 (Paul); 41.2.44 (Papianus); 49.14.3.10–11 (Callistratus). It should be noted that although the Roman jurists did not pay much attention to the obligation to “proclaim” treasures that one has found, there are traces of this kind of obligation, explicit in at least one case (D 49.14.13.11 [Callistratus]), in connection with finds in which the Roman treasury has an interest (treasures on imperial or public property, or funeral treasures). In addition, passages that distinguish treasures buried for safe keeping (for which appropriation is actionable for theft) from those that are ancient and ownerless presuppose some sort of mechanism for making the distinction.

This is not explicit in the Mishnah, although if, as I have argued, M2:7 [I–M] properly pertains more generally to deposits, the idea that a find is considered a kind of unpaid deposit is implied. Compare T2:22 (cf. Y2:10 [8d]; B30a), which, after a series of rules closely related to M2:8 (T2:21–2), makes the correlation of finds and deposits explicit: “Just as you say in [the case of] a lost object so do you say in [the case of] a deposit” (T2:22 [1]). This is followed by a parallel to M2:8 [D–E], now introduced: “One who deposit a garment with his fellow ...

...” (T2:22 [J]).

M2:7 [G–H] makes it clear that the reason the finder is entitled to sell the object is that the finder thereby prevents loss (due to expenses) to the owner. On the other hand, when the found animal does “produce and eat” it is not automatically clear that the permission to benefit from the animal was strictly limited to the value of the labor expended by the finder (as according to, e.g., T2:20 [cf. B28b]; so also Maimonides, Code, Gêzelâ wa-‘âbedâ 13:15). A
Institutions and Relationships

hand, this pericope does not openly stipulate that the finder is entitled to compensation for expenses. Indeed, the requirement to sell unproductive finds [F] (and the verse exegesis that follows [G–H]) may be taken as aimed at preventing a situation where the finder might legitimately claim compensation. By contrast, M2:9 [F–G] allows for compensation, but only to a limited extent:

possible interpretation of M2:7 [E–F] is that the finder of a productive animal is considered a kind of borrower with general permission to use the animal for personal benefit. Some slight support for this reading comes from the dispute over what to do with the proceeds of the sale of the unproductive find [I–M], which follows in the pericope. I have already suggested that this dispute may originally have been concerned with the deposits of money in general (see Chapter II.D.2, n. 150, and above section A.3, n. 63). In context, however, the inclusion of this dispute form here may be connected with the idea that the finder was entitled to use the find, which the money in question now replaces. Indeed, since in M3:11 the prohibition of householders using deposited money seems settled, the appearance of the Yabnean dispute in M2:7 may reflect a specialized reinterpretation of the dispute, which centers on the proceeds from the sale of found objects alone. Since an animal does require feeding and maintenance, but the money replacement does not, the dispute might then center on whether the money is like the find itself (R. Tarfon) or like a deposit (R. Aqiba). Since the use of the money in question benefits the finder alone (i.e., since money requires minimal upkeep) and yet according to one view the finder is permitted to use it, it is possible that in [E] as well, the found animal was considered a kind of loan, to be used for the finder’s benefit.

83 M2:7 [H]: “See how [i.e., at what value?] you return it to him.” Although in principle the finder may be entitled to claim compensation, this comment, it seems to me, instructs the finder not to accrue expenses or otherwise diminish the find (see further the note to M2:7 in Appendix I). M2:8 also does not explicitly refer to compensation, but here there is nothing in particular that suggests that the author of M2:8 did not intend for the finder to be eligible for compensation. Compare the related pericope in the Tosepta, T2:22 (referred to above):

[I] Just as you say in [the case of] a lost object so do you say in [the case of] a deposit.

[J] One who deposits a garment with his fellow—

[K] he should shake it out once in thirty days (=M2:8 [D]),

[L] and he should spread it in accordance with its needs, but not for his honor (=M2:8 [E]).

[M] If it was great, he takes his wage (šékārō) from it (mi-menāh).

Since [M] discusses reward (šākār), “it was great” refers to the labor involved with the upkeep of the deposit. Lieberman, TK, 165, took [M] to refer to depositaries only (citing M2:9 [F–J] as the law for lost objects), but the implication of the introductory clause that the rules for deposits and finds are analogous (T2:22 [I]) makes this difficult. More problematic is the rule that the finder takes his wage mi-menāh. The feminine pronominal ending presumably agrees with kēšūt, “garment,” in the previous sentence (and M2:8 [D]). This may imply that at a certain point the finder is entitled to sell the deposit to recoup “wages” (at which point the depositary or finder will no longer be caring for the object and henceforth not eligible for a wage). Another possibility is that the wage consists of the use of the garment for the finder’s benefit, in which case this ruling sees the found object as a kind of loan (see the discussion of
[F] If he had given up a selah let him not say: “Give me a selah.”

[G] but he gives him his wage as an idle laborer.

This passage is in tension with the material that follows it immediately (M2:9 [H–J]), which allows the finder to guarantee himself full compensation, or to evade the obligation. This last tradition may be a later supplement intended to resolve a perceived inequity in the law.\(^8^4\)

In considering the social background of the treatment of lost objects, it is worth considering the kinds of objects people are thought to lose or find: garments,\(^8^5\) domestic animals,\(^8^6\) wild animals,\(^8^7\) written deeds,\(^8^8\) a variety of goods available in the marketplace,\(^8^9\) articles of considerable value (books; vessels of gold, silver or glass),\(^9^0\) and baskets or sacks.\(^9^1\) Where Roman jurists, for instance, talk about finding a “treasure,” the scale of Rabbinic legislation is rather more homely. This does not mean that the people who produced *m. Baba^2 Mesi^a^2* were poor; indeed, the general argument of the first part of this chapter is that they (or their target audience) were not. It is important to

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\(^{8^4}\) On the textual and literary problems of M2:9 [F–J] see the note to M2:9 in Appendix I. Whether or not we read the word ‘immō in [H], the point of [H] is that the finder can guarantee himself full compensation either by means of self help (reading ‘immō) or by stipulation at the outset (omitting ‘immō). Properly speaking, [G–H] may refer to the opportunity costs lost in the time-consuming activity of returning an animal that repeatedly escapes (M2:9 [D]), and not to the expenses of long term care, and arguably discusses a different kind of problem than M2:7 [E–H]. But to the extent that [H–J] (or at least [I–J], if we read ‘immō in [H], see Appendix I) can be set at the moment of the find, where no distinction can yet be made between out of pocket expense and lost time, the implication is that the author of [H–J], at least, made no such distinction.

\(^{8^5}\) M1:1; 2:5 (citing Deut. 22:3).

\(^{8^6}\) M2:9–10 (the relationship of these pericopae with each other is discussed in Chapter II.A.2); the discussion of M2:7 implies rules concerning an animal (which “produces and eats”). M1:2 also deals with a domesticated animal, but may not be dealing with found objects at all but rather with the more general problem of claims at court. This may underlie the statement (with problematic attribution) in B2a, 8a: “The first part [of this pericope] deals with found objects, the last with buying and selling,” that is, M1:2 deals with disputed ownership of things bought and sold, and not merely lost objects. Compare the discussion of M1:1–4 in Chapter II.C.3.

\(^{8^7}\) M1:4.

\(^{8^8}\) M1:6–8.

\(^{8^9}\) M2:1–2; M2:3–4.

\(^{9^0}\) M2:8.

\(^{9^1}\) M2:8 [H].
note that this list does have its *Sitz im Leben* in the town: there is a great emphasis on market goods, on things found in a store or at a banker’s table (M1:4), and on written deeds. Domestic animals are mentioned, but do not make up the overwhelming focus of attention, and it is not impossible for a town household to keep a domestic animal or two.

A second important point concerns the question of social equality and hierarchy. In principle all people (or at least all adult males) are equal before the law: in the court setting of M1:1 there is no hierarchical distinction made between parties; similarly, not even the divinely sanctioned authority of a father can nullify the finder’s obligation towards the lost object and its owner (M2:10 [D]), because the law falls on all Israelites equally. However, there are breaks in this equality. The rule, “If he found a sack or a basket, if it is not his habit to take up [such things], lo, let him not take it up” (M2:8 [H]), introduces an aspect of personal honor and dignity: the finder is not asked to undertake something that would be unseemly. Considerations of ritual purity are taken to exempt the finder from having to deal with an animal found in a cemetery (M2:10 [C]). Whether this passage deals with priests or with lay Israelites observing priestly purity, it presupposes a particular hierarchical division between those people who are prepared to become impure and those who are not. Finally, Chapter 2 ends with an interesting pericope in which the obligations of sons and disciples to their fathers and teachers are compared, in favor of the teachers. Thus M2:11 hints at a social code (theoretical or not) in which, when given a choice between saving one’s own property, or that of one’s father or teacher, or of a stranger, there is a scale of values that determines to whom one’s obligations lie first.

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92 G. Hamel discusses purity rules and observance in the context of social status; see, e.g., G. Hamel, *Poverty and Charity in Roman Palestine, First Three Centuries C. E.* (Near Eastern Studies 23: Berkeley, California, 1990), 82–6. In a passage related to M2:10 [C], *Sipre Deut.* 222 and 225 (ed. Finkelstein, pp. 256, 257–8) reads: “... if he was a priest and it was in the cemetery, or an elder and it is not in accord with his dignity (*šnāh lēpî kēbōd*) ... he is exempt.” Thus *Sipre Deut.* explicitly connects this tradition with priests, (although it, too, cites a tradition about “dignity” to which compare M2:8 [H]). In the Mishnah, however, as in the close parallel to our Mishnah cited in *Mek. Kaspā* 20 (ed. Horovitz-Rabin p. 325), the person who is permitted to avoid becoming impure is not explicitly a priest. It is not impossible that a non-priest maintaining a high level of priestly purity is intended M2:10 [C]. This may mean that the pericope (or fragment) is relatively early (since material dated to the earlier period is consistently interested in lay purity) but this is hardly necessary, and in any case does not mean that at the end of the second century lay purity was not an important form of piety. For the literature see A. Oppenheimer, *The Am Ha-aretz: A Study in the Social History of the Jewish Period in the Hellenistic-Roman Period* (Arbeiten zur Literatur und Geschichte des hellenistischen Judentums 8: Leiden: Brill, 1977), 114–6 and passim.
2. Deposits.

The rules for deposit take up nearly all of Chapter 3 in *m. Baba* ṭa Mesīʿa, and are referred to elsewhere in the tractate as well. The most systematic exposition of the liabilities of depositaries is given in M7:8 [C–H] (= *m. Šebu*. 8:1):

[C] There are four watchmen:
[D] the unpaid depositary (lit. watchman), and the borrower, and the paid depositary (lit. wage-bearer) and the renter.
[E] The unpaid depositary swears for everything;
[F] and the borrower pays for everything;
[G] the paid depositary and the renter swear for the break, for the captured [animal], and for the dead [animal];
[H] and they pay for the loss and for the theft.

These rules are supplemented by a rejoinder (M7:10 [E–G]) that allows any of these “watchmen” to alter their liabilities by stipulation in the contract. What links the rules of M7:8 [C–H] together is the fact that all four “watchmen” hold property that belongs to another, and are responsible, to varying degrees, for the safekeeping of that property. In addition, all of these categories derive on some level from the exegesis of Exodus 22:6–14. The requirement that the depositary who is exempt from payment must take an oath derives, for instance, from Exodus 22:7 and especially 22:10. The connection with Scripture defines the choice of terminology for describing

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93 Outside the tractate, unpaid depositaries are referred to by title in *m. Seq*. 4:1; *m. B. Qam*. 4:9; 7:6; *m. Šebu*. 8:1 (parallel to M7:8 [C–H]), 2; see also references to the verb *hipqid*, “deposit,” or the noun *piqādôn*, “an object on deposit,” *m. Dem*. 3:4; *m. Ket*. 9:2; *m. Sof*. 7:1; *m. Git*. 3:5; *m. B. Qam*. 9:7; 8; 10:6, 7; *m. Šebu*. 4:5, 8; 5:1–3; 7:4; *m. Ker*. 2:2; *m. Meʾil*. 6:5 (close parallel to M3:11); *m. Toh*. 8:2; *m. Mekf*. 6:3. Paid depositaries are mentioned in M6:6–7; 7:8, as well as *m. B. Qam*. 4:9; *m. Šebu*. 6:5 (a near parallel to M4:9); 8:1, 6. See also the use of *piqādôn* in *m. Šebu*. 6:7, in the context of a discussion of loans against a pledge, and cf. *M6*:7 in which one who lends against a pledge is a paid depositary with respect to it.

94 Cf. the Roman juristic texts in which deposit can shade into a form of loan (*D* 16. 3. 24; 16. 3. 25. 1 [Papinian]; 16. 3. 26. 1 [Paul]; 16. 3. 28 [Scaevola]; 16. 3. 29. 1 [Paul]; in addition to the passages cited above in Chapter II.D.2 and the discussion of *depositum irregularare* in Section A.3 above) or hire (e.g., *D* 16. 3. 1. 8–10 [Ulpian]).


96 M3:1 goes further in granting the double payment required of a thief to the depositary if the latter paid although the depositary was entitled to take an oath.
the levels of liability for the renter and wage-bearer: theft, breakage, capture, and death.  

Systematic though this passage may be, it leaves out certain important details. First, nowhere in the passage, or in m. Baba² Mesía³ in general, are we told what form the oath that the depositary swears takes. Certain passages elsewhere in the Mishnah may be taken to mean that the oath supports the counter-claim of the depositary against the owner who comes to retrieve the deposit. Other passages, outside of the Mishnah, seem to imply that the depositary takes a more formulaic oath corresponding in some way to the Biblical oath “that he did not stretch out his hand (šaláh yádó) to the property of his fellow” (Ex. 22:7, 10), and echoing the language of Exodus 22:8: “For every matter of transgression (pešá) ....” Second, we are not told what

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97 To the terms in M7:8 (gēnebá, šeber, šebrúyá, mēt̄á) compare the terminology of Ex. 22:6–14 (gunnábā/gánáb jiggāněb, ništ̄ári, ništ̄á, mēt). See also Mek. Néṣáiqin 16 to Ex. 22:9 (ed. Horovitz-Rabin, p. 303), and the brief discussion of that passage in Chapter II.A.1.

98 See m. B. Qam. 9:7 [G–J], 8 [A–D]:

[G] [Owner:] “Where is my deposit,’

[H] [Depositary:] “It was lost (m. B. Qam. 9:8 [B]: stolen).”

[I] [Owner:] “I demand an oath from you (malbr’ak ‘amé).”

[J] [Depositary:] “Amen.”

While the contents of this oath are not stated, the context implies that the depositary swears that the deposit was lost (or stolen) to satisfy the owner. See also m. Šébu. 8:1–6.

99 See y. Šébu. 8:1 (38b): “What does he swear? ‘I did not transgress (lo’ pásá’et)” (it is not clear whether this is the conclusion of the báraitá—which precedes this tradition, or an anonymous later gloss to the báraitá; on the word ps see below). This same oath is presupposed by the Babli B82b, 83a: “It is all well (bi-šélamé) that an unpaid depositary swears that he did not transgress (lo’ pásá) with respect to it, but as for a paid depositary ....” (It should be noted that this statement arises in a discussion of whether a certain act falls under the heading of pešá—by this time a term for “negligence”—and it may be that it is this that determines the form of the oath. Nevertheless, it remains possible that the Babli is saying that in this case the unpaid depositary can take the conventional oath, but asks about the paid depositary in the same case). The same formula may also be presupposed by Mek. Néṣáiqin 16 (ed. Horovitz-Rabin, p. 300) to Ex. 22:7 (= 17 [p. 304]), to Ex. 22:10, which glosses “[and swears] that he did not (‘im lo’) stretch out his hand to the property of his fellow” with the following:

[1] “Reaching out the hand” is said here (Ex. 22:7) and “reaching out the hand” is said there (22:10):

[2] just as here an oath [is referred to], so there an oath;


[4] just as here in a court, so there in a court;

[5] just as here [“reaching out the hand” refers to use] for his own needs, so there for his own needs.

[6] just as here “On every matter of pešá” (Ex. 22:8), so there “On every matter of pešá.”
the positive responsibilities of the depositary are. Third, the liability for a depositary who does not live up to (unstated) responsibilities is left unspecified.

To a certain extent, liability for failure to perform one's responsibilities is discussed in the two supplementary pericopae that follow M7:8 (M7:9–10 [D]). In M7:9 [A–G], the absence of ḫnes implies a kind of passive negligence: failure to prevent the death of the deposited animal. In [J–K] active negligence is introduced: leading an animal to a place where it is likely that it will be hurt. In M7:10 [A–D], in addition to active negligence (“He took...”) the final clause [6] certainly implies that the oath referred to in Ex. 22:7, 10 is somehow related to the subject matter of 22:8: it is at least possible that the oath form še-loʾ pāʾal tūti, “that I did not commit pesaʾ,” is intended. More complicated is the oath attributed to Rab Sheshet (b. B. Qam. 107b; B6a): “One makes him [an unpaid depositary] swear to three oaths: [1] ‘[I swear] an oath that I did not transgress with respect to it;’ [2] ‘...an oath that I did not stretch out my hand to it;’ [3] ‘...an oath that it is not in my possession.’” Maimonides, Code, Seḥel ʿal-piqādōn, 6:1 took this to mean: “[1] That he watched it in the manner of watchmen, [3] and that such and such happened to it and it is not in his possession, and [2] that he did not stretch out his hand to it before that event happened which made him exempt [from paying but obligated to take an oath].” Maimonides’ paraphrase reflects a combination of a preset formula with a requirement for the depositary to swear to the truth of his claim (previous note). Notably, without Maimonides’ interpretation (and ignoring the insistence in the Talmudic text that there are three separate oaths, which for the Babi could have different implications, as the material that follows immediately at b. B. Qam. 107b shows) Rab Sheshet’s triple formula utilizes terminology that overlaps considerably in meaning (Rashi, in his comment to M3:6 itself [B33b] cites only a double formula: “That he did not transgress with respect to it and that he did not reach out his hand to it”), and may reflect the amplification of a tradition according to which the depositary swore only “that he did not transgress.”

In this connection, it is worth noting that already Josephus, Ant. 4.287, thought that the depositary had to swear that he did not lose the deposit through his own intention (bouleōsis) or malice (kakia) and that he had appropriated no part of the object.

100 In M3:6, what is disputed is whether the depositary in charge of rotten produce is required to let them rot (“lo, let him not touch them” [B]) or whether he should sell it in a court authorized sale. But neither view gives any indication of what is normally required of a depositary (even one who holds “let him not touch them” must surely have in mind a basic norm of expected activity). As noted in the previous section, M2:8 gives instructions for the care of certain types of lost objects; closely related material in the Tosepta is supplemented: “and just as you say in [the case of] a lost object, so do you say in [the case of] a deposit” (T2:22).

101 On this term see the note to M7:9 in Appendix I.

102 M7:9 [I–K] is clearly a supplementary form (“When does this apply?...”) that is intended to introduce what I have termed active negligence. The precise relationship between M7:9 [I–K] and the rest of the pericope is not obvious, however. The reference to brigands in [K] suggests that [I–K] refers back to [G] and thus supplements the entire pericope [A–H]. Alternatively, [H–K] could be read as an independent pericope that has been added to supplement [A–G]. In support of this is the inclusion of the word ha-zetēb, “the wolf” in [H] in some manuscripts of the Mishnah, an inclusion that brings [H] into some tension with [A] (see the note to M7:9 in Appendix I).
it up to the tops of the peaks ...” [D]), mismanagement or mistreatment is introduced (“If he afflicted it [ṣiqẓḥ] and it died ...” [B]), although the parallel structure of [A–B] and [C–D] suggests that the Mishnah may not be making a clear distinction between these forms of “negligence.” The clear implication of these passages is that the exemption from payment for the unpaid and paid depositary and for the renter in a case of breaking, capture or death applies only when the damage or loss arose due to ḏōnes in the absence of ḏōnes the depository would be liable. The three forms of culpable handling of a deposit, active or passive negligence and mistreatment, are all termed in later Rabbinic literature pēṣṣā (“transgression,” although generally translated “negligence”). The concept of negligence itself, however, remains undeveloped in Tannaitic literature.103

103 The use of the noun pēṣṣā (Aram. pēṣṣṭāṃ) in connection with some sort of failure on the part of the depositary is at least in part determined by Ex. 22:8. Appearing in the context of a passage dealing with deposits that verse reads “For every matter of pēṣṣā, ... to the divine tribunal (ḥa-ṭlōbīm, lit. “god(s)”) shall come the matter of both [parties], and he whom the divine tribunal finds wicked (parsiṭʿun [plural]) shall pay double to his fellow.” The root meaning of pēṣṣā is transgression, and since Ex. 22:8 follows a verse dealing with an oath “that he did not extend his hand,” reflecting some kind of use or appropriation, and refers to a double payment as penalty, as in the case of theft (Ex. 22:3), it is presumably a charge of theft or misappropriation that is at issue in Ex. 22:8, and not negligence (for pēṣṣā as sin see the ancient translations: Tg. Neofiti, ḥiṭṭayyā; a Genizah Targum [T–S 20. 155. col. 3, in M. L. Klein, Genizah Fragments of the Palestinian Targum to the Pentateuch (Cincinnati: HUC, 1986), 1, 291], ḥiy [i.e., ḥaṭaʔ?]; Peṣitta, ḥṭ; LXX, adikia; the same meaning is likely to be behind the use of a form of ḥōḥ, “debt,” but also “sin” [cf. Tg. Onk. to Gen. 20:9, where ḥāṭām translates ḥaṭaʔ; Tg. Neofiti, margin; Tg. Onk.; cf. U. Cassuto, A Commentary on the Book of Exodus, tr. I. Abrahams [Jerusalem: Magnes, 1967], 285 who took pēṣṣā as negligence; see also M. Fishbane, Biblical Interpretation in Ancient Israel, rpt. corrected ed. [Oxford: Clarendon, 1985], 172–3, n. 23, who saw Ex. 22:8 as a charge of theft, but took pēṣṣā in this case to mean “contention” at court). The connection between the verb pāṣaʾ and extending one’s hand to the deposit is also made in Mek. Nēṣṣiqin 15, to Ex. 22:7, and 16, to Ex. 22:10 (ed. Horovitz-Rabin, 300 ll. 9–10; 304 ll. 1–5; cited above) and Mek. Nēṭiqin 15 (300, ll. 12–15) (see also the other passages linking the dispute about the inception of ṣelīḥāt yōd in M3:12 to the exegesis of the word pēṣṣā listed by Horovitz in the notes thereto).

In later Talmudic usage the term pēṣṣā can continue to mean theft or misappropriation (see, e.g., b. B. Qam. 54b, commenting on the tradition in m. B. Qam. 5:7 that the rule of double payment for theft [among other rules] applies to all animals, glosses ‘al kol débār pēṣṣā with ‘al kol débār pēṣṣā, where the context requires that it mean theft [note, however, that the context of this gloss is the rule of theft, and not precisely that of deposits]). A related usage, also connected to the use of pēṣṣā as “transgression,” is that of misuse or improper treatment (e.g., B83a: a rule that porters who use a kind of pole [ṣiqẓḥ on the text see S. Friedman, Talmud Arukh: BT Bava Meẓiʿa VI, Commentary (Jerusalem: JTSA, 1990), 403–7] to carry jars and broke the jars are liable is glossed: “What is the reason? [The load] was [too] much for one
and [too] little for two, [and the case is thus] near to *ones and near to *pēʾēʾā.* Since the load was too much for a single porter, what makes this a case of *pēʾēʾā* may be something more than a kind of "active negligence," but actually an improper procedure that in and of itself endangered the load. (See also Tosafot, *s.v.* *sigpāḥ* [B93b], who question the significance of the rule of M7:10[B] ["[if] he afflicted it and it died, it is not *ones*": "... for it is obvious that this is a case of outright *pēʾēʾā*..."; see preceding note.) Thus, it is possible that the oath formula *le-lo* *pēʾēʾā,* is to be translated "that I did not treat it improperly [i.e., make improper use of; perhaps also "steal"] (especially if the tradition of the oath formula predates the articulation of the later Rabbinic use of *pēʾēʾā* as "negligence"). In the more general usage of the term *pēʾēʾā* as "negligence," it is frequently difficult to tell whether what is meant is a kind of passive failure to take protective steps, or an act that puts the deposit in an environment of potential risk (e.g., Y3:1 [9a], "He had witnesses that it was stolen due to *pēʾēʾā*; B5a, "...and one died due to *pēʾēʾā*...").

In connection with this discussion of terminology, mention should be made of the term *būṣāṯ,* which may be a Tannaitic term for "negligence" (T5:10–2 [cf. Y5:6 (10b) (Aramaic paraphrase); b. *B. Qam.* 116b; some traditions have *kūṣāṯ,* on the reading *būṣāṯ,* see Lieberman, *TK* 9, 214–5); T10:25–6). In the passages in which *būṣāṯ* occurs, it is used in the context of indemnity or insurance: in T5:10–2 one who contracts to raise an animal agrees to pay full damages if the animal dies *bē-būṣāṯ,* but only half if not *bē-būṣāṯ*; in T11:25–6 a guild of ass drivers or of pilots will not replace an ass or a ship for a member who loses it *bē-būṣāṯ.* What the term refers to precisely is not clear: it may be negligence (failure actively or passively to take proper care; e.g., Lieberman, *TK,* 9, 215; M. Sokoloff, *A Dictionary of Palestinian Aramaic* [Ramat Gan: Bar Ilan, 1990] , *s.v.*), but it could also refer to a form of misuse or mistreatment. Note that Tg. Ps. *Jon.,* to Ex. 22:8 translates *pēʾā* with *būṣāṯ* (emended from *kūṣāṯ,* Lieberman, *Yerushalmi Neziqin,* 159 [to l. 79]). In light of the testimony of the other ancient translations of this word, cited in the previous note, which tended to take the Hebrew word as a form of "sin," a similar meaning for *būṣāṯ* is attractive in here (transgression, and in the Tosephta passages perhaps misuse). However, Ps. *Jon.* explicitly reads in other Rabbinic rulings in Ex. 22:6–14 (notably the distinction between a paid and unpaid depositary), and may be projecting a Rabbinic concept of negligence onto the Biblical text. At any rate, the absence of any other Tannaitic word for negligence, the limited range of use that this one term has, and the fact that the word *būṣāṯ* seems to derive from the language of Aramaic contracts (T5:10) remain striking.

104 See D. Daube, "Negligence in Early Talmudic Law of Contract (Peshiʾa)," *Festschrift F. Schulz* I, ed. H. Niedermeyer, W. Flure (Weimar, 1951), 124–47, who comes to similar conclusions about the chronological development of the concept of *pēʾēʾā* to that taken here. The problem of liability for "negligence" in early traditions is complicated by the apparent multiplicity of traditions that might be taken to rule on cases of negligence. Those in *m. B. Meš.* are discussed in the text, but the problem is worth brief further examination.

In *Mek. Neziqin* 16, to Ex. 22:10 (ed. Horowitz-Rabin, p. 303, ll. 5–9). R. Eliezer (b. *Hyrcanus*) is represented as having held initially that a depositary is exempt from "breaking" and "capture" because, like "death," it is something that the watcher could not prevent. In response to a challenge attributed to R. Aqiba (who points out that only "death" takes place "at the hands of heaven" but that "breaking" and "capture" can occur "at the hands of a human"), "[R. Eliezer] recanted and considered them a kind of theft." One possible reading of this revised view attributed to R. Eliezer is that in general cases of "breaking" or "capture" cannot be classed with "death" (as M7:9–10 [D] and the first view attributed to R. Eliezer
Institutions and Relationships

The closest that we come to a general principle of liability for negligence on the part of the depository is M3:10:

[A] One who deposits money with his fellow—
[B] [if] he bound it and cast it behind him,
[C] [or] gave it to his minor son or daughter,
[D] and locked [the door] before them\(^{105}\) in an inappropriate manner,

apparently do), but must be defined as a kind of theft. If, for the sake of argument, we take "negligence" as the failure to prevent damage that should have been prevented, the Mekilta here may reflect a different organization of negligence than in M7:9–10 [D]. That is, unlike the Mishnah, the Mekilta, according to the interpretation suggested here, apparently treats such failures differently, putting "breaking" and "capture" into a separate category. As a result, whereas the Mishnah does not appear to treat paid and unpaid depositaries differently in this regard, the designation in the Mekilta of "breaking" and "capture" as "theft" has the legal implication that a paid depository will be liable but an unpaid depository will be exempt in such cases (cf. M7:8 [H] and elsewhere in the Mekilta). If this is correct, how the rule of the Mekilta might be applied is not clear. Perhaps, unlike the Mishnah, the Mekilta does not hold depositaries who fail to prevent "death" liable at all ("for 'death' can only come about at the hands of heaven"). This interpretation of the Mekilta as treating the failure to prevent "capture" and "breaking" in particular as a "negligent" view may be echoed in other passages in the Mekilta, which compare theft with loss, and loss with attack by wild animal on the grounds that all involve "a lack of watching (hesrôn iēmîrôn)" (Mek. Nēqāqîn 16 to Ex. 22:12 [pp. 305–6]).

Alternatively, what is at issue in Mek. Nēqāqîn 16 (ed. Horovitz-Rabin, p. 303, II. 5–9) may be not the conceptualization of what constitutes culpable failure to prevent damage, but rather how one assigns liability. As noted above, this passage implies (but does not state) that paid and unpaid depositaries should be treated differently. Perhaps, according to the Mekilta, one expects a higher degree of care, and therefore greater liability, from a paid depository. Similarly, the passages in t. B. Qam. 10:8–10 and T7:15 hold artisans liable for damage done to the material on which they are working (as in m. B. Qam. 9:2) "because he is like a wage bearer (nōṭē’ ṭākār [i.e., a paid depository])." This explanatory comment implies that in order to understand why the artisan is liable for what appears to be a kind of "negligence" one has to compare his case to that of a paid depository, in contrast, no doubt, to an unpaid depository. See also the bāraltā cited at b. B. Qam. 45a, which states that all four "watchmen" assume liability in place of the owners for damage that animals in their charge do (cf. m. B. Qam. 4:9) "except the unpaid depository." Compare the Amoraic tradition at y. Šebu. 8:1 (38c), attributed to R. Leazar in the name of R. Hoshaya, in which liability for "stretching out one's hand" begins for the unpaid depository only when he has formally taken possession by a possessory act, but at the mere derivation of benefit for a paid depository (cf. an analogous view in the Babli, B41a, attributed to R. Yohanan in the name of R. Yose b. Nehorai, taken by the stammatic expansion to refer to whether liability for "stretching out one's hand" occurs only if the deposit has been damaged). These last passages, although not connected with "negligence" resulting in damage to the deposit, reflect differential rulings for paid and unpaid depositaries.

\(^{105}\) See Appendix I, note to M3:10.
The second part of this pericope makes it clear that the reason that the depositary is liable is that there is a basic level of care that is expected even of the unpaid depositary “who swears for everything” (M7:8 [E]). This minimal standard of care is based on a social norm that is not articulated in detail, and may support more than one definition.\(^\text{106}\) Thus, M3:6 [A–B] states that a depositary is required not to touch [B] rotting produce in order to save it. The view attributed to R. Simeon b. Gamaliel in the same pericope [C–D], that the depositary should sell the produce before the court, does not disagree in principle but in practice recognizes the importance of another rule: “returning a lost object to its owners” [D]. At the same time, in M3:9 and M6:8 the depositary who breaks a jar while handling it for the purposes of caring for it (explicit in M3:9, implicit in M6:8) is exempt from paying for it, although precisely this exemption is a matter of surprise in the view attributed to R. Eliezer (Eleazar) in M6:8.\(^\text{107}\) All of these views can be reconciled with a standard of care “according to the manner of watchmen,”

\(^{106}\) Compare the equally “social” definition of *culpa* (negligence) by Gaius in the Digest: “culpa, however, is absent if everything was done, which every very diligent man (*diligentissimus quisque*) would be likely to attend to (*observaturus fuisset*)” (D.19.2.25.7). See also D 10.2.25.16 (Paul); 13.6.18. pr. (Gaius); 50.16.223.pr. (Paul). In all of these texts, however, the standard is not what is expected of anyone bound by the same contract (e.g., “in the manner of watchmen”) but either the same care one would exercise on one’s own property, or the care of a diligent (or very diligent) *pater familias*. See Schulz, 1951, 515–6; Buckland, 1963, 556–8.

\(^{107}\) According to the view attributed to R. Hiyya b. Abba in the name of R. Yohanan at B83a, “This oath [of M6:8 [C]] is an enactment of the sages (*taqanat hakhamim*), for if you do not say this no one will move a jar from place to place for his fellow.” This statement resolves the objection by R. Eliezer (Eleazar) by explaining that the oath in [C] is a special one, and not the standard oath (considered Biblically ordained) of exemption for an unpaid depositary (see Friedman, 1990, 369–70). Thus, this Amoraic tradition presupposes (a) that in principle both paid and unpaid depositaries should be liable—that there is some sort of negligence here—and (b) that some kind of intervention with a deposit (moving a jar for his fellow) is generally expected of the depositary. However, the wording of the Mishnah itself (and the *barambdet?*, B82b, cited below) does not imply that this is a special kind of oath. Hence, although the reasoning attributed to R. Yohanan (i.e., that M6:8 [A–C] does not hold the depositary liable so that the depositary will not refrain from necessary tasks) may well be correct, M6:8 [D] does not appear to question a special relaxation of the rules of liability, but the rules themselves.
but the differences among them (although not all irreconcilable with one another) seem to turn on how much active care is demanded.

The very concept of breaching the contract, of "reaching out one's hand" to the deposit, is somewhat unstable in the Mishnah as well. The Hillelite position in the Houses (and Yavnean) debate about how to value the loss to the owner ("[the price] at the time of taking it out") is somewhat parallel to

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M6:8 and the related bāraitā that occurs at B82a (see the note to M6:8 in Appendix I) read as follows:

<table>
<thead>
<tr>
<th>M6:8</th>
<th>B82b</th>
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<tbody>
<tr>
<td>[A] One who moves a jar from one place to another,</td>
<td>&quot;One who moves a jar for his fellow from one place to another,</td>
</tr>
<tr>
<td>[B] and broke it:</td>
<td>&quot;and broke it:</td>
</tr>
<tr>
<td>[C] whether he is an unpaid depositary or a paid depositary let him swear.</td>
<td>&quot;whether he is an unpaid depositary or a paid depositary, let him swear,&quot;</td>
</tr>
<tr>
<td>[D] Said R. Eliezer: &quot;I question whether this one or this one can swear.&quot;</td>
<td>R. Eliezer says: &quot;This one and this one swears, but I question whether this one or this one can swear.&quot;</td>
</tr>
</tbody>
</table>

If we may plausibly interpret these passages within the framework provided by M7:9–10 [D] (i.e., that which is not ōnes has happened because of the depositary, who is therefore "negligent" and liable), these disputes arguably deal with whether or not the breakage was a form of ōnes (cf. B82b, in which the problem is characterized as one of whether "one who trips [nitqal] [and breaks what he carries] is negligent [pōter]; and see Friedman, 1990, 376–7). The first view (M6:8 [A–C]; R. Meir in the bāraitā) would then rule that the breakage of the jar was an unpreventable accident, and therefore constitutes ōnes, and the depositary is exempt. By contrast, the surprise attributed to R. Eliezer presupposes that on the face of it the depositary ought not to be exempt for this kind of accident, and by implication this is a kind of negligence. The view attributed to R. Judah in the bāraitā could be taken in one of two ways: either (a) distinctions are made between various kinds of "negligence" (and for some, an unpaid depositary is not liable while a paid depositary is) or (b) that paid and unpaid depositaries in general have different rules in the case of negligence (see the discussion above, n. 104).

In fact, however, although both M6:8 and the bāraitā attribute the damage to the depositary (ū-tēbarā, "and he broke it"), neither makes it possible to distinguish between "negligent" breaking and "accidental" breaking. I would like to suggest that what is at issue in these passages is entirely separate from negligence, and relates to the question of whether a depositary acting in the interests of the owner should ever be liable, even when it is the depositary who actually caused the damage (compare M3:9, in which a depositary who breaks a deposit while moving it lešorkāh, "for the needs [of the jar]," presumably the case of M6:8 as well, and explicitly that of the bāraitā: "One who moves ... for his fellow", is always exempt from payment). M6:8 [A–C] (R. Meir in the bāraitā) holds that he is never liable; the view attributed R. Eliezer (Eleazar) responds that the depositary ought, in theory, to be liable for the damage [D]; with a mediating position attributed to R. Judah in the bāraitā?
m. Baba Qamma 9:1-2 ("[the price] at the time of the robbery") and suggests that, as in the latter passage, what is at issue is a kind of robbery. Yet M3:9 seems to imply that liability for use lasts only as long as the depositary made use of the object, while M3:12 [I-J] (although not necessarily in conflict with M3:9) introduces the concept of possessory acts and distinguishes between liability for the whole and liability for only part of the deposit.\(^{108}\)

There is relatively little material in the Mishnah about paid depositaries. In a number of passages they are mentioned only in the context of other "watchmen," with or without differentiation in terms of rules (m. B. Qam. 4:9; M4:9 [cf. m. Šebu. 6:5]; M7:8 [cf. m. Šebu. 8:1], 10; m. Šebu. 8:6). In some ways, the most interesting pericopae that involve the paid depositary are M6:6-7, which use the framework of liability for the paid and unpaid depositaries as a way of working out liability for other individuals who hold

\(^{108}\) In reading M3:9 in this way, I am following C. Levine, "The Concept 'Shelihut Yad' in the Mechilta De Rashbi' [Hebrew], BIA 18/19 (1981), 103, who bases his argument on two passages from the Mek. dē-rašbi: a comment to Ex. 22:7 (ed. Melamed, pp. 201-2) and one to Ex. 22:10 (p. 205). The way in which the Mek. dē-rašbi combines the cases and language of M3:9 and M3:12 in the first of these passages is relatively clear. (The passage from the Mek. dē-rašbi concludes "... and if after he put it down whether for his needs or for its needs he is exempt [M3:9 [D]], as it says: 'For every matter of transgression [pesa'], this one is excluded mi-pēnē se-lo' paša'; the context seems to require the translation "because he was not transgressing," i.e., at the time of the breakage.) The second passage is not as explicit as Levine, 1981, 102-3, takes it to be. This second passage distinguishes between a case in which an animal was grazing when appropriated by a military force (the depositary is exempt), and one in which the depositary rode on the animal that was seized (the depositary is liable). The tense of the verb in the second case (rākab, "he rode") can mean that the riding had taken place in the past, but that the depositary is nevertheless liable, and not, as according to Levine, that the animal was seized while the depositary was riding it. (Note, however, that an analogous problem of tenses occurs in the first passage where the meaning is nevertheless clear).

The relationship between M3:9 and M3:12 [H-J] is complicated. Clearly the author of the first passage of the Mek. dē-rašbi considered that both could be interpreted in the same manner. The two pericopae may stem from different authors. If we were to cast M3:12 [I-J] in terms of M3:9, we would describe it as a case where no specific place has been specified for the deposit and in which the depositary has handled it for its own use. However, M3:12 [I-J] does not clearly distinguish between cases in which damage happened before or after the depositary put down the deposit as M3:12 [I-J] does. Still, we have no idea whether the M3:12 [I-J] makes a distinction between breakage before or after he stopped handling it (the same passive verb, wē-nišbārā, is used in M3:12, and for both cases in M3:9; contrast sēbarah, "he broke it," M6:8 [B], which implies both causality and immediacy). In addition, M3:12 [I-J] introduces the problem of possessory acts, which is absent in M3:9. (C. Levine, 1981, 104, took M3:12 [I-J] as dependent upon M3:9 and claimed that as a result, the language of M3:12 [I-J] is highly condensed. However, it seems to me that one of the points of introducing possessory acts in M3:12 [I-J], may be precisely to consider the depositary liable from that moment forward.)
property belonging to another: artisans, and lenders holding a pledge.\(^{109}\) In both of these cases, as well as the case of M6:6 [C–D], which distinguishes between two depositaries who agree to watch for one another and one who merely said “leave it before me,” the Mishnah reflects a theory of liabilities that correlates benefit to both parties with the assumption of risk.\(^{110}\)

It has long been noticed that in the Greco-Roman world contracts of deposit often mask other transactions.\(^{111}\) Although this is hardly the main concern of the Mishnah there are traces of this phenomenon in the *m. Baba* 2 *Mesî’a*\(^2\) as well. As formulated, M3:11 prohibits the use by non-bankers of loose money on deposit—a kind of loan—but the fact remains that it recognizes the concept. In addition, I have argued in Chapter II that M3:7–8 presuppose that the depositary has mixed the depositor’s produce with his own.\(^{112}\) If this is correct it appears that in these pericopae (but not in M3:6) a deposit is actually a permitted kind of loan of produce. This is particularly

\(^{109}\) On these pericopae see Friedman, 1990, 239–40, 295–7.

\(^{110}\) See Lapin, 1995, 156–7, n. 18 and the text thereto. Compare Gaius, 3.206, who specifically links the liability for *custodia* for both an artisan and a borrower for use to the benefit they derive: a wage on the one hand, and use on the other.

\(^{111}\) See *M. Grz.* 257; Taubenschlag, 1955, 350–1. For the use of deposit to mask the dowry of Roman soldiers see *BGU* I 114 i.5–13 (*M. Chr.* 372), in which the prefect of Egypt refuses to grant a trial to a woman who wishes to claim a deposit from the property of a dead soldier, on the grounds that “we presume that the deposits are dowries” (ll. 9–10). Mitteis considers *M. Chr.* 167 (=*BGU* III 729), 334 (=*P. Lond.* II 310 [p. 208]) and 335 (=*CPR* I 29) possible examples of such transactions. For a contract of deposit serving to document a loan, see *M. Chr.* 332 (=*P. Lond.* II 298 [p. 206]), 333 (=*BGU* III 704), 338 (=*P. Tebt.* II 392). Closer to the world of the Mishnah is a papyrus from the Judean Desert (*P. Babatha 5* a 5–16) in which the Jesus’ share (in money, loan documents and other forms, including produce) of his deceased father’s partnership is held by the former partner “on deposit” and valued as an amount in cash, over and above Jesus’ mother’s dowry, which was apparently also “on deposit.” The depositor’s “deposit” clearly allows his father’s former business partner to continue to participate in the same business and with the same capital.

\(^{112}\) See above Chapter II.B.2. See also *m. Dem.* 3:4:

[A] One who takes wheat—

[B] to a Samaritan miller or an *‘am ha-Ẓîres* miller:

[C] [it remains] in its status with respect to tithes and the sabbatical year;

[D] to a gentile miller, [it is] *dēmai* ["doubtfully tithed produce"].(E) One who deposits his produce—

[F] with a Samaritan or an *‘am ha-Ẓîres*:

[G] [it remains] in its status with respect to tithes and the sabbatical year.

[H] with a gentile,

[I] [it becomes] like the gentile’s produce.

[J] R. Simeon says: “[It is] *dēmai*.”

Produce deposited with a gentile is presumed to have been exchanged with other produce, and is therefore considered to no longer have the ritual status it had before the deposit [H–I].
notable in light of prohibitions of loans of produce elsewhere in the tractate in order to avoid potential usury (M5:8–9).

By and large the rules of deposits are worked out in *m. Baba* 1 Ḫesi'ā in terms of relationships between equal parties. 113 While it may be that the Mishnah here purposefully avoids a discussion of social distinctions, it is also possible that the Mishnah devotes its attention to interactions between members of the same social group. 114 The selection of objects described as deposits, occasionally money or utensils, but also animals, wine, oil, grain, and other agricultural produce, reflect the agrarian world in which the Mishnah came into being. At least sometimes, the amounts or values given for deposits presuppose individuals with considerable wealth as well. 115

If the Tosepta is any indication, the issue is not the likelihood that gentiles, but not *samē Ḫa-āres* or Samaritans, would exchange produce on deposit (i.e., presumptive unscrupulousness of gentiles), but rather a gentile's inability to make the claim "I took them [i.e., the produce] and I put in their place old [i.e., pre-sabbatical-year] and tithed (*mētuqqānim*) [produce]" (t. *Dem.* 4:22, 24; cf. y. *Dem.* 3:4 [23d]).

113 Other social divisions, not automatically of an economic kind, are raised elsewhere in the Mishnah. See, e.g., *m. Dem.* 3:4 (previous note) and *m. Toḥ.* 8:2 in which the Jewishness or piety of the depositary become factors in the ritual status of the deposited foodstuffs. In *m. Mākt.* 6:3, the force of: "And for all of them the *samē Ḫa-āres* is believed when he says "They are clean," except for small fish, because they deposit it (*ṭēāb* [i.e., the small fish]) with the *samē Ḫa-āres*," is that there are certain kinds of items that the people in whom the Mishnah is interested will deposit with an *samē Ḫa-āres*—and that are therefore suspected of having been made impure by the depositary—and others that they will not. [I take the explanatory clause as dependent on "small fish," about which the *samē Ḫa-āres* is not believed, reading *ṭēāb* with the witnesses KRLMPN and following, e.g., Maimonides, *Code, Ṭum* 3 at y. *6kalim*, 16:3; R. Eliyah of Vilna, *ad loc.;* so also Albeck *ad loc.* Cf. R. Samson of Sens, and Rosh, and, following them, Bartenoro and *TYT* *ad loc.,* who read "they deposit them (*ṭēān*)." That is, depositaries are believed precisely about things that are deposited with them.]

114 Compare J. A. Crook, *Law and Life of Rome* (Ithaca: Cornell, 1967), 209, who takes the Roman insistence that *depositum* be free of charge (as in the case of loans) as a form of *noblesse obligé.* Cf., however, *t. B. Qam.* 11:1, which deals with the deposits by individuals who are under the authority of the householder (slaves, women, minors).

115 An animal, such as an ass or an ox, is a substantial piece of property (see *M3:1, 9–10; m. Šebu.* 8:2–6; cf. *m. B. Qam.* 4:9: 7:6, which also deal with animals, but this may be the influence of Biblical terminology). Deposits of one or two hundred *dinārim* (*M3:3–4; cf. m. Šebu.* 4:8, which compares a case of a promise [unfulfilled] to lend 200 *dinārim* to one of deposit) or of utensils worth a hundred or a thousand *dinārim* are also examples of this kind (*M3:5). Similarly, the way in which amounts of acceptable loss are calculated in *M3:7–8* presupposes individuals with considerable holdings in the form of produce: dry goods, such as wheat and linseed, are calculated by the *kor* (*M3:7; something under 400 liters), and wine and oil by the 100 *log* (*M3:8; where the *log* is roughly equivalent to 13 liters). (For a discussion of measurements see Hamel, 1990, 243–6.) Compare, however, *m. Šebu.* 6:7, in which the value of a loan and pledge (termed, at the end of the pericope, a *piqādôn,* is disputed: the order of magnitude is that of a *selā* [tetradrakhma].
3. Buyer and Seller.

Chapter 4 of *m. Baba* Mesi'a*, which contains a sustained discussion of sale, opens with the pericope “Silver acquires (*qoneh*) gold, but gold does not acquire silver” (M4:1 [A]). The implications of this passage for the Mishnah’s treatment of money have already been discussed above (section A.1). This pericope ends:

[E] Moveable goods acquire the coin, but the coin does not acquire moveable goods.

[F] This is the rule; all moveable goods acquire one another.

The operative verb in M4:1, *qnh/h*, used in its specialized sense of “acquire,” “gain possession” (as distinct from “buy”), suggests that what is at issue is the transfer of ownership in the context of sale. However, M4:1 is extremely terse and does not specify when or how the formulaic “A acquires B” is thought to apply. Moreover, the verb (participle) *qoneh* in M4:1 is somewhat awkward since its subject is not one of the actors, but one or the other of the two items in the exchange. To the extent that *qoneh* implies an

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116 On these words (which should perhaps be deleted) see the note to this pericope in Appendix I.

117 The root *qnh/y* can take the meaning “buy” in the Mishnah. See, for example, *m. Ber.* 9:3; *m. Hal.* 4:1; *m. Bik.* 1:6,11; 3:12; *m. B. Bat.* 1:5; *m. Ohal.* 18:7. In other passages, the required sense is “acquire:” *m. Qid.* 1:1-5 is the most important example; see also *m. Sebi.* 10:9, *m. Nid.* 5:4. In *m. Ma'as.* 5:5 the act of buying is juxtaposed to the attendant change in ownership (“One who buys [*ha-loqeh*] a field of vegetables ... Said R. Simeon b. Gamaliel: ‘When are these things said? When he acquired [*qande*] the land [with the crop], but when he did not acquire the land ...’”); so also *m. B. Bat.* 5:7 (“Who sells [*ha-moker*] ... [the buyer] has acquired [*qande*]; ... has not acquired”). A hybrid passage of this type is *m. B. Bat.* 5:4: “One who buys (*qoneh*)... trees ... has (not) acquired ([lo'] *qande* the land.” (Compare also *m. Ma'as.* 1:5, which juxtaposes “buying” with the somewhat difficult expression *lo* *qande* ma'as'et, in context perhaps “that which he acquired is not tithe”; cf. *m. Ma'as.* 3:12.) On wives being “acquired” in *m. Qid.* 1:1 (as well as *m. Ned.* 10:6; *m. Nid.* 5:4) see Wegner, 1988, 42–5 and 227 n. 84. (Wegner has misunderstood D. W. Halivni, *Mêqôrêts u-mêqôrêts: Nâ'îm* [Tel Aviv: Dvir, 1968], 614–5 [to b. *Qid.* 2a] as saying that the Mishnah only uses *qnh* for betrothal when the *marriage* involves a property transaction: Halivni is seeking to explain why *qnh* is used in *m. Qid.* 1:1, whereas in other contexts the root *qds* is used, and argues that the literary context of *m. Qid.* 1:1 involves property transactions.)


119 Cf. the language of T3:13, glossing a variant of M4:1 [A] (see Appendix I and the discussion in Section A.1 above):
obligation (i.e., if the coin has been acquired, the buyer, who still holds it, now owes it to the seller), M4:1 [A–E] operates from the perspective of the seller: it tells how the buyer comes to owe the seller the price, and not the reverse.

Immediately following this passage, M4:2 [A–C] adds the following explanation, which I take to be a later supplement:\textsuperscript{120}

\begin{itemize}
  \item \textbf{[A]} How?
  \item \textbf{[B]} [If] he drew produce from him but did not give him money he cannot withdraw [from the sale.]
  \item \textbf{[C]} [If] he gave money but did not draw produce he can withdraw.
\end{itemize}

This explanation introduces the concept of possessor acts (specifically, drawing the merchandise in order to complete the sale), a notion that is not referred to explicitly in M4:1.\textsuperscript{121} In doing so, M4:2 shifts attention to the buyer who is the subject of the verbs in [B–C]. M4:2 [A–C] restricts the buyer in that it gives the seller some guarantee that the sale of the merchandise is final. At the same time, the passage grants the buyer comparatively wide power not only to withdraw, but also to determine by a unilateral act whether the seller can withdraw or is legally bound.\textsuperscript{122} In light of the

\textsuperscript{120} See above Chapter II.C.2.

\textsuperscript{121} See \textit{m. Qid.} 1:5 cited in full below, and, e.g., \textit{m. Šebi.} 10:9; \textit{m. B. Bat.} 5:7.

\textsuperscript{122} Although the language of M4:2 [A–C] focuses on the buyer alone, it seems that the expression “he can (not) withdraw” should apply equally to both buyer and seller (so, e.g., Rashi \textit{ad loc.}, B44a). Although it is impossible to prove from the passage itself that the seller is bound by the buyer’s act, and unbound as long as the buyer has not taken it, this is consistent with \textit{m. B. Bat.} 5:7. In that passage, a straightforward rule that it is drawing and not measuring of produce that constitutes the formal transfer is supplemented by the note: “If he was bright, he [the buyer] rents the place [of the produce].” (Since what a person rents temporarily belongs to the renter, one can acquire what is in it by an act of will, and not by a formal possessor act alone.) This note, it seems to me, assumes that it is within the rights of the seller to withdraw as long as the buyer has not drawn the produce, and offers the buyer a way
preoccupation with purchases in the marketplace in Chapter 4 of the tractate. I am inclined to see this pericope as protecting the power of a buyer of goods for consumption (see the discussion of markets above, Section A.2) to bargain and shop around for a better price. Nevertheless, the warning that God will demand payment from people who do not stand by their words (M4:2 [D]) reflects a certain discomfort with this latitude to bargain.

By itself, however, M4:1 is far from explicit. In the first place, it is not clear whether M4:1 presupposes the rules of possessory acts. It is possible to effect the transfer of ownership immediately even if the produce cannot be drawn. (This is not the traditional understanding of m. B. Bat. 5:7, the interpretation of which in the Babli [B84bff] is complicated by a complex set of rules about the efficacy of various forms of possessory acts. The matter requires further study.) See also the end of T3:16, which, if it refers to M4:2, equates the case of seller and buyer (“just as the seller can withdraw, so can the buyer” [this passage, and the statement attributed to R. Simeon that follows do not fit in context, and seem to be a misplaced reference to M4:2, Lieberman, TK, 9, 179]).

M4:3, M4:4 [B], perhaps M4:5–6, and certainly M4:11–2. I return to this matter below.

In addition to the advantage to the buyer in a market situation, another advantage for the buyer is alleged in the following Palestinian Amoraic tradition (Y4:2 [9d]):

R. Yohanan gave money to his relative for oil. Oil went up in price. He went and asked R. Yannai. He said to him: “According to Scripture money [alone without a possessory act] acquires, “And why did they say ‘It does not acquire’? “So that [the seller] not tell him [the buyer] ‘your wheat has burned in the cellar.’” [Lieberman, Yerushalmi Neziqin, 148–9, to ll. 41–2, suggests that the case itself is problematic in that it is already covered by M4:2 [C] (God will punish one who withdraws from a contract), and a rule applying M4:2 [C] is attributed to R. Yohanan himself; but this does not concern us here. The answer attributed to R. Yannai is given, with minor variations, in the Babli (B47b and elsewhere) in the name of R. Yohanan himself.] In the answer of R. Yannai, the rule that drawing alone ends the transaction by passing ownership to the buyer was perceived as a Rabbinic enactment resulting from a conscious choice to increase security for the buyer (i.e., since as long as ownership had not passed the buyer assumed no risk for the maintenance of the merchandise).

In the Mishnah, as also in the Tosepta (T3:14), this is clearly a warning. In later traditions, however, this statement seems to be taken as a reference to a court-invoked curse (as in the expression “give (msr) him over to ‘He who exacted payment’,” Y4:2 [9c] [attributed to R. Hiyya b. Yosep, R. Yohanan]; 4:3 [9d]; 4:4 [9d] [attributed to R. Yose]). Even according to this later interpretation, however, it is clear that the agreement in M4:2 [D] creates a moral, but not a legally enforceable, obligation to follow through on one’s promise.

If it is true that the notion of possessory acts is not presupposed by M4:1, it is an attractive suggestion that M4:1 is a relatively early formulation of a rule for sale (cf. B. S. Jackson, Theft in Early Jewish Law [Oxford: Clarendon, 1972], 81–7, who argued that possessory acts are a late development in tannaitic law). Nevertheless, that a view rejecting the concept could
that “moveable goods acquire the coin” only when all of the merchandise has
been delivered, and not upon a symbolic act of drawing it. Second, the obli-
gation created may be either bilateral (i.e., just as the buyer now owes the
money, the seller cannot withdraw from the sale and demand the merchan-
dise back) or unilateral (once one has received merchandise one has commit-
ted oneself, but the other party may withdraw). If the obligation created is
bilateral, the opposition between sale and barter\(^{127}\) in M4:1 [E–F] (if [F] is
not a later addition) creates the following distinction: while in the case of
sale a binding contract from which neither can withdraw can only be insti-
tuted by an act of the buyer (as in M4:2 [A–C]), in a case of barter both sides
are obligated by an act of either party.\(^{128}\)

Nevertheless, this is not the only possible reading of M4:1. The statement
attributed to R. Simeon, “Whoever has the money in his hand, his hand is in
the superior position” (M4:2 [E]), rejects the idea stated in M4:2 [A–C] that
it is the buyer’s possessory act that completes the transaction. The words of
the tradition imply that it is up to the party that holds the money to decide
whether to force the other party to honor the agreement to buy or sell.\(^{129}\)
The statement attributed to R. Simeon can be read, however, as ruling that
as long as both money and merchandise have not changed hands the sale is

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\(^{127}\) Compared to sale and purchase, discussion of barter is quite rare in the Mishnah: see
M8:4 and m. Ma'âšî. Š 1:1; m. Qid. 1:6. Like the Roman jurists (cited in Section A.1. above),
early Rabbis seem to have had a certain amount of conceptual difficulty with barter. Hence,
in m. Qid. 1:6 the Mishnah uses an odd formulation:

[A] Everything that is made [to serve as] money with respect to another [thing];
[B] once (kewâan še-) this one has gained possession (zâhâ), this one has become
obligated with respect to that with which it has been exchanged (bê-halipâyû).

The expression “made money with respect to another” analyzes barter in terms of sale. While
M5:1 [H–K] gives an example in which one thing is indeed “made [to serve as] money with
respect to another,” since the cash value of the objects traded is constantly noted and made
the basis of the exchange, and this interpretation could apply to m. Qid. 1:6 [A–B], the case is
glossed in [C–E] with the example “one who exchanges [ha-mahalîp] an ox for a cow...”; that
is, with a simple case of barter.

\(^{128}\) However we understand M4:1, it seems relatively clear that in contrast to Roman law,
sale is not a “consensual” contract (i.e., one created by mere agreement) but requires some
action to make it binding. For this aspect of Roman law see, e.g., Gaius 3.135, D
18.1.2.1(Ulpian) and F. de Zulueta, The Roman Law of Sale (Oxford: Clarendon, 1945), 7,
20–1. F. Pringsheim, The Greek Law of Sale (Weimar: Hermann Boelhau, 1950), 14ff. dis-
cusses the differences between Roman and Greek legal traditions in this regard.

\(^{129}\) For this force of “his hand is in the superior position” see M4:4 [D–E], where the
expression is glossed: “Give me my money or give me the amount whereby you have
oppressed me,” and cf. T3:16.
not fully complete and bilaterally binding: where the buyer has given money or where the seller has given merchandise that party is bound, but the other party is not.\textsuperscript{130} If this is so, the idea that delivery of merchandise in M4:1 (like the delivery of money in M4:2 [E]) creates only a unilateral obligation is conceivable within the Mishnah itself.

Although one can speak of sale as binding, at least once both parties have made the exchange, the Mishnah also has provisions, the rules of hônâyâ (“oppression”), for voiding the sale should one of the parties claim that they have been cheated.\textsuperscript{131} M4:3, which defines hônâyâ as “one sixth of the

\textsuperscript{130} In the Mishnah, R. Simeon’s rule is not framed in terms of permission to withdraw, but in terms of which party has the upper hand. This may presuppose that legally the sale is not fully binding, but the one who has the money has an enforceable claim. (Alternatively, however, the tradition may reflect a more nuanced view of contracts in which what one “may” do is less important than what kind of legal recourse the parties have.) Cf. T3:16, in which a tradition attributed to R. Simeon that may be a version of the rule attributed to him in M4:2 is formulated in terms of permission: “The seller can withdraw, but the buyer cannot withdraw, for that one [the seller] has already received his money.” That is, by paying the price the buyer is obligated to go through with the sale, but this has not bound the seller. (The tradition attributed to R. Simeon may be out of place [Lieberman, TK, 9, 179], as has been noted above. The interpretation of this rule in the Tosepta is further complicated by the fact that in T3:14 what appears to be a restatement of the principle of M4:1 [A–D] together with a version of M4:2 [D] are attributed to R. Simeon, who, if I have read M4:2 [E] correctly, should disagree with M4:1 as well.)

J. Neusner, The Economics of the Mishnah, 1990, 82, noticed, quite correctly, that R. Simeon has an entirely different conception of sale, but he is absolutely incorrect in his assessment of the Mishnah’s system of sale as an (Aristotelian) system of barter keyed to an abstract quantity called money. I have already argued in the first part of this chapter that Rabbis have a clear sense of money as a commodity to be bought, sold, and hoarded; moreover, they make a clear distinction between barter and sale (in fact, it is this distinction that, in part, motivates, the discussion M4:1 [A–D]).

purchase” (טֵרֵט לַמֶּקֶה), allows the party that has been “oppressed” “long enough to show it to a/tagär or to his relative” to return the object [A–C]. In the story that follows (and by implication in [A–C], which the story supplements) the rules of hōnāyā are clearly perceived to protect the buyer from overcharge at the hands of the marketer. M4:5–6 together supplement M4:3:132 M4:6 presents a substantially analogous formulation to M4:3 [B–C], while M4:5 [A] clearly extends the definition of hōnāyā to coins: “And how much may a selà’ be lacking and there [still] not be hōnāyā in it?” I am inclined to think that these pericopae, too, are designed to protect the consumer in the marketplace.133 Between M4:3 and M4:5 is inserted an interesting set of rules supplementary to M4:3 (M4:4):

[A] Whether [it is] the buyer or whether [it is] the seller, they have hōnāyā.
[B] Just as a non-professional has hōnāyā, so a merchant (tāgär) has hōnāyā.
[C] R. Judah says: “A merchant has no hōnāyā.”
[D] Whoever has been imposed upon, his hand is in the superior position.
[E] For he says to him: “Give me my money or give me the amount whereby you have oppressed me (שֶׁ-הוֹנֶטֵתָנָי).”

The three anonymous rules [A, B, D–E] reflect an attempt to impose a degree of consistency and systematization on the rules of overcharge: the

132 Dickstein, 1926, 33–4, argued that the bare rule of hōnāyā defined as one sixth (M4:4 [A]; 4:7 [A]) constitutes the earliest stratum of the law. Dickstein’s argument is based mostly on the language and style of M4:7, which, he argues, must stem from second Temple times. M4:7 may indeed contain a series of early rules, but these appear concentrated in the list that follows (M4:7 [D–I]; see Chapter II.A.2). In any case, his argument that the reference to Media in M4:7 [I] implies a time of current or recent Persian domination (i.e., before or not long after Alexander’s conquest) is mistaken; on the contrary, a time when Media is considered the other end of the world is presupposed. By contrast, Melamed, 1942–3, 37–8 considered M4:3 and M4:5–6 as apparently coeval and as together making up the earliest stratum of the rules of hōnāyā. He prudently avoids assigning a date to these passages, although he apparently considered them quite early. Melamed’s observation that the Yerushalmi does not refer to M4:4 is at best an argument from silence, and in any case has no bearing on the dating of M4:3 and 4:5–6; moreover M4:5 is entirely an Ushan pericope [rare in m. B. Mes., see Chapter II.D.2] and arguably relatively late. Moreover, since M4:5 is formulated as an elaboration of the rule of hōnāyā it makes sense to see it as supplementary. This suggests (but does not prove) relative priority for M4:3 (it is suggestive that M4:3 includes a tradition involving the Yabnean R. Tarfon), but even if this is so, no fixed date can be given. As for the relative dating of M4:4 and M4:5–6, there does not seem to be any way of deciding one way or another.

133 I.e., to protect someone who has received a suspect coin from a local shopkeeper or money changer. Cf. Melamed, 1926, 36, who understood this passage to grant equivalent
rules involved are balanced, and apply equally to both parties and, apparently to sales between two householders as well. If the view attributed to R. Judah [C] backs away from giving the right to an action on hōnāyā to a professional merchant, it is presumably because it is precisely the tāgār who is expected to know the correct prices (and who, according to M4:11 [G–H], is in any case of doubtful integrity). These three rules are clearly to the advantage of the professional marketers (in comparison with M4:3). However, we should not automatically conclude that it is these people in whom M4:4 is particularly interested. As a concomitant to the rule that buyers and sellers are equally protected from excessive overcharge, landowners engaged in selling crops or trading in large amounts of produce outside the marketplace would be as well protected as sellers as they are as buyers in the marketplace.135

protection to the seller, stated in terms of coins, to that of the buyer in M4:3, stated in terms of a proportion of the price.

134 This seems to be the most straightforward explanation of M4:4 [C] (see Appendix I) (it is also supported in the Babli by the view attributed to R. Nahman, and a bārāitā cited in defense of this view), but in the view attributed to Rab Ashi (B51a) the expression ʾen la-tāgār hōnāyā means “the merchant is not subject to the rules of hōnāyā” (ʾenō bē-tōrat ṣōnāṭ), and can therefore void the sale even if the overcharge has been less than one sixth (see B51a).

135 This is consistent with the rule of R. Judah (M4:4 [C]) as well. One of the roles of the tāgār is to buy up produce in bulk and market it out to the retail henwānī. Thus, R. Judah may be seen as rather baldly protecting the interests of the householder against the interests of the tāgār, while maintaining the balance of interests in transactions between householders.

Another step in this direction may be seen in the tradition attributed to R. Judah the Patriarch at T3:16. After a citation of M4:4 [D] (“Whoever has been imposed upon is in the superior position”) the Tosepta works out a case in which the buyer can withdraw (in the manner of M4:4 [E]) when overcharged, as can the seller who has undercharged the buyer. To this is added: “R. [Judah the Patriarch] says: ‘The seller is always (lē-ʾolām) in the superior position.’” It seems highly unlikely (although still possible) that this statement gives a blanket right to a marketer to withdraw, and none to the buyer, and it may well be correct that this statement presupposes sale between householders. However, this statement of R. Judah the Patriarch appears also in B50b without the word lē-ʾolām, and on B51a the contradiction with our Mishnah [M4:4 [D]] is resolved by the suggestion (attributed to Raba, supported by a tradition attributed to Rab Ashi) that the Mishnah gives a case in which the buyer may withdraw (i.e., M4:4 [E] gives the claims the buyer might make), and in the bārāitā? R. Judah the Patriarch adds the case of a seller who has undercharged (“that which he left out of the Mishnah, he made explicit in the bārāitā”). This interpretation is hardly necessitated by the wording of the tradition of R. Judah the Patriarch itself, and is clearly designed to resolve a contradiction with the Mishnah; moreover it is impossible to apply this interpretation to the version preserved in the Tosepta (lē-ʾolām). The version in the Babli is further complicated by the fact that it is appended to a tradition attributed to R. Nathan that is treated as a bārāitā in the Babli, but may be a Palestinian Amoraic tradition. See Y4:3 [9d]), in which the view of R. Nathan in the Babli is attributed to “R. Judah the Patriarch,” and an opposing view to R. Yohanan, and see Yēpē ʾenayim to B50b; Lieberman, TK, 9, 178–9. Epstein, Nūsah, 300 n. 5
One last pericope on hōnāyā should be noted. In M4:9 [A–B] “slaves and documents and lands and consecrated goods” are listed as “things for which there is no [rule of] hōnāyā.” In a conceptual world in which loans are interest-free, it only makes financial sense to buy a loan document (and with it the right to collect the debt) if one buys at a discount. Similarly, if the “consecrated goods” are sacrificial animals (as seems a distinct possibility from R. Simeon’s disputing view [Fl]), it would follow that what is at issue is the sale of animals that have become blemished and can no longer serve the purpose for which they were consecrated, and are being sold off at a discount. By implication, in the sale of land and slaves as well, the force of “there is no [rule of] hōnāyā” is that the seller cannot void the sale by claiming that he has undercharged the buyer. While this rule no doubt applied to a buyer claiming overcharge as well, the formulation of the pericope, and indeed the rule itself, seem to presuppose a general reluctance to sell off land (except, perhaps, due to need), and protect the buyer from having the sale voided by the seller.

argued that in the Yerushalmi the full expression “R. Judah the Patriarch” never refers to the redactor of the Mishnah, but always to later descendants, and that Yohanan (second generation Amora) there is a corruption for [Yo]natan (first generation Amora) in the Yerushalmi.

Compare Sperber, 1978, 153–9, who argues that the later view attributed to R. Yohanan in allowing a claim of hōnāyā in cases of sale of land in which the difference in price was excessive (mūplegei) (y. Ket. 11:4 [34 d]; cf. B57a, b. Tern. 27b), refers to a case in which the seller undercharged the buyer.

Certain other passages of the Mishnah have been taken to imply that there was a tradition that held that hōnāyā did apply to land (Melamed, 1942, 51–2), but none of them are quite decisive:

(a) m. B. Bat. 7:3. 7:2–3 discuss the implications of formulae that the seller uses in designating the land to be sold: “measured by a cord,” “whether more or less,” “by its [geographical] marks and boundaries (mešaravuy)” (cf. H. H. July, Die Klauseln hinter den Massangaben der Papyrusurkunden [Diss. Cologne, 1966]). In the case of the last of these m. B. Bat. 7:3 rules that if the actual size of the plot of land turned out to be more than one sixth smaller than the amount stated, the seller deducts (mēnakkeh) from the price. It should be noted, however, that there is no permission to the party “imposed upon” to withdraw, but only to retrieve the difference in price. Moreover, what is at issue is an error in the description of the land involved and therefore a mistaken sale, and not a case of overcharge. (Cf. t. B. Bat. 6:26.)

(b) m. Ket. 11:4. R. Menahem Meiri took the rule that “[If a wife’s] kēsūbbā was worth a māneh and she sold [land worth] a māneh and a dinār for a māneh, her sale is invalid,” as a form of hōnāyā, in which, since the wife was merely an agent of the husband’s heirs and not the principal owner, the sale could be considered void due to any overcharge whatsoever (Bēt ha-bēhirā ‘al maseket kēsūbbā, ed. A. Sofer [Jerusalem: 1947–8], 451). The real issue, however, is that in contrast to the first two cases given in m. Ket. 11:4 the wife has sold more than she was entitled to.

(c) m. Ket. 11:5. The first part of the pericope reads:

[A] The evaluation [of property to be sold by the widow to recover her kēsūbbā]
The distinction between “real” and “moveable” property raised in M4:9 also has important implications for sale, as the following passage shows (m. Qid. 1:5):

[A] Property against which there can be a lien [when sold] (še-yēš lāhem tāharāyāt)\(^\text{138}\) is acquired by money, or by document, or by [act of] possession (hazāqā).\(^\text{139}\)

[B] and that against which there can be no lien is acquired only by drawing (mēšikā).

The implication of this pericope is that the actual ownership of moveable goods (that against which there can be no lien) may be transferred only by the formal possession of the goods by the buyer, while in sale of real property mere delivery of the money or a unilateral act of the seller (the writing of a document) without prior payment can also transfer ownership.\(^\text{140}\) Any

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\(^{138}\) See Appendix I, note to M1:6. The reference is to land, slaves and documents (cf. M4:9 [A-B]).

\(^{139}\) The term hazāqā does not refer, in this case, to usucaption (as in m. B. Bat. 3:1–3), but a formal act of possession. See, e.g., t. Qid. 1:5, in which hazāqā for land is defined: “he locked, or built a wall, or breached [a wall], to any extent (kol šē-hāt)” (cf. the end of m. B. Bat. 3:3), and that for slaves: “he tied on his shoe, or loosened his shoe, or took clothing (kēlim) after him to the bath.” This conception is precisely analogous to the acquisition of a wife (i.e., binding betrothal) by “money, by deed or by intercourse (bīťā)” (m. Qid. 1:1) although the specificity of intercourse as an act of possession for betrothal left room for a distinction between hazāqā for slaves and bīťā for wives (e.g., y. Qid. 1:1 [58b]).

\(^{140}\) That the writing of a sale document could be taken as a unilateral procedure is indicated by m. B. Bat. 10:3, which considers a deed of sale written for the seller in the absence of the buyer valid, in the same way that a borrower may write a loan document in the absence of the lender. In both cases the documents were to be given over to the beneficiary of the document who could then use them to collect on the basis of their contents. See also characterization of the operative clause in a loan document in b. Qid. 26a: “My field is sold to you” (on traces of the formulae of the sale document see A. Gulak, 1929, Lē-hēger tōldōt ha-miṣpāṭ ha-ʻibri [Jerusalem, 1929], 67–8). Gulak, 69–70, argues that in the Mishnah sale by deed was ineffective unless accompanied by payment in full, and treats the Amoraic traditions to the contrary (e.g., the tradition attributed to R. Yona and R. Yose, y. Qid. 1:1 [60c]) as later developments. However, the Yerushalmi supports the view that ownership passes with a document alone
attempt to explain this distinction is bound to be speculative, especially since we have almost no information about actual custom, and have no way of determining to what extent the Mishnah's rules approximate usual practice. It is worth observing, however, that while from a contractual point of view the sale of real property is easier to effect, practically it is likely to be more difficult: the costs are higher, the negotiations therefore more careful, and (in the real world outside the Mishnah) the steps involved perhaps more complicated (involving, for instance, registration of the transfer of property\textsuperscript{141}). Thus the Mishnah's rule about real property may reflect the recognition that by the time that the actual transfer takes place the two parties are both resolved to go ahead with the sale.\textsuperscript{142} It also implies that for the

from a bāra'itza with parallels in t. Ket. 2:1: "But if he gave him the money for one of them [one of ten fields being sold simultaneously], or (צ) wrote him a document for one of them, he has only acquired that one field," in contrast to hazāgā, by means of which one can take possession of ten fields with the formal possession of one (cf. t. B. Bat. 2:12, which has a partial parallel to t. Ket.; in both t. Ket. and b. Qid. 27a, the tradition is part of a larger rhetorical structure comparing the relative strengths of money, documents and hazāgō [in the Babi, however, the bāra'itza, reads quite differently; see Yēpē ēnayîm to b. Qid. 26a, 27a]). The implication of the specification of both sale by deed and sale by money is that sale by deed is not dependent upon payment, and that property can be considered fully "sold" by a deed from the seller alone. Similarly, unless t. B. Bat. 2:13, which glosses m. Qid. 1:5 [A], implies that all three elements are required, the conjunction waw must be taken as disjunctive: "... since he wrote a document or received the money, or took possession of one of them, he has possessed all of them" This follows also from the treatment of m. Qid. 1:1, on betrothal "by money, by document or (צ) by intercourse" (analogous to m. Qid. 1:5 [A]) in t. Qid. 1:1-3, which treats each element separately. (See also y. Qid. 1:1 [58b]: "The Mishnah [should be read] thus: 'Either (צ) by money, or (צ) by document or (צ) by intercourse,' and R. Hiyya taught: 'The end of the matter is: not by means of all of them, but even by means of one of them.'") Thus, it appears that both the apparent meaning of the Mishnah, and early witnesses to its interpretation support the idea that sale could be completed by the writing (and delivery) of a deed of sale, before the payment of the price.

141 See Pringsheim, 1950, 232-42; this was discussed briefly in n. 36, above.

142 The reasoning in a rescript of Diocletian (CJ 4. 44. 8 [293]) is apposite here:

For this alone, which you express, that the land was sold at a somewhat lower price, is not effective for the rescission of the sale. It is plain that you considered the nature of a contract of buying or selling, and that the buyer comes to this contract having in mind to buy at a lower price and the seller to sell at a higher price, and that with difficulty, after many disagreements, little by little, the seller subtracting from that which he had asked, the buyer adding to that which he had offered, they agree to a fixed price, you would perceive, undoubtedly, that neither good faith (bona fides) allows ... nor any other reason permits, the rescission of a contract finalized by consensus because of this ....

[The rescript goes on to allow voiding the sale if the price given was less than half the full value, but this is patently against the argument of the rescript as a whole]. The legal principles
authors of the Mishnah, in a sale of real property for deferred payment or for deferred delivery, ownership was assumed to pass, and the transaction to be binding, even though one of the parties had not yet been satisfied (cf., e.g., M5:3 [A–C]). By contrast, the sale of moveable goods is probably likelier to be contracted quickly (e.g., to take advantage of what one thinks is a bargain) and less likely to require administrative or customary complications such as registration. On the other hand, prices for moveables (especially such commodities as produce) are subject to wider and more volatile variation, and there may be greater impetus for one of the parties to want to get out of a contract. It is in this latter case, therefore, that the Mishnah specifies a single and clear-cut formal criterion for when the contract has become binding.

With the exception of M4:11–12 (which were dealt with above in connection with markets), the remaining pericopae in m. Baba’ Méshia’ concerned with sale do not deal with markets but with large-scale transactions between householders. In M3:8 [G] R. Judah extends the rule of acceptable deductions for absorption, articulated for a case of deposit of wine and oil, to a case of selling. In both the tradition ascribed to R. Judah and in the case of deposit the scale envisaged is that of one hundred lággin (some 50 or 60 liters). M5:1[H–K], I have already suggested, is one of large-scale speculation in commodities; here too the order of magnitude is large (25–30 dinárim). The initial transaction that set the case of M5:1 [H–K] in motion is apparently one of advance payment for deferred delivery. The reverse is the case in M5:2 [I–J] in which the seller is permitted to accept a higher price for later payment, although the property (a field, again relating to the concerns of landholders) changes hands immediately. Similarly, in M5:3 the implicit rule is that in a sale (of a field) in which the buyer gives only partial payment, the property is to be transferred immediately. M5:7 gives another case of advanced payment for produce for deferred delivery, focusing on the question of how early in the production of the produce the material can be sold. Here too, the context is large-scale purchases between land owners.143

may be different (notably the emphasis on consensuality), but (especially since the rescript deals explicitly with land) the logic is the same: after an extended process of negotiation it would be difficult for either side to say that they did not know what they were getting into.

143 In these four cases from Chapter 5 we have references to more complex transactions than simple cash sales, since in a contract for delayed delivery the buyer needs guarantees that the produce will be delivered, and in a contract for delayed payment the seller requires guarantees of payment. The Mishnah does not develop these further (although these and other transactions are dealt with in post-Mishnaic literature). Compare, the documents cited in Pringsheim, 1950, 259–65 for papyri from the Roman period dealing with sales on credit; 279–81 for sales with deferred delivery (see, e.g., BGU I 223; IV 1015); and see Tauben- schlag, 1955, 336–9.
M8:4 deals with the sale or exchange of animals or slaves (both expensive items) and M8:5 with the sale of olive trees for wood. In general, then, outside of Chapter 4 the tractate focuses on the concerns of landholders.\footnote{\textsuperscript{144} In this respect \textit{m. B. Mej.} is consistent with the Mishnah as a whole. In most of the tracts of the Mishnah in which questions of sale arise what is at issue most frequently is a ritual problem (e.g., whether produce may be used), and the focus is therefore usually on the sale or purchase of foodstuffs for use. However, even in connection with ritual matters, sale of real property, large scale transactions, and transactions reflecting the concerns of landholders are considered (e.g., \textit{m. Bik.} 3:12; \textit{m. Pe'a} 1:6; \textit{m. Ma'at} 5:1, 5; \textit{m. Ma'at.} Ş. 1:7). Where what we would call “civil” or “private” law is at issue the objects for sale are likely to reflect the interests of this same wealthy stratum (e.g., \textit{m. Qid.} 1:1–5: modes of acquisition for wives, slaves, animals, real estate [opposed to moveables]; 1:6 exchange exemplified by an ox and a cow; \textit{m. B. Bat.} 2:5: buying a house with a pigeon coop; 3:7–8: houses; 4:1–4: houses, courtyards, olive presses, bath houses, villages [\textit{fr}, perhaps an isolated farm settlement, see S. Applebaum, “Economic Life in Palestine,” in \textit{The Jewish People in the First Century}, ed. S. Safrai \textit{et alii} (CRINT 1: Philadelphia: Fortress, 1976), 641–6; but ownership of villages is not impossible: G. M. Harper, “Village Administration in the Roman Province of Syria,” \textit{YCS} 1 (1928), 160ff.; R. MacMullen, \textit{Roman Social Relations} (New Haven: Yale, 1974), 38–9 and notes thereto], fields, ships, asses, and produce for seed; but also trees, slaughtered animals and produce). See also the passages in \textit{m. Ket.} in which money belonging to the wife is left in the care of the husband who is to buy land with it, this being the only acceptable investment (e.g., \textit{m. Ket.} 6:1; 8:3, 5, 7). The rules for how a widow may claim her ketubbd assume that she will sell land now belonging to the heirs of the husband (e.g., \textit{m. Ket.} 11:4–5). In addition, as noted previously, to the extent that ritual restrictions or prohibitions of certain kinds of transactions with gentiles were observed, the Mishnah gives us a window into another set of social interactions.
} Within Chapter 4, the primary focus is on consumers in their relationship to marketers, but the rules have been expanded in a way that reflects a concern for systematization and consistency. There are also indications, I believe, of amplification in a direction that gives greater play to the role of the landholder as seller.

\textbf{4. Lender and Borrower.}

The Mishnah distinguishes between two different types of contracts of loan: \textit{šë'elâ}, a loan for use, with the object borrowed itself to be returned, and \textit{milwâ}, a loan of money or some other fungible good for consumption, with the value of the loan to be returned.\footnote{\textsuperscript{145} See, e.g., Rashi to \textit{m. Ab. Zar.} 1:1 (b. \textit{Ab. Zar.} 2a):
\textit{šë'elâ} [is transacted] with something that returns in the form [in which it was lent] (\textit{bë'-ayın}), such as an animal or vessels, as it is written: “If a man borrows (\textit{yi'ăh}) from his fellow ...” (Ex. 22:13 [Rashi’s citation of the verse depends on context: Ex. 22:6 refers to “silver (\textit{kesep}) or vessels”; 22:9 to animals; and 22:13 itself refers to the “breaking” or death of the object borrowed, i.e., an animal as in 22:9]). \textit{Milwâ} [is given] with a thing that does not return in the form [in which it was lent], such}
has an obligation with respect to the object of the loan itself, and because the connection is already made in Exodus 22:6–14, the Mishnah frequently considers this form of loan under the rubric of “depositaries” (ṣomrim). From the point of view of law, the pericope in m. Baba Mesi’ah that deal with loans for use are concerned with liability: at what point it begins or ends

as money (mā'āqah), as it is written “If you should lend (taliweh) silver to [one of (?)] my people (ʾami) ...” (Ex. 22:24), for a milwā is given for expenditure, and he pays him other money.

An analogous distinction between loan for use (commodatum) and loan for consumption (mutuum) occurs on Roman law (see on commodatum D 13.6 and Schulz, 1955, 513–6; Buckland, 1963, 470–3). That the distinction in Rabbinic usage is not merely between loans of objects and of money (although it may have been this in origin) may be seen, for example, in M5:9 [H, E] where lāyih is used for the loan of a commodity, apparently for consumption.

Occasionally the Mishnah uses the verb ʾād in a less technical sense for a “neighborly” loan for consumption. For instance: “The woman who has borrowed (šē-šēwād) from her fellow spices and water and salt for her dough ...” (m. Bes. 5:4). In the present case, the rule follows one in which “One who borrows (šēyw) a vessel from his fellow ...” and may use parallel language for formal reasons. More interesting, because it seems consciously to utilize the terminological distinction, is m. Šab. 23:1:

[A] A person may borrow (šōʾēw) from his fellow jars of wine and jars of oil,
[B] as long as he does not say: “Lend to me (halwēn),”
[C] And so also a woman [borrows] loaves from her fellow.

The continuation, as well as the correlation of [A–B] with [C], make it clear that a loan for consumption is meant. In a tradition attributed to R. Zera in the name of R. Yonatan in the Yerushalmi (y. Śebi. 8:4 [38a]), this pericope is explained as an example of a (permissive) rule going against the strict application of a prohibition (mē-halakēs šel ʾamām hū). Strictly speaking, a loan is a business transaction and a typical weekday activity and should be prohibited, but this pericope allows the parties to evade the prohibition in the case of a “neighborly” loan by specifically refraining from the language of milwā. (See Albeck, Miṣnād, 2 [Mōʾēd], 423–4.) According to the Babli (b. Šab. 148a), in a dialogue between Abbaye and Raba b. Rab Hanan, the issue at hand is that when the language of halwād is used, the lender might be led to record the transaction. The medieval commentators sought reasons why this should be so (Rashi, b. Šab. 148a: halwēn implies a loan of some duration, thirty days, and the lender might therefore be inclined to write the loan down; cf. the objection of Tos. ibid. s.v. Šeʾel ʿadām, who add according to R. Isaac that since šē-ḵēlā is typically a loan for use, the object of which is therefore always “there,” one is less likely to record the transaction; see also Meiri to m. Šab. 23:1 [Beth Habehira on the Talmudical Treatise Shabbath, ed. I. S. Lange [Jerusalem, 1968], 587], who adds that šē-ḵēlā implies that the borrower will return it shortly, or whenever the lender demands it; but that milwā implies a lengthy loan).

146 M7:8, 10; m. Šebu. 8:1, 5. See also m. B. Qam. 4:9, 7:6 in which all four “watchmen” are listed together as a group. Similarly, the R. Yose series in Chapter 3 (M3:2–5) includes pericopae about unpaid deposit (M3:3–5), as well as one on renting and borrowing for use (M3:2). Compare, e.g., D.16. 3.18.1 (Gaius), which similarly considers the analogy between pledging, lending for use and deposit.
(M8:3), what the level of liability is (M3:2; 7:8; 8:1), whether one can alter the legal liability by stipulation (M7:10), and how one resolves the problem of liability in cases of uncertainty (M8:2) or where the borrower has borrowed from a renter (M3:2). A review of the objects described as loaned affords two interesting observations. First, the objects, when they are not articles of clothing, are connected with the production or storage of agricultural produce, or the making of bread. For the most part, then, the loans that the Mishnah considers are tied to basic activities of production within an agrarian economy, and not “prestige” or “life-style”—oriented loans. This might be taken to imply that the Mishnah is concerned here with the economic lives of relatively poor farmers, especially given the kinds of objects loaned for use in the treatment of commodatum in the Digest of Justinian.

However, this observation need not necessarily conflict with my argument that overall m. Baba’s Mesia speaks to the concerns of a wealthier landholding class. In the first place, emphasis on the household and on production may be a conscious choice to focus on loans common to a broad spectrum of households. Secondly, wealth need not imply the absence of active interest in the maintenance and exploitation of one’s assets—and in fact may imply the reverse.

The second point worth noting is an apparent division in the text between objects that women borrow and objects that men borrow: while men borrow agricultural implements, women borrow articles of clothing and implements for the transformation of grain into bread. This suggests a division, cer-

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147 Clothing: m. Ta’an. 4:8; m. Ned. 4:1; m. Nid. 9:3; animals: M3:2; 8:1–3; m. Sêbi. 8:5–6 (see also m. B. Qam. 4:9; 7:4, in which the case of borrowing an animal is part of a formulaic working out of hypothetical cases); utensils for storing produce: m. Ma’âš. Š. 3:12; implements for the preparation of grain and the baking of bread: m. Sêbi. 5:9; m. Ned. 4:1; m. Git. 5:9 (m. Bes. 5:4 refers to keli without specification, although the continuation may imply food production).

148 An impressionistic survey of the title in the Digest on commodatum (D 13.6) suggests that the majority of objects considered in this context are connected with the maintenance of a certain standard of living: 5:6: a slave; 5:7: a horse to take to one’s villa or to war, a slave to perform manual (but not agricultural) labor; 5:8: a codex; 5:9: a mare with its foal (the use is not specified); 5:13: a slave with a dish (presumably a domestic slave); 5:14: the material to outfit a dining room; 5:15: a vehicle (Ulpian); 13:1: beasts of burden (arguably for agricultural work) (Pomponius); 17:3: writing tablets (pugillares), and timbers to support a building; 17:4: a coach (carruca) and a litter (lectica) (Paul); 18.pr.: silver plate; 18.2: a slave; 18.3: vessels for wine or oil (Gaius); 20: silver (Julian); 21:1: vessels (Africanus); 22: a slave (Paul); 23: a horse for a journey (Pomponius).

149 Both m. Ta’an. 4:8 and m. Nid. 9:3, which deal with the borrowing of clothing, specifically picture women as borrowers. (It should be noted however that in both cases there are other reasons for the rule to be formulated in connection with the women. m. Ta’an. 4:8 involves the description of a ritual equalization of women through the wearing of garments
tainly not unique to Rabbis or Jews, in the spheres of economic activity open to women and to men. Papyrological remains, such as the archives of Babatha in the Judean Desert, imply that this kind of distinction could be largely ideological, and not reflected in actual practice, in which women, if they had the means, and although working within the framework of legal restrictions, could carry on a diversified economic life on their own.

The archetypal loan for use is one between status equals. In theory people lend freely to their neighbors and can expect to borrow in turn when the need arises, and on balance there is no structured inequality between those who are able to lend, who gain prestige or power (by being able to ask for favors in return), and those who are forced to borrow. Thus the Mishnah that are both white and borrowed “so as not to embarrass one who does not have.” In *m. Nid.* 9:3 the legal problem is one of a menstrual stain, and of necessity involves women.) It is striking that *m. Šebi.* 5:9 = *m. Git.* 5:9 chooses to discuss the lending of winnowing fans, sieves, millstones, and ovens in connection with women (and continues by discussing women of different ritual status baking together). This observation is consistent with other loans, for consumption, attributed to women in the Mishnah, for example: *m. Šab.* 23:1; M5:9 [E–G] (loaves); *m. Bes.* 5:4 (note that the first part of this passage, dealing with an unspecified kālīt, has a masculine subject, but that the second part concerns “the woman who has borrowed spices and water and salt for her dough”). If I am correct in my general assessment of the differentiation—at least in theory—between women and men in the economy of the household, *m. Ned.* 4:1, a notable exception, deserves comment:

[B] One who is under a vow [not to benefit from] his fellow’s food:
[C] let him not lend him [i.e., to the one under the vow] a winnowing fan, a sieve, millstones, or an oven.
[D] But he may lend him a tunic (*haluq*) or a ring or a cloak (*tallit*) or earrings,
[E] or anything that one does not use for the means of sustenance (*š-e-rēn ṭōšīn bō ʿokel nepeṯ*).

[See G. Hamel, 1990, 58–64 for a discussion of and literature on *haluq* and *tallit*.] In this pericope, it is precisely the man who is pictured as lending garments and implements of food production. Perhaps this pericope should be seen as focusing on the master of the household who can dispose at will any or all its contents.

In the Tosepta, too, women are presented as borrowing clothing (*t. Nid.* 9:12), as well as winnowing fans, sieves, millstones, and ovens (*t. Ket.* 7:4). In the latter case the passage from the Tosepta states that if a woman is under a vow not to lend these implements to neighboring women she is to be divorced: if imposed by the husband “he gives her a bad name before her female neighbors”; if she took the oath on her own, “she gives him a bad name before his female neighbors,” and therefore receives no Ketubbd settlement. The lending of such implements on the part of women is thus pictured as part of the expected activity of women. However, in the Tosepta the emphasis on loans by men of material for agricultural production is less pronounced: men are seen as lending or borrowing not only animals (*t. B. Qam.* 5:4; 6:14; 11:1; *t. B. Mes.* 8:20–2; *t. Šebu.* 6:7), axes (*t. Ned.* 4:6; *t. Nid.* 6:14), and containers for produce (*t. B. Mes.* 2:18), but also clothing (*t. Bet.* 4:6; *t. B. Mes.* 8:28), a kerchief to cover a Torah scroll (*t. Meg.* 3:2), and wicker vessels for a wedding or funeral (*t. Kelim B. Mes.* 5:3).
pictures loans for use as taking place between householders or between women. Similarly, the Mishnah’s assessment of loans for consumption (milwā) considers loans between status equals (although, unlike še’élā, milwā is typically perceived as a consumer loan, i.e., a loan that allows the borrower to buy goods that he needs to live or to maintain a certain standard of living and not for production). This goes a certain distance towards explaining the rulings on interest, which are the focus of Chapter 5 of m. Baba’Meïtsa’.

In economic terms, the concept of interest can be analyzed in at least two directions. On the one hand, we can describe interest as compensation to the lender for the risk that is incurred by making the loan, and for loss to the lender of the benefits that would have accrued had the lender been able to make use of the money. On the other hand, interest is also a function of the balance of supply and demand. This is true not only in the broad sense in which the price for money (the interest rate) is tied to the amount of money in circulation, but also in the narrow sense in which an individual’s demand for money may force that person to pay a premium for it. I believe that the Mishnah’s rules on usury focus on this last aspect: to charge interest is to take advantage of the borrower’s need and to impose an inequality where in principle there ought to be none. In other words, the authors of our tractate, in setting out the rules for lending at interest, choose to see all of Israel as equal, and structure the rules of interest accordingly.¹⁵⁰

¹⁵⁰ That the rules apply to Israel, as opposed to any other group, is quite clear from M5:6 [C–D]: “But one may accept “iron sheep” from the gentiles, and one borrows from them and lends to them at interest.” That is, the rules prohibiting interest apply only between Jews. In this respect, the Mishnah follows the Deuteronomic legislation of Deut. 23:20–1: “You shall not lend to your brother at interest (tassik).... To the foreigner (nokri) you may lend at interest, but to your brother you shall not lend at interest.” That the Mishnah consistently prohibits interest should not be taken for granted simply because the Bible prohibits it: Rabbinic tradition is capable of remarkably flexible interpretation, and the other two Pentateuchal passages prohibiting interest are susceptible to a more “refined” exegesis. Both Ex. 22:24 (“If you should lend money to [one of (?)] my people—to the poor person who is with you ...”) and Lev. 25:35–6 (“And if your brother should be brought low ... do not take nesek or tarbit from him ...”; compare however vs. 37, which states the prohibition as a general rule, and may be a supplementary expansion [Fishbane, 1985, 174, n. 32]) specifically describe the borrower as poor: it would not take tremendous creativity to exclude loans to borrowers who are not poor from the prohibition. Moreover, it is always possible to define “usury” as interest that exceeds some acceptable rate. The choice taken in the Mishnah to uphold the rules of interest bespeaks an ideological decision to view all Israel as “brothers” and a milwā as a loan between equals. Whether this choice further reflects the limitations of ancient economic thinking (e.g., an inability to conceive of loans as a form of capital investment), or the ideological refusal to see loans in any other manner than personal favors, is a question to which the Mishnah does not afford an easy answer.
The basic form of interest in the Mishnah is expressed in M5:1 [B–D]:

[B] What is *nesēk*
[C] One who lends a *sela* for five *dinārin*, two *sārin* of wheat for three,
[D] because he bites (*nēšēk*).

What is prohibited is the receipt by the lender of more than he gave out. The rate of interest given in this example is quite high: 25% for loans in money and 50% for loans in kind, although what relationship this bears to rates of interest as actually charged is far from clear.\(^1\) It is a corollary of the Mishnah's assumption that loans for consumption are given between equals that

\(^1\) In an uncharacteristically ingenuous and "historicizing" gesture, Neusner, *Economics of the Mishnah*, 1990, 102, states "the going rate of interest appears to have been 25 percent for a loan in cash, and 50 percent for a loan in kind." The matter is not so simple. The rate of 50% on loans in kind was quite conventional in Egypt (see Johnson, 1936, 460–1). If similar economic conditions existed in Palestine during the time of the Mishnah it would be a reasonable assumption that in Palestine too this was a conventional rate. As for loans of money, under Roman law, and in Egypt in the Roman period, the legal rate of interest was 12% for loans of money, and this is reflected in documents from Egypt (the rate is set in the Gnomon of the Idios Logos par. 105 [dated to the middle of the second century]; for documents see Johnson, 1936, 450 n. 58, who cites examples of variation from 24% to 6%). In at least one of the documents from the Babatha archive, involving a loan by a Roman soldier (therefore, in theory, bound by Roman law) and a Jew, the rate of interest charged is 12% (*P. Babatha* 11.7, 21–2 [124 CE]; N. Lewis, in noting the erasure in line 3 of "forty" and the interlinear insertion of "sixty," suggests that the loan was actually for forty *denarii* and the document falsely records the loan as sixty as a way of charging a higher rate of interest as well as a higher "principal"). *DJD* II 114 (again involving Roman soldiers) refers to an official rate of interest (*son eg* (*l. ek*) *diatigmatos tokon*). From *P. Babatha* 15, S. Lieberman, "The Importance of the Bar Kokhba Letters for Jewish History and Literature," in *Masada and the Finds from the Bar Kokhba Caves* (New York: The Jewish Museum, 1967), 42–3, rpt. *idem*, *Texts and Studies* (New York: Kvaw, 1974), 208–9, concluded that the going rate of interest varied between 6% and 18%. However, if Lewis' analysis of the relationship between *P. Babatha* 14 and 15 is correct, the statutory rate of interest was 12%, and the point of the proceedings against the guardians is that Babatha accused them of withholding half of the income from their ward's money. The elevated rate of 18%, which Babatha proposes to provide for her son's upkeep, is explicitly expansive and may be a special case of "interest" paid for the upkeep of a minor. It may be, therefore, that in the Judean Desert documents, as in Egyptian papyri, a 12% statutory provincial interest rate is presupposed. However, both sets of documentation come from different administrative units (Egypt and the province of Arabia) than that in which the Mishnah was produced, and cannot offer direct evidence for Galilee in the late second century. These documents do indicate, however, that statutory rates of interest need not necessarily prevent lenders from charging higher rates. However, when and where (or even whether) 25% was the going rate for loans is beyond our knowledge. It may even be that the figure of 25% was chosen for ease of presentation (a *dinār* is one fourth of a *sela*).
the traditions attributed to R. Gamaliel (Yabnean) and R. Simeon (Ushan) in M5:10 [E-P] prohibit extra-contractual gifts of money or service as a form of interest: it is precisely the giving of a “gift” that expresses inequality and residual obligation.\textsuperscript{152} The emphasis on equality between lender and borrower is also emphasized by the insistence on parity in M5:10 [A-D]: the labor that one person does for another has to be balanced by the “loan” of labor that that person receives in return, or the exchange of unpaid labor is usurious.

The rule that the lender ought not to receive more than he gave out is used as a systemic principle to structure other permissible or prohibited transactions. Hence, M5:2 allows the lessor of a property to charge more if the lessee pays on a month-by-month basis, and less if he pays for a full year in advance [F–H], but prohibits a seller from charging a higher price for deferred payment [I–K].\textsuperscript{153} In the sale of land where partial payment is made, the seller is not permitted to retain possession (and usufruct) of the property

\textsuperscript{152} I have argued (Appendix I, note to M5:10) that M5:10 [O–P] refers to information that the debtor offers to the lender as a gift. If the reading supported by the Sifre to Deuteronomy (Sipre Deut. 262, ed. Finkelstein, p. 284) is correct, that the information is specifically requisite by the lender, the built-in inequality inherent in this form of “interest” is even more emphatic.

A similar prohibition of extra-contractual gifts occurs, I believe, also at M5:2 [A–C], which prohibits letting one’s lender live in one’s courtyard for free or for a reduced rent (Chapter II.C.3). However, in light of papyri from Egypt and elsewhere documenting loans on \textit{anti-khresis} where the service was provided explicitly instead of interest, it is possible that M5:2 [A–C] considers a contractual form of interest, and not an extra-contractual gift (see below on security). (For loans involving personal service, cf., e.g., \textit{P. Dura} 20, 21 and the documents listed by Johnson, 1936, 452–4; for documents involving housing see, e.g., the contracts of \textit{enoikësis} such as \textit{P. Fouad} 44 [44 CE]; \textit{BGU} I 260 [90 CE] [=\textit{M. Chr.} 137]; \textit{P. Oslo} III 118 [111/2 CE]; \textit{P. Mich.} III 188 [120 CE], 189 [123 CE]. See further Taubenschlag, 1955, 286–91; B. Cohen, “Antichresis in Jewish and Roman Law,” \textit{in Jewish and Roman Law: A Comparative Study} [New York: JTSA, 1966], 433–56.)

\textsuperscript{153} Note that in this case the rate of “interest” is 20%. The case of sale is clearly understandable as one of usury: payment is due immediately, and by charging more for deferred payment the seller is charging interest. The case of renting requires some explanation. According to the Babli (B65a), the reason that the transaction is permitted in the case of lease is that in a lease payment is due at the end of the term (this rule is attributed to Rabbah and Rab Yosep), in this case at the end of each month, so the lessor is seen as charging the fair value for a month by month basis, and as willing to deduct from the rent in exchange for the money in advance, and not as charging a fee for the use of the money by the lessee. At the end of Y5:2 (10b) there are two traditions that seem to be comments upon M5:3 [I–K] (see Lieberman, \textit{Yerushalmi} \textit{Neziqin}, 156 and the commentaries cited there). (1) “R. La said: ‘He gives him the fee for his walking (\textit{têkîr raglê}, lit. “the wage for his feet”).’ That is, the lessee compensates the lessor for having to come monthly and collect the rent. (2) “R. Zera said: ‘He becomes like one renting
Institutions and Relationships

until full payment is made since this would constitute interest (M5:3 [A–C]). By contrast, in a loan against a field as security, possession of the field remains with the borrower (the “seller”) (M5:3 [D–G]).

It is a measure of the Mishnah’s dependence on a money economy, and on the use of coins to mark the value of commodities, that loans of produce that are liable to price fluctuations are restricted even when they do not involve an outright charge of interest. According to the dictum of Hillel, even loans of a loaf between women must be made according to the cash value of the loaf at the time of the loan (M5:9 [D–G]). (Note once again the kinds of loans depicted as taking place between women.) Even in traditions that do not conform to Hillel’s strictures, loans of produce may not be made for a

his dwelling for a high rate.” In other words, in the case of leases, one is simply permitted to charge what one wants (perhaps because of the view underlying the Babli’s interpretation as well).

Arguably, if the point of M5:3 [D–G] is to rule on the problem of who may enjoy the use of the field in the interim, its conclusion is trivial: if the field remains in the hands of the borrower surely there is no problem of unlawful gain by the lender. Furthermore, the terms of the agreement, “If you do not give me [payment] from now until three years [from now], lo, it is mine” [E], may imply that possession is not transferred until the borrower defaults. At any rate, [E–F] seems to be particularly concerned with the transfer of ownership, and not with interim use. It may be that M5:3 [D–G] (unlike [A–C]) does not deal with the possession and enjoyment of the property, but with a field whose value exceeded that of the loan (so that the eventual transfer of the house will give the lender more than was lent out). That possession and use of the property used as security stays with the borrower need not be contradicted by the view attributed to R. Judah in T4:2 (cf. Y5:3 [10b] [on the text see Lieberman, Yerushalmi Neziqin, 156], and B63a; b. 'Arak. 31a). That passage appears to presuppose a different case, despite the clear overlap with M5:3 [D–G] (both deal with a field used as security, and both refer to Boethos b. Zenon). The wording of the passage from the Tosepta (“he sold him his field in writing”) may imply that the document transferred ownership immediately, and not, as in M5:3 [D–G], only upon default (cf. the Greek institution of ὑπ᾽ ἐπιστήμην, “purchase on trust”); see Taubenschlag, 1955, 272–5). Thus, should the lender make use of the field (as according to R. Judah) and the borrower fail to pay, the lender will have been enjoying the use of a field that he bought and was his own all along. A similar suggestion was attributed to Rab Nahman in the Babli as an explanation of M5:3 [D–G] itself (B66b), and was accepted by the commentaries, but is not required either by the wording of the Mishnah itself or by its ruling on interest. In the Tosepta, however, this reading seems very likely (it is suggested, e.g., by Ritba in Šīṭṭa mēqubeset to B63a, s.v. ʿOšēmāʾel, and may be implied in the comparison in the Yerushalmi [attributed to R. Yohanan, R. Eleazar, and R. Hoshaya] of this case to the Biblical rule of redemption of urban property [Lev. 25:29–30; m. 'Arak. 9:3]: i.e., both are immediate sales subject to redemption).

Cf. the tradition attributed to Rab Judah in the name of Samuel, which sees Hillel’s rule as a kind of supererogatory legalistic pietism that can only lead to trouble (B75a).
term long enough for the price to fluctuate in the interim (M5:9 [A–B]). Similarly, where one buys produce for later delivery, the seller must either have produce, or the produce must currently be available in the marketplace (i.e., there is a “market price”) so that either buyer or seller could get the produce immediately if they wanted; otherwise the seller owes a debt of a certain volume of produce, which, since the produce is subject to fluctuation in price, is prohibited (M5:1 [H–L]; M5:7). I have been arguing that the treatment of interest in m. Baba’ Meşi’a reflects the assumption that loans are consumer loans between equals. Yet the world in which the Mishnah took shape was one in which loans were also given as business investments. The Mishnah refuses to grant legitimacy to such loans when the lender charges interest, and is willing to permit them only when they can be perceived as another form of transaction. This is quite clear in one of the passages just referred to above (M5:1 [H–L]):

156 The language of this pericope is worth noting. First, the prohibition is applied although the borrower promises to pay at the harvest, when prices are likely to be at their lowest [A]. Second the permitted case [B], “but he [the borrower] may say to him: ‘[Lend me produce] ... until my son comes,’ or ‘... until I find the key,’” may presuppose not only that the loan must be for a short term, but that the borrower actually has produce but is currently unable to get at it (so, e.g., Rashi, s.v. ‘Abāl[B75a]). If so, this pericope is working with the same principles as M5:1 [H–K] and M5:7. If this is the case, loans of produce, “neighborly” loans between equals, can only really be carried out in an informal manner between two parties who have a measure of wealth in the form of produce. (In [A], too, the stipulation “I will give it to you at [the time of] the threshing floor,” is consistent with a picture of a land holding borrower who expects to have produce down the line, although admittedly it would apply equally to small freeholding or tenant farmers as well.) A loan to a poor person who does not have stores of produce would have to be made on the basis of the cash value. This is potentially a strikingly divisive element in what is ostensibly an egalitarian system.

157 Compare the Gnomon of the Idios Logos, par. 104, which prohibits selling produce until it is harvested. R. S. Bagnall, “Price in ‘Sales on Delivery,’” GRBS 18 (1977) 85–96, describes how these kinds of sales, at least in Egypt, can mask loans that are decidedly not interest free by misrepresenting the sale price. The Mishnah, however, seems to be concerned with increase resulting from the “natural” fluctuations in prices.

158 See on this pericope S. Lieberman, “Miṣnat bābā’ meši’a rēl ḥeḥu nelek ʿā-pērēlah,” in Yad R. : M. Lifḥitz (Jerusalem, 1975), 217–23, rpt. in idem, Studies in Palestinian Talmudic Literature, ed. D. Rosenthal (Jerusalem: Magnes, 1991), 12–8. Lieberman seems to suggest (p. 14 [219]) that in [H–K] what is referred to is a wheat merchant re-selling produce that he had bought for twenty five dinārim for thirty dinārim (i.e., precisely the limit allowed by the rules on ḥonayṭ, if the sixth is calculated as a fraction of the market price plus the overcharge [on this method of calculation see Y4:3 [9d]; B49b; Melamed, 1942–3, 45–6]). This is a rather strange reading of the Mishnah, since the pericope states explicitly that the market price had gone up [I], and not that the original purchaser, now the seller (Lieberman’s “wheat merchant,” although there is no reason why this transaction should not be seen as taking place between householders, as I have argued above in my discussion of markets) wishes to raise the price.
[H] He bought wheat from him at a golden dinár to the kór, and such was the market price.

[I] Wheat [later] stood at thirty dinárím [to the kór].

[J] He said to him: “Give me my wheat, for I am going to sell it and buy wine with it.”

[K] He said to him: “But lo, your wheat is valued with me at thirty dinárím! And lo, you have a claim with me against them for wine”—

[L] but he does not have wine.

Where M5:7 depicts a straightforward purchase, this pericope adds the element of speculation: buying at a low price to sell high and converting the proceeds into a new investment in produce. What makes the transaction prohibited in this pericope is the fact that the borrower (the “seller”) does not have wine. Since the transaction cannot be construed as a sale, it must be a loan and is prohibited.159

159 The restriction is even more explicit in a bāna'atā in T4:23 (with parallels Y5:8 [10c]; B62b):

[A] He owed him money,

[B] and he came to take produce from him at the threshing floor.

[C] He [the borrower] said to him: “Go out and value them against me at the market price, and I will give [the produce] from now to twelve months [from now],”

[D] lo, this is ribbit,

[E] because it did not come to him like his ḫissār.

[F] He came and said: “Lend me a kór of wheat and I will give it to you at the market price at which you sell it,”

[G] it is permitted.

[Nahmanides, Hiddusim to B65a concluded that the Yerushalmi’s version of [F–G] read ḫissār, “it is prohibited,” in [G] (see Lieberman, TK, 9, 208), and sees [F] as a reference to a contract to pay according to some future price. Even if correct, this does not mean, however, that the Tosepta should be emended accordingly, since traditions often circulated with variations. In the context of the Tosepta, [F] may mean simply “I will give it to you at the market price at which you could sell it [now],” i.e., the current price.] In [A–E] the transaction is prohibited [D], even though the borrower (“buyer”) had produce (cf. M5:1 [L]), “because it did not come to him like his ḫissār” [E], i.e., because the transaction did not begin with the transfer of a coin given as a purchase (see Rashi, s.v. De-lo’ ke-ḫissārō, B62b). According to this tradition, not only must the transaction appear to be a sale, but it must actually be a sale. By contrast, a bāna'atā at B63a (tēni R. Ṭōla'ya), begins (as does T4:23) with a debt, but allows a succession of conversions of the debt to new forms of produce, much as does M5:1 [H–L].

Since M5:1 does not specify whether there existed a market price for wine in [K–L], it is possible that the author of [H–L] would have permitted the transaction—even though the borrower had no produce—if such a price existed. In that case, M5:1 would make no distinction between actual sales for delayed delivery (cf. M5:7) and a fictive “sale” that converts a debt of one commodity into another. While this may be, this view is not attested in the Tannaic material cited in the preceding paragraph. T4:23 clearly would prohibit such a transac-
In the transaction just described, the parity between the parties is maintained. It is otherwise with the other form of investment described in Chapter 5 of our tractate, in which one party gives money or raw materials (produce or animals) to a borrower and shares the profits.\(^{160}\) M5:4 [A–B] discusses transactions with a shopkeeper. In [A] the principal gives actual produce to the borrower. The next clause [B] considers an investment of "money with which to buy produce." Since this latter transaction, too, is contracted "for half profit" (lê-mahasît šâkâr), it follows that the produce is to be bought for reselling. In connection with animals, two types of contractors "for half profits" are considered in \(m.\) Baba 3 Mešî'a:\(^{161}\) (1) one who assesses (or: receives on assessment) (šām) the value of the animal (M5:4 [E]; M5:5 [A, D]; the "setting up" of chickens, M5:4 [D], is presumably a contract of the same type since the same ruling, M5:4 [F], applies to both);\(^{162}\) and (2) one who receives (mêqabbel) (M5:4 [G]).\(^{163}\) In all of these cases, the transaction (in [B–C] there exists a market price and the borrower has produce). The bâraštâ of R. Osha'ya, which permits conversion of a loan, nevertheless specifies at each phase: "value them against me at the current market price" (ka-laâr šel 'aṣkâynu), and concludes that the transaction is permitted only if the borrower ("seller") actually had produce. If the expression "he has no wine" in M5:1 [L] specifies that [K–L] would only have been permitted had the borrower had wine, even if there existed a market price, the Mishnah, like T4:23 and the bâraštâ of R. Osha'ya, makes a sharp distinction between these two contracts.

\(^{160}\) It is perhaps an indication of the limitations of the Mishnah as a workable law code and of its incompleteness as a compendium of materials, that this subject is discussed in no more than two pericopae in the Mishnah (M5:4–5; three, including M5:6), but takes up the better part of twenty-nine pericopae in the Tosepta (T4:11–25; 5:1–14, with some exceptions).

\(^{161}\) For the material from Egypt see S. von Bolla, \emph{Untersuchungen zur Tiermiete und Viehpacht in Altertum} (Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte 30: Munich: C. H. Beck, 1940), 28ff. (on leases of animals for their "produce" rather than their labor, Viehpacht) and especially 93ff. (on proportional arrangements). For contracts on shares see \(SB\) V 7814 (K.S. Gapp, "A Lease of a Pigeon-House with Brood," \emph{TAPA} 64 [1933], 90–1; 256 CE) in which the lessees pay a specific (and increasing) number of birds and a proportion of the dung produced (one half in the first year, two thirds in successive years); \emph{P. Thead.} 8 (306 CE) = \emph{P. Sakaon} 71 similarly involves both payments of fixed amounts and proportional shares of the flocks (see the discussion by von Bolla, 1940, 102–4).

\(^{162}\) T5:10, dealing with receipt on assessment ("One who assesses (ha-tâm) an animal from his fellow") presents the following fragment of a documentary formula: "if it should die at [my] fault (bê-bûṣyâ) I will pay the whole [of its value], [if] not at [my] fault I will pay half" (cf. the discussion of the term \(bûṣyâ\) in connection with negligence in section B.2 above). The implication is that under normal circumstances (i.e., not \(bê-bûṣyâ\)) the "borrower" assumed only half the risk for loss, damage, or depreciation from the initial valuation (cf. the expansion on this in T5:11–2).

\(^{163}\) T5:1–2, in two pairs of cases, distinguishes between a contractor who receives (qibbel) animals "for a hundred gold [coins], for a half, for a third or for a quarter," (a prohibited
borrower is permitted to use the "loan" for personal profit. However, since half of the profits go to the owner, the borrower returns more to the lender than the lender gave out as an investment. Therefore, the lender must compensate the borrower so that the latter not appear to be providing free service (or value) to the lender in exchange for use of the money or raw materials (unless the borrower receives some other form of supplementary compensation). In discussing these contracts, the Mishnah does not deal with status

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contract) and one takes on the contract "for a half, for a third or for a quarter, half for food and (or?) half for idleness [i.e., from other activities, in modern terms "opportunity costs"]" (a permissible contract). According to Lieberman, TK, 9, 209, the valuation "for a hundred gold [coins]" applies to the first case alone, and the primary distinction between the cases is the assignment of risk: in the prohibited case the contractor is liable for the entire initial value. If this is correct, it is possible to take "receipt" as a contract in which there is no liability at all for the "borrower" (as did Rashi, for instance [see the note to M5:4 in Appendix I]; see also Lieberman, TK9, 210, n. 4). However, even if the initial valuation referred to in T5:1–2 applies only to the prohibited case, it remains possible that some liability (e.g., a proportion equivalent to the share of the profits) is undertaken by the "receiver" in the permitted case. Moreover, it is possible that "for a hundred gold [coins]" applies to both cases, and what distinguishes the two cases is solely the specification "half for food and half for idleness" in the second: i.e., by making the compensation explicit one has met the requirement of "paying a wage." If that is so, it should be noted that in contrast to the Mishnah, in the permitted contract it is the proportion of the appreciation that is the functional equivalent of labor costs and wages (cf. M5:4 [C, F]) and the payment per head that serves as the "share" in the contract. Nevertheless, this passage from the Tosepta may explain why the requirement to pay a wage is not specified in connection with a méqabhél (M5:4 [G–I]).

The traditional assessment of the contracts in M5:4 [A–F] is that the recipient of the materials is partly a borrower (and liable with respect to damage and loss) and partly a depositary (i.e., bearing only limited liability) (see B74b, in the name of the "Nehardeans"), and that the share of the profits that the contractor makes from the portion on "deposit" and delivers to the "lender," is the product of labor offered free of charge in exchange for the use of the portion that is a "loan." It is this labor that is "interest" unless it is compensated. (See Rashi ad loc. B68a). In the Tosepta there is a dispute about how high the compensation is to be, with the view attributed to R. Judah that the compensation need be only nominal (the "borrower" ate some of the "lender’s" bread and vinegar or dates); and a further distinction between "full payment" (attributed to R. Simeon) and the wage of "an idle laborer" (pō’tēl baʾaret; attributed to R. Meir). (On the expression "an idle laborer," compare J. Heinemann, "The Status of the Labourer in Jewish Law and Society in the Tannaitic Period," HUCA 25 [1954], 278–83, who understands the phrase to refer to a worker duly hired but unable to work because of circumstances such as inclement weather, who is therefore entitled to partial compensation for the wasted day [T4:11; see also the note to M2:9 in Appendix I]; alternatively, the expression may refer to an unemployed worker willing to take work even at reduced wages). According to the reading of the manuscripts KRLNP in M5:4 [C], our Mishnah agrees with the view of R. Meir; according to the variant that leaves off the word "idle," M5:4 is in agreement with the view of R. Simeon (see Appendix I, note to M5:4). In M5:5 [A], the fact that during the term of the contract the animal can be made productive (it "produces and
equals making a mutually beneficial business arrangement, but rather transactions in which one party works for another and is directly answerable to the principal party: workers who will sell the produce of a householder, or will raise his animals, as well as tenant farmers receiving loans of seed or of money for improvements (M5:5 [E–F]; M5:8).165

Loans are everywhere a risky undertaking. Despite the apparent ability of the debtor to pay there is always the risk that borrowers will default on loans. If the Mishnah refrains from compensating the lender for undertaking this risk (i.e., through interest), it does recognize the need of lenders to secure their loans. One way of doing this is for the debtor to put forward a third party who is willing to guarantee payment ("ārāḥ, “surety,” “guarantor”) (M5:12 [B]).166 The other form of security that the Mishnah recognizes is that of pledged property.167 This may take the form of landed property, as in M5:3 [D], which refers to a case in which one party lends to another against the value of a field.168 (Although the Mishnah does discuss the “Hebrew slave” who sells himself for a limited period of time, it does not use the category "eats") apparently obviates the need for an additional wage. M5:4 [G–I] may not specify payment for the "receiver" (mēqabbēḥ) because it is presupposed by the definition of that kind of contract (see the preceding note). Alternatively, [G–I] depends on the rule of [C, F].

On the prohibition of the contract of the soʿn bārzel, “iron sheep” (M5:6 [A, C]), see Y5:7 (10c) and T5:14 (on the text of which see Lieberman, TK, 9, 217–8). The passage from the Yerushalmi presents a case where the recipient of animals accepts all of the risk for the animals, but receives all of the profits less a charge per animal. A. Gulak, “Soʿn bārzel bi-dīnè ha-talmud,” Tarbiz 3 (1932), 137–46 surveys the material and discusses it in connection with Greek (especially the "athanatos" contracts; see von Bolla, 1940, 17–27) and Roman legal traditions.

166 As I have already noted in my discussion of markets, the Tosepta greatly expands on M5:4 [A–C] (investment with a shopkeeper), and, in particular, emphasizes the demands that the principal may make on the shopkeeper’s time and activities (T4:12–3, 19–21). For the tenant farmer see M9:1–10 and the discussion in Section B.6 of this chapter.

167 Cf. m. B. Bat. 10:7, 8. The latter passage (in a tradition attributed to Ben Nannas [Yabnean]) makes a distinction between a surety who is assigned after the giving of the loan ("after the signature of the documents") and one who undertakes the responsibility before the money is loaned ("lend to him and I will give it to you").


169 Compare, e.g., papyrus documents referring to loans on hypothec (P. Oxy. III 485 [178 CE]; XVII 2134 [170–1]; from the Judean Desert comes a fragmentary document [it is listed by the editors as an acte de vendé] that refers to a piece of property that is "liable for payment of a debt" [zaharāʾ bē-pērēʾōn], DJD II 22. 1–2; and a fragmentary Greek document, P. Seclidim Gr. 3, published in H. M. Cotton, 1994, 53–60); compare also the institution of hypallagma, in which the debtor retains possession of the security but is prohibited from alienating it (e.g., P. Ath. 21; P. Vind. Worp 10; and the two documents in J. G. Keenan, “Two Loans from Tebtunis,” BASP 7 [1970], 77–84).
of personal security of a loan. In general, when the Mishnah uses the noun *mašken*, "pledge," it refers to moveable goods that the borrower hands over to the lender in exchange for the loan. In M9:13 [B] the noun is used to refer to a pledge seized for the lender by the court. In either case, the pledge is considered to be in the hands of the lender, hence the level of liability that the lender bears with respect to the pledge becomes an important issue, discussed in M6:7. In M9:13 [E—I], however, the Mishnah discusses the Pentateuchal rule that the pledge of a poor person be returned so that the

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170 For instance, M6:7. Cf. also m. Ma'at. Š. 1:1 (produce as pledge; the context, which involves selling and exchanging second tithe produce as well as using it as a weight (?), suggests that it has been transferred to the lender); m. Šebu. 6:7 (the rule worked out about the pledge presupposes that the lender had possession of it and lost it). m. Šebi. 10:2 is not explicit in this regard. Compare P. Lond. II 193 (p. 205), the account of a pawn broker who makes small loans (to women) in exchange for articles of clothing, jewelry or furniture; P. Oxy. III 530.

The verbal use of *mašken* in the Mishnah applies to land as well as moveable property, and can mean both to "distrain" (especially by a court: M9:13 [B, J]; see also m. Šeq. 1:3; 7:5; m. Ket. 13:8; m. Šebu. 7:2; m. Arak. 5:6; 6:3; 8:2) and "to give up as a pledge" (e.g., the formula "sold it or gave it as a pledge [miškenah]," m. Ab. Zar. 4:5; m. Ket. 11:3 [in both cases real estate is referred to], which seems to presuppose that the object is no longer in the borrower's possession). However, the context of the passive participle *memuskan* in m. Pe'a 8:8 and m. Šebi. 10:6 may imply that the object so described is still in the possession of the borrower.


Said R. Yohanan: "How much is a person willing to give to sell his produce on the [security] of a pledge."

Said R. Abbahu in the name of R. Yohanan: "How much is a person willing to give to sell his produce to someone who will appease him by means of a pledge."

On the basis of the Yerushalmi traditions, Friedman took M6:7 [B—C] to refer to a sale for delayed payment, with the payment secured by a pledge (hence the "lender" receives the additional benefit of disposing of the produce, and therefore has a higher liability with respect to the pledge). Indeed, given the discomfort with loans of produce in the Mishnah, and the dictum of Hillel (M5:9 [D—G]) that loans of produce were to be made for the current monetary value of the produce, it is not impossible that what is envisioned in M6:7 [B—C] is a loan in which the lender will receive cash in repayment of the loan. Nevertheless, M6:7 is framed in terms of a loan, and not a sale. This may be merely because the view attributed to R. Judah amplifies a tradition involving loans. However, since loans of produce to be repaid in kind do appear in the Mishnah, at least within limits (see M5:8–9 and the discussion of M3:6–8 in Chapter II.B.2), it may be that M6:7 [B—C] is working with the case of real loans. In that case, the increased benefit to the lender is that the lender now has an unpaid caretaker for the produce.
borrower may use it. In focusing on the Biblical rules (Ex. 22:25–6; Deut. 24:10–13, 17), M9:13 as a whole emphasizes the potential real poverty of borrowers, and demonstrates an interest in protecting paupers from rapacious creditors: distraint can only be undertaken by the court [A–D]; the pledge must be returned for the debtor’s use [E–F], and something upon which the sustenance of the debtor depends may not be seized at all [L–R]; for reasons of sexual morality or reputation, rather than economic ethics, the pledge of a widow may not be seized at all [J–K] (cf. Deut. 24:17). Once again, the model of parity is allowed to break down, and in its place a picture in which a creditor may have substantial power over his debtor is recognized. This is especially striking in the tradition attributed to R. Simeon b. Gamaliel (M9:13 [G–K]), which limits the amount of time that the borrower can rely on receiving his pledge back for use before it is sold off. In this rule the power of a creditor over the property of the borrower is not only noted but enforced (within limits). The same theme, that of the power that the lender has over the borrower, recurs in M6:7 [D–E]:

[D] Abba Shaul says: “A person may rent out the pledge of a poor [debtor] in order to continually assign it to him [i.e., against his debt],

[E] “because he is like one returning a lost object.”

On the one hand, this tradition is clearly in the interests of the poor person, since it reduces the debt. At the same time, however, the passage also presupposes that this renting out of the pledge is undesirable (whether because of

\[172\] M9:13 [J–K] is glossed in T10:10 as follows:

[C] “It is the same (‘ahat ... wē-‘ahat ...) whether she is poor or wealthy.”

[D] the words of R. Judah.

[E] R. Simeon says: “[In the case of] a poor woman he is not permitted to seize the pledge [at all],

[F] “[In the case of] a wealthy woman, he takes [a pledge] but he does not return it,

[G] “so that he not [regularly] go in and out of her house (ḥōlēk ʿa-hā ṣ’lāh),

[H] “so as not to cause her a bad name.”

[G–H] make the issue of sexual reputation quite clear. Notable in this context is also the question of the interpretation of “authorial intent” in Deut. 24:17: “You shall not seize the garment of a widow as pledge.”

\[173\] By contrast, in M9:13 [E–F] the time limit is unstated, and presumably open. It is probably in this connection that T10:9 adds explicitly “but if he returns it [i.e., if the creditor is required to return the pledge to the debtor for the debtor’s use] he returns it forever.” (Note, however, that in T10:9 the specific case is somewhat different than in M9:13. In the Tosepta, the loan is secured by two pledges: “one that he [the debtor] needs, and one that he does not need.”
wear and tear on the object, or the loss of dignity involved in having one’s property in the hands of a stranger), and that poor people are subjected (against their will?) to something from which wealthy borrowers are exempt.\footnote{174 This is made explicit in T7:18, in which a version of Abba Shaul’s tradition ends “but he is not permitted to touch [the pledge] of the wealthy man.”}

5. Laborer and employer.

The Mishnah considers the rights of workers to be protected from unilateral deviations from customary practice, to eat of the produce of the field, to demand their wage and, in fact, entitles workers to an extraordinary procedure to secure their payment. This concern with the privileges of workers is remarkable in light of the general attitude towards laborers in Greek and Latin literature and, in particular, the relative absence of concern for this topic in Roman legal texts.\footnote{175 The recurrent description of manual labor as “servile” and of laborers as slave-like in classical literature is by and large absent in Rabbinic tradition.\footnote{176 See, e.g., Aristotle, \textit{Politics}, 8.1337b.19–21 (performing even “liberal” activities on account of another is both \textit{thētikos} [like a hired worker] and \textit{doulíkos} [slave-like]); Nicomachean Ethics, 4.1124b.31–5a.2 (for the noble person \textit{megalopsykhos} to live for another is \textit{doulíkos}; that is why all flatterers \textit{[kolakes]} are \textit{thētikos} and humble people are flatterers); Cicero, \textit{De officiis}, 1.150–1 (the occupations of hirelings \textit{[mercenarii]} are all illiberal and dirty \textit{[sordidus]}; “the very wage [they receive] is the recompense for their servitude”); Lucian, \textit{Apology}, 10 (entering the imperial service is different than entering the service of some rich man in order to serve \textit{[douleueri]}). It is not accidental that the closest thing in the Digest to a discussion of contractual relations between employer and employee does not occur in the context of a discussion of \textit{locatio conductio} (lease and hire) (D 19.2) but in the title \textit{De operis libertorum} (D 38.1, “Concerning the Work of Freedmen”), that is, in the context of the obligations a nominally free, but not independent, person owes his or her patron (cf. also D 47.2.90; 48.19.11.1). See Finley, 1985, in particular 62–94; de Ste Croix, 1981, 179–204.

That the status of a laborer might also be seen as “servile” in Rabbinic tradition is made quite clear in \textit{Sipra Be-har}7:3 (ed. Weiss, 109c), to Lev. 25:39–40 (“If your brother should be brought low and is sold to you, you shall not have him perform the labor of a slave. He will be with you like a hired laborer \textit{[šākir]}; like a resident \textit{[aliens] ...”}). The \textit{Sipra} notes that “like a hired laborer” the “Hebrew slave” is also entitled to his wage at the proper time. More

\footnote{174 This lack of interest was noted by Schulz, 1951, 344–5. See also Crook, 1967, 192–200. There are, however, occasional references in the Digest to the rights of a worker. For example, D 19.2.38.pr. (Paul) rules that a worker is entitled to his wage if it was not his fault that he did not do his job (cf. T7:3–4); cf. D 19.2.19.9 (Ulpian), which cites an imperial rescript that gave a similar ruling for a copyist (cf. T7:1, to be discussed further below). In both cases the texts refer to workers who have leased out their labor (\textit{operas suas locare}) and not to a situation in which the worker (typically an artisan) has accepted a contract to do a job. In D 38.1.50.1 (Neratius), a worker is entitled either to food (cf. M7:1) or to time off to eat, and time to take care of physical requirements.

\footnote{175 See Finley, 1985, in particular 62–94; de Ste Croix, 1981, 179–204.}
Rabbinic attitude towards labor. To be sure, the relationship of laborer to employer can be used in tractate *Avot* as a model for the relationship of humans to God (*m. Ab. 2:14–16*), but so can the relationship of slave to master (*1:3*). At best, we can say that the Mishnah reflects an appreciation of skilled artisanship (although not without some ambivalence), and this appreciation perhaps extends to small independent farmers who had to work hard to make ends meet. Both artisan and small farmer, however, are independent producers; the same cannot be said of unskilled wage labor, and it is interesting, however, is the immediately preceding tradition that “you shall not have him perform the labor of a slave” implies that this special class of bondservants is exempt from doing servile work, but free laborers do not share in this exemption. (In light of this, it seems that the rule brought in the continuation of 7:3 [*109c–d*], that "with you" means that the bond-servant is to be maintained at the standard of living that the master enjoys, need not be taken as extending also to the hired laborer. Cf. M. Ayali, *Pilgul wé-*וּמָנִים: meḥaktnan um-*מַעָ'קָדֵדְמִים be-siprut hiz[ déf] Jerusalem: Masada, 1987, 77, who concludes that this passage expresses the hope that workers be treated as equals.) It should be noted, however, that this passage does not attribute servile status to workers merely because they perform work for others, but rather requires duly contracted laborers to perform whatever duties they are assigned even if those duties are servile. In this connection, it is worth noting the Amoraic tradition attributed to Rab and connected in both Talmuds to the contractual relationship of the worker to his employer that glosses the verse “for unto me are all the children of Israel slaves” (*Lev. 25:55*): “[They are] my slaves and not slaves to [my] slaves” (*B10a*; cf. *b. B. Qam. 116b; B77a-b*; compare *Y6:2 [11a]: “Israelites do not acquire [qônîn] one another”). It is presumably in the context of an easy association between hired laborers and slaves or bondservants that this passage explicitly denies any such connection.


In a gloss to a reference in *m. Qid. 1:7* to obligations of fathers with respect to their sons, the Tosefta includes teaching one’s son a trade (וּמָנָנְדַּה), followed by a series of traditions about how knowing a trade establishes both financial security and morality (*t. Qid. 1:11*). More ambivalence is reflected in the Mishnah itself in a late supplement that appears in standard editions of *m. Qid. 4:14* (see Epstein, *Nûrah, 977–8*: most ms. do not include this material and several medieval commentaries testify that it is not properly part of the Mishnah; Epstein suggests that the material comes from *t. Qid. 5:14–7*, with which the supplement to *m. Qid. 4:14* does indeed have multiple parallels). A tradition attributed to R. Meir instructs a father to teach his son an “easy and clean trade” (surely because some trades were beneath one’s dignity if one could avoid them) and continues with the recommendation that the father pray for his son’s sustenance “for there is no trade in which there is not [both] poverty and wealth ...,” a theological position that is rather less confident in the advantages of trades than the passages from *t. Qid. 1:11* referred to above. More striking is the passage attributed to R. Simeon b. Eleazar that follows immediately in the supplement to *m. Qid. 4:14 (= *t. Qid. 5:15*), which describes the necessity of trade in human experience as the regrettable result of the fall of Adam in terms strongly reminiscent of Mt. 6:25–33 and Lk. 12:22–31.
unclear to what extent Rabbis’ appreciation of labor extended to include these workers.\footnote{179}

Traditions about workers (pō‘alîm) in the Mishnah associate them with agricultural labor,\footnote{180} in contrast to slaves, who are regularly associated with domestic work.\footnote{181} If this differential treatment of free and unfree labor is reflective of the forms and distribution of labor in Roman Galilee (this is far

\footnote{179} In m. 'Abot 1:10 the dictum “love work (mēl̄'ākô)” is attributed to Shema’yah. How this was taken by later tradition may be seen from the way in which the dictum is glossed in 'Abot R. Nat. B 21, in which the work referred to is repeatedly assumed to be skilled crafts, or independent agricultural activity, for instance:

(1) R. Yose says: “Great is work, for the Divine Presence did not descend upon Israel until they did work [in the building of the Tabernacle (i.e., the work of carpenters, weavers, and metal smiths)]” (cf. A 11).

(2) R. Eleazar b. Azariah says: “Great is work, for every single artisan (kol ‘ūmān we’-’ūmān) goes out and glories himself in his craft.”

(3) R. [Judah the Patriarch] also used to say: “Great is labor, for even if a man has a courtyard or a vineyard in ruins he should occupy himself with them so that he will be occupied with work.”

If Rabbis made the distinction I am suggesting between independent production and wage labor they were merely conforming to more or less common upper class values in the ancient world. This is precisely the difference that Cicero, for example, makes in the passage referred to above between those workers who are paid for their labor (operae) and those for their skill (artes) (De officiis 1.150–1). See also the discussion of de Ste Croix, 1981, 198–9, of the terminology of locatio conductio operarum (the hire of one’s services) and locatio conductio operis (the hire of a job) in Roman legal sources.

\footnote{180} See, e.g., m. Pe’a 5:6, 7; m. Kil. 7:6; m. Šebi. 5:8; 8:4; m. Ter. 3:4 (treading grapes); m. Ma‘aši. 2:7–8; 3:1–3; 5:5; m. Mo‘eṣ Qat. 2:1–2 (production of wine and oil); m. Ned. 4:7 (agricultural labor, but also building a house or wall); m. B. Meṣ. 7:2–7 (cf. M6:1 [D], processing of flax); m. 'Ab. Zar. 5:1 (wine production).

\footnote{181} See m. Pes. 7:2 (roasting the paschal lamb); 8:2 (slaughtering the paschal lamb); m. 'Abot 1:3 (personal service, as a model for humans’ service of God); m. 'Obal. 18:7 (watching a house). See also the passages in which a slave is listed among the members of a household (e.g., m. Ter. 3:4; m. Ma‘aši. Ș. 4:4; m. 'Erub. 7:6; m. Šeq. 1:3; m. B. Meṣ. 1:5; m. 'Arak. 8:8; m. Neg. 14:12), or in which he appears as the representative of the householder, like his wife or agent (m. Bik. 1:5; m. B. Meṣ. 8:3; m. Menah. 9:8). In m. B. Qam. 6:5, the slave who is killed in the burning of a stack of grain may (but need not) have been used for agricultural labor. Similarly, in m. B. Bat. 10:7 (whether slaves are automatically sold along with an ḫn), even if ḫn is taken to be an agricultural installation and not a village, the slaves may (but again, need not) be thought be doing work in the fields. In M7:6, the implication is that the slave performs agricultural labor, but this is perhaps to be explained by the fact that the pericope is interested in the status as competent adults of the various members of a household (including slaves) rather than in the type of labor these members perform. See G. Alon, Toldōt ha-yehudim bi-eres yisra'el bi-tiqqûmat ha-miṣna' we-ha-talmud (Tel Aviv: Hakibutz Hameuchad, 1953–4), 1, 97; Ayali, 1987, 82, who stress the relative infrequency of slaves in agricultural work in Rabbinic literature. See, more generally, Urbach, 1979.
from clear, but it is at any rate consistent with observations about Roman Egypt\(^\text{182}\), it suggests that slaves were not involved with “production” but rather contributed to the standard of living and, no doubt, the personal status of those people wealthy enough to afford them. Free laborers are also to be distinguished from artisans (\(\text{\text LOGIN}\)), who perform a more or less skilled trade, own their own tools (or, in the case of porters, their own animals), and are located in “town” and not in the fields.\(^\text{183}\)

It is about artisans that \textit{m. Baba\(^\text{a}\) Mesi\(^\text{a}\)} formulates its rules about contracting for labor (M6:1–2). M6:2 [A–E] reads as follows:

\begin{quote}
[A] One who hires artisans—
[B] and they withdrew,
[C] their hand is in the inferior position.
[D] And if the householder withdrew,
[E] his hand is in the inferior position.
\end{quote}

In other words, employer and employee are considered equal contracting parties, subject to the same penalties for withdrawal from the contract: if either party withdraws that party has a weaker legal standing.\(^\text{184}\) This rule is further generalized to penalize any alteration of, or withdrawal from, any

\(^{182}\) See Rathbone, 1991, 89 (also Johnson, 1936, 277f.).

\(^{183}\) \textit{m. Ber.} 2:4 (working on a course of stones; the pericope also refers to \(\text{\text LOGIN}\) atop a tree, although this may result from the Mishnah’s compressed language [cf. the emendation in \textit{y. Ber.} 2:4 (5a): "[Read] the Mishnah thus (\text{\text LOGEN}, for \text{\text LOGEN} in the Leiden ms. and the Venice \textit{editio princeps}): ‘The \text{\text LOGEN} read atop a tree, and the \(\text{\text LOGIN}\) atop the course of stones;’" see Epstein, \textit{Nisah}, 444–5; \textit{m. \text LOGEN}. 5:6 (sellers [and presumably makers] of farm equipment); \textit{m. Pes.} 4:6 (tailors, barbers, launderers and shoemakers are identified as workers in \(\text{\text LOGIN}\), “crafts”): 4:7 (one gets “vessels” \(\text{\text LOGEN}\), perhaps clothing, cf., e.g., \textit{m. \text LOGEN}. 1:10) from the house of the \(\text{\text LOGIN}\); \textit{m. \text LOGEN}. 1:10 (repairing shoes); \textit{m. Mo\text LOGEN ed Qat}. 1:8 (a professional tailor); 1:10 (construction work); 2:4 (“vessels” from the house of the \(\text{\text LOGIN}\); \textit{m. B. Qam}. 9:3 (carpenters and builders are given as examples of \(\text{\text LOGIN}\); \textit{m. B. \text LOGEN}. 2:2 (wool that is processed in the house of the \(\text{\text LOGIN}\); 8:7 (doors and locks are the work of artisans); \textit{m. Arak}. 6:3 (carpenters); \textit{m. Kel.} 5:4, 9 (makers of ovens); 26:1 (repairing baskets). In a Yabnean gloss to \textit{m. Arak}. 6:3 an ass driver and \(\text{\text LOGEN}\) (an agricultural worker) are mentioned. Ass drivers are also mentioned in M6:1 [D] in the context of hiring artisans. The case of the \(\text{\text LOGEN}\) is especially important because it is apparently the latter’s possession of a team of oxen that takes this worker out of the class of mere laborer (“If he was an \(\text{\text LOGEN}\) they give him [i.e., allow him to retain] his team [of oxen],” \textit{m. Arak}. 6:3; see also the sources cited in Ayali’s catalogue of types of labor, Ayali, 1987, 105 s.v. \(\text{\text LOGEN}\)).

\(^{184}\) It is frequently assumed that the view attributed to R. Dosa in T7:1 (cf. Y6:1 [10d–11a]; B76b) corresponds to that of M6:2 (Rashi to B76b, s.v. \text{\text LOGEN} \text{\text LOGEN}; see also Heine- man, 1954, 299–300; S. Friedman, 1990, 88). That view holds that if workers withdrew half way through a job and the cost of completing the job had gone up the employer can
Institutions and Relationships

205

type of contract [F–G]. However, M6:1 [A–C] rules that where the parties have “deceived one another” (ḥitʿū zeh ṭet zeh) they have no legal claim against each other (cf. M4:6 [E]). Just what is meant by deceit is not entirely clear, but the interpretation of the Yerushalmi\(^\text{185}\) is probably correct, that the

deduct the added cost to himself from the amount owed to the workers for the half that they completed (and perhaps, if the cost of labor had gone down, the employer could pay the workers for the work already done at the new lower rate, rather than at that originally contracted; see Lieberman, TK, 9, 247, citing Ḥasdē dāwīd and Merkebet ha-mīnā). Since, however, the tradition of R. Dosa only explicitly considers withdrawal by workers, there is no guarantee that according to this view employers were penalized if they withdrew, whereas the wording of M6:2 [A–E] states that the position of the employer who withdraws is analogous to that of the workers if they withdraw.

\(^\text{185}\) See Y6:1 (10d) (and Lieberman, Yerushalmi Neziqin 163; see also Albeck, Nēziqīn, 426):

(1) What is “and they deceived one another” [=M6:1 [C]]?
(2) [Employer:] “Come work for me (‘immāṭ; Escorial ms. ‘immān [plural]).”
(3) [Workers:] “How [i.e., at what rate] do you (pl.) work?”
(4) “For five rbn (?),”
(5) and it turned out that they worked for ten rbn for the job.
(6) “Come work for me.”
(7) “How [i.e., for how long] do you (pl.) work?”
(8) “For ten days,”
(9) and it turned out that they worked for five.
(10) What is “They deceived (ḥitʿū) the householder?” (ms. Escorial; Leiden ms., Venice editio princeps “The householder deceived them (ḥitʿan)”).
(11) “Come work with your fellows,”
(12) “How do they work?”
(13) “For ten rbn,”
(14) and it turned out they worked for five rbn for the job.
(15) “Come work with your fellows,”
(16) “How do they work?”
(17) “For five days,”
(18) and it turned out that they worked for ten.

The interpretation of this passage is problematic. Following the text of the Escorial ms. in (2) and (11), Lieberman, Yerushalmi Neziqin, 163, took (1–9) as describing deceit by the employer of the laborers, and (10–18) deceit by the laborers. Friedman, 1990, 4–5 and n. 14 followed the Leiden ms. in (10) and saw (10–18) as describing a case where the workers deceived the employer, although in order to make this reading make more sense, he proposed the readings “five” and “ten” in (13) and (14) respectively (i.e., the workers accept a lower wage thinking it is the going rate, as in Lieberman’s interpretation of (1–9)). Lieberman could rely on citations of the Yerushalmi in medieval commentaries (see Rabad, cited in a comment attributed to the Ritba in Sīdī mequbbeset, s.v. Wē-rēla’[to B71a]; Rashba, in the same collection, s.v. Ḥāzrd); but Friedman, n. 15 argued that the version cited by the commentaries was simplified and revised. Friedman, 1990, 4–5 (see also nn. 12, 13, 18) interpreted (1–9) as referring to groups of workers deceiving one another, and saw this as the basis of the Babli’s
parties misrepresented the going rate or the expected duration of the work in order to get advantageous terms.\(^{186}\) The material that intervenes between this passage and M6:2 (M6:1 [D–G]) supplements the material that precedes it and may be a later addition.\(^{187}\) At any rate, whereas M6:1 [A–C] and M6:2 deal with the rights of contracting parties at court,\(^{188}\) M6:1 [D–G] offers a form of self-help ("he hires [others] at their liability or deceives them") to the householder in the case of "time-sensitive" matters.

\(^{186}\) Compare the use of same verbal form (the hitpael of ʼihḥ) at the end of this very pericope ("in a place where there is nobody [else], he hires [others] at their liability or deceives (marān) them," M6:1 [G]): here the use of "deceive" is explicitly "lie about what one is willing to pay" (cf., e.g., T7:1: "How [does he deceive them]? 'I made a deal with you for a sela', I will hereby give you two," but the employer only pays the one originally agreed upon).

However, Friedman, 1990, 7–8, took ʾhifu in M6:1 [B] as equivalent to "withdrew," which is the sense that it has in m. Moʻed Qat. 2:1–2 (the Babli raises this as one of two possible interpretations [ʾi bait ʾema'], B76a-b; this is also the view of Maimonides, ad loc.), and resolved the apparent contradiction between M6:1 and M6:2 (they are both now dealing with cases where parties withdrew) temporally: M6:1 [A–C] discuss the contract before the workers have begun working, and M6:2 after they have begun (see also Heinemann, 1954, 306; cf. T7:1: "When are these things said [i.e., that one has only "anger"]? When they [the workers] did not go .... When are these things said? When they did not begin ....").

\(^{187}\) Note the shift in verbal form from the participle (present) ha-šōkēr to the perfect (past) šākār in [D], which has the force of a supplement ("but if he hired ..."); cf. M6:3 [A] ha-šōkēr ... [F] šākār .... ("One who rents ... but if he rented ...."); M9:9 [A] ha-megabbel šādeh ... [E] qibbelāh ("One who receives a field ... but if he received ..."). However, the relationship of M6:1 [D–G] with [A–C] is somewhat awkward. If "deceived" in [B] means merely that, [D–G] is dealing with an entirely different case (where one party withdrew) and is out of place (the rule would have fit better after M6:2 [E]). Even if, with Friedman, we take "deceived" to mean "withdrew," we nevertheless have to distinguish between a case where work has begun [D–G] and one where it has not yet begun [A–D] (see previous note), a distinction that is by no means self-evident from the language of the text itself. If M6:1 [A–C] + M6:2 [A–E] were formulated together as a unit ("deceit" is not actionable, but "withdrawal" is), the awkwardness of M6:1 [D–G] may suggest that it was a later interpolated amplification.

\(^{188}\) This is the force of the opposition of "They have only anger against one another" M6:1 [C], and "Their/his hand is in the inferior position" M6:2 [C, E; also F, G].
Since all of this is formulated in terms of artisans, or at least workers hired to take on a particular job (M6:1 [D] mentions “workers (pōʿalīm) to take his flax out of the infusion”), it is worth asking to what extent the rules of M6:1–2 are thought to apply to casual labor, especially day labor.\footnote{The traditional commentaries took M6:1 as referring to any worker, but M6:2 as referring specifically to workers hired for a contract. This seems to be at least partially implied in Maimonides, \textit{Code}, \textit{Sekirut}, 9:4, who distinguishes between a day laborer and a contract worker who withdraw (the latter is penalized according to the view of R. Dosa in T77:1; i.e., “they are in the inferior position,” M6:2 [C]); but discusses M6:1 [D–G], at least, in connection with both day laborers and contract workers (see also \textit{TY}, \textit{TYT}); \textit{Tos. s.v. Ha-ṭokēr} [B75b] clearly takes M6:1 to refer to any labor contract; \textit{Tos. s.v. Ha-ṭokēr ... wē-hāzru} [B76a], in connection with M6:2, only addresses the problem of contract labor. For the possible origins of this view, in connection with the tradition of Rab (see below) see D. W. Halivni, \textit{Meqorot u-mesorot: Bdbd* mesPa?} (in preparation). Friedman, 1990, 89, questioned whether the expression “their/his hand is in the inferior position” in M6:2 should even apply to laborers hired on a day to day basis, since they are not contracted for a specific job. (i.e., the whole question of future labor costs and leaving a job in the middle should not apply). Part of Friedman’s argument depends on his view that the Mishnah already assumes that the rules pertaining to workers are different than for artisans, i.e., that day laborers can, by the law presupposed in the Mishnah, quit at any time. Friedman is probably correct in his argument that the views attributed to Rab and R. Yohanan in the Yerushalmi (Y6:2 [11a]) and to Rab alone in the Babli (B77a), that the worker (pōʿel) (and according to the interpretation given to Rab’s tradition in the Yerushalmi, the employer as well) may withdraw “even at mid-day,” assume different rules for a pōʿel (Friedman, 1990, 87–8). Nevertheless, that Amoraim make a distinction between day laborers and artisans or other workers hired for a particular job does not necessarily mean that this distinction is implied in the Mishnah itself. Moreover, Friedman’s argumentation, at least from the Yerushalmi, seems problematic. First, he suggests that the views of Rab and R. Yohanan apply not to the Mishnah [he argues that the lemma from M6:2 [A] is erroneous in the Yerushalmi] but to the bārāṭātā’ that appears in different forms in T7:1, Y6:1 [10d–11a] and B76b. Yet in the Yerushalmi the clause to which Friedman attaches these Amoraic views is stated in terms of classic “contractors,” and should apply to them as well (“He saw [other] ass drivers coming along ... or ... [in the case of a shipper] he said to him: ‘Go and hire one of all of these’”), although the whole clause is introduced using the word pōʿel. It is only in the Babli that this clause is phrased in terms of “workers” without further qualification. Second, in all three versions of the bārāṭātā’ what is at issue is that workers who withdraw in a case where there is no lack of other workers (cf. M6:1 [G]) ought not to be penalized (as in M6:1 [D]) since there are other workers immediately available to work at the same price. The same logic should apply whether the workers had contracted for an extended job or had been hired for the day. I do not see how this tri-form bārāṭātā’ is the Tannaitic basis for special rules for casual laborers. (Indeed, if “workers (pōʿalīm) to take the flax out of the infusion,” M6:1 [D], refers to day laborers [note, however, that the significance of the job description here may be to stress the pressing need of the employer [E] rather than the technical character of the contract], M6:1 [D] mentions “artisans” and day laborers together suggesting that the Mishnah could treat them together.)}
we do take these rules to apply to day laborers, the choice to articulate the rules in terms of umanim is significant. First, M7:1 assumes that workers typically take a customary contract. If they had negotiated a special contract they might be considered analogous to the uman, but in the general course of business it may well be that this kind of dispute with mere casual laborers is not expected to arise. Second, to the extent that it is artisans who take the householder’s raw material who are referred to by the term umanim, these workers have a certain amount of leverage against the householder. It is easier to see how, in a case where the employer decided to withdraw or to pay a lower wage, an artisan could force a settlement (or at least an appearance in court) by withholding the material or the finished product, than a day laborer could in an analogous situation.

By contrast, the remaining contractual issues dealt with in m. Baba’ Mesi’a arise in the discussion of “workers” (otherwise unqualified; presumably day

190 So Heinemann, 1954, 271–2 and n. 13; Ayali, 1987, 69–70 and 188–9 n. 11. In favor of this argument is the fact that the Tosepta (T7:1, cf. Y6:1 [10d–11a]; B76a) glosses M6:1–2 using the word poel. However, the second part, at least, of T7:1 uses the language of “laborers” but refers to the work of “artisans” (cf. the discussion of a clause from the Yerushalmi parallel in the previous note). (In the first part of T7:1, the reference to workers who find the field unworkable may refer either to casual labor or to an extended work contract.) Similarly, the explication of “They deceived one another” in Y6:1 (10d), cited above, presupposes a contract where workers are paid so much money “for the job” (5), (14) or in which the work contract is for a specific number of days (8–9), (17–18). It may be that the author of T7:1, in using the term poel, is introducing a new category of labor not considered directly in this context in the Mishnah: a laborer with a specific contract.

191 Compare the parable of the workers in the vineyard in Mt. 20:1–16. Although the first workers are contracted for a specific wage, later workers are promised payment according to “what is right” (bo ean e diakion dso hymin, 20:4). It is possible that this is a reflex of “customary practice” (so, e.g., Heinemann, 1954, 276). That is, since the workers knew the going wage and that they only worked a partial day, they left it to some unspecified standard to determine what proportion should be paid to them. Notably, the determination is left to the landowner (and workers are chastised for questioning his judgement, 20:12–15): within the context of the parable this makes perfect sense since it is God alone who decides what is just recompense; what is less clear is the extent to which day laborers were in practice dependent on unilateral decisions by their employers.

192 This distinction holds for the cases of contract workers dealt with in the Tosepta: the employer can, according to R. Dosa in T7:1, withhold his expected loss from the wages of his workers; but in the situation where the employer withdrew, the Tosepta can only assign a suitable settlement (T7:1, “he gives him the wage [for] idle [laborers]”). Cf. T7:3–4: (a) a worker with a month’s contract who had to stop work due to illness or a period of mourning is paid the completed portion of the contract (with no penalty); (b) a worker hired to perform a service and was unable to complete the service (e.g., the worker was hired to bring food to a sick person who became well or died), is entitled to a complete wage. In all of these cases workers may be entitled to a certain settlement, but have no leverage to enforce it.
These issues are (1) the protection of the worker from unilateral changes in the customary contract, (2) the right to eat produce in the fields, (3) the right to payment at the proper time, and (4) the right to payment in the form in which it was agreed upon. In principle, all of these matters should pertain to ʿumānîm as well (except perhaps that of eating the produce of the field, to the extent that "artisans" are not engaged in this kind of activity). In this case, it may be precisely the assumption of the relative vulnerability of the worker that underlies the framing of these rules (which are concerned with the protection of rights in an unequal relationship) in terms of ʾpōʾâlîm, while M6:1–2 (which depict a contract between equals with balanced rights) is worked out in terms of ʿumānîm.

Of these four contractual issues, the last can be disposed of quickly. According to M10:5 [G–M], a worker who was working "in hay and straw" and who was promised payment in cash cannot be told at payment time: "Take what you produced as your wage" [J]. Similarly, if the worker agreed to this arrangement the employer cannot later state: "Here are your wages, and I am taking what is mine" [L]. The point of this pericope does not seem to be to prohibit payment in kind, but rather the unilateral decision on the

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193 The Mishnah uses two terms for a laborer: ʾpōʾēl and ʾsākîr. Krauss, 1911, 102, saw the former as a landless worker who lived on daily wages and the latter as a poor landowner supplementing his income with wage labor. See also Alon, 1953–7, 95–6, who correctly identified the ʾēkîr yōm with the ʾpōʾēl, but who took the mention of "a worker (ʾsākîr) [hired for] a Sabbath [i.e., a week] ... a month ... a week [of years]" (M9:11 [D]) to refer to workers who undertake to become dependents of landowners for a particular length of time. (Such arrangements existed in Egypt: see J. Hengstl, Private Arbeitsverhältnisse freier Personen in den hellenistischen Papyri bis Diokletian [Diss. Freiburg, 1971] [Bonn: Rudolph Habelt, 1972], 9ff. [paramone contracts]; 35ff. [service contracts], and D. Rathbone's discussion of metrēmatiaioi, 1991, 116–8; for later documents see the studies of A. Jordens, published in P. Heid. V.) However, in the Mishnah at least, ʾsākîr only occurs in the context of the Biblical obligation to pay the laborer's wages on time (in addition to M9:11–12, see m. ʾṣebi. 10:1; m. ʾṣebu. 7:1), and cannot be distinguished from a ʾpōʾēl. In the Tosepta ʾsākîr is used more generally to refer to a worker, and in particular where a contract for a specific amount of time is referred to (t. ʾṣebi. 5:21; t. ʾṭer. 1:6; t. B. Mes. 7:3; 8:1; 9:1; t. B. Bat. 2:5; t. ʾāb. Zār. 1:3) but this does not mean that what is referred to is bound labor. The Tannaitic midrashim reflect the same usages; however in these works the situation is complicated by the Biblical use of ʾsākîr for a dependent laborer (e.g., Lev. 25:50; see Mek. Boʾ15 [ed. Horovitz-Rabin, p. 54] [here ʾsākîr is taken to refer to a gentile]; Sipra ʾemor 4:17 [97a]: Bē-har 8:7 [110b]). In the non-exegetical works (Mishnah, Tosepta) this meaning of ʾsākîr does not seem to appear.

194 See, e.g., T10:7, which specifically discusses the requirement to pay the worker on time in connection with an artisan. See also M9:12, which, although not mentioning the ʿumān explicitly, extends the application of Lev. 19:13 and Deut. 24:15 beyond the limits of a contract for day labor alone.
part of the employer to change the mode of payment. Moreover, it may be significant that the pericope is formulated in terms of a worker “in hay or straw”: if the worker has no use for hay or straw (if the worker does not own animals), in order to receive a usable wage the worker has to sell the materials as well, while the owner, if he too had no use for the straw or hay, has effectively had the field cleared for free.

M7:1 guarantees the workers protection from changes to their customary work standards (“... in a place where it was customary not to rise early or not to work late he cannot force them ... all follows the custom of the province” [C, F]). In particular, it is the practice of feeding the workers a meal that is most developed both in this pericope [D–E] and elsewhere in the Mishnah. The gloss to the story about R Yohanan b. Mattya and his son (“R. Simeon b. Gamaliel says: ‘he did not have [to specify bread and pulse only [K]], [for] all follows the custom of the province’” [L–M]) indicates how custom might work in the interests of the householder as well: having specified a meal the employer was certainly not obligated to feed the workers more than the customary fare.

Related to the practice of feeding a meal to workers is their right to eat the produce of the fields in which they are working. On the one hand, there are passages that treat this privilege expansively. Most notable in this regard is M7:8 [A–B], which grants the privilege to eat to watchers of produce (who

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195 Cf. Heinemann, 1954, 284 (and n. 32), who was uncertain “whether the ruling of the Mishnah means to prohibit payment in kind altogether or only payment with inferior products, such as straw,” but took it as self evident that it was payment in kind that was prohibited in this pericope. Here we must distinguish between employers who give their workers a measure of certain basic staples (e.g., wheat, oil, or wine), but little or no cash wage, and the “payment in kind” described in M10:5. It is not impossible that in those pericopae in which workers get paid through a grocer (henwân, M9:12 [G]; m. Şebu. 7:5) what is at issue is not merely that on the village level these individuals are likeliest to have stores of coins, but perhaps also that part of the payment is in the form of staples. However, in m. Şebu. 7:5 at least, the only payment explicitly envisaged is one of money.

196 Compare T7:4 [D–G], in which this rule is extended to rather more valuable produce (and cf. Heinemann, cited in the preceding note):

[D] One who hires a workman to bring grapes, apples, and Damascene plums (darmasqanô, cf. Greek Damaskêna) for a sick person—

[E] he went, and found him dead, or recuperated,

[F] let him not say to him: “Take what you brought as your wage,”

[G] rather, he pays him his complete wage.

Here, again, however, the employer attempts to dispose of goods for which he no longer has any use.

197 See m. Dem. 3:1; 7:3; m. Ter. 6:3; m. Ma'at. 2:7–8; 3:1–3; m. Ned. 4:4.

are not involved with its actual production or harvesting) "according to local practice" (mê-hilkôt ha-mêdinâ), despite the fact that these should not be permitted "according to the Torah" (min ha-tôrâ) (M7:2 [A]). The anonymous view in M7:3 that a worker who "was working with his hands, but not with his feet, his feet, but not with his hands, even [if only] on his shoulder" [A–C] is permitted to eat, is presumably intended to extend the privilege of eating to a variety of types of agricultural workers. Finally, for those workers permitted to eat, there was, according to the anonymous first view of M7:5 [A–B] and that attributed to the sages [D], no limit to the amount that the worker could eat.

On the other hand, there is a distinct tendency to limit the privilege. In M7:5, the permissive ruling that set no upper limit to the amount the worker may eat [A–B] is countered by the view attributed to R. Eleazar Hisama that sets the upper limit as that of the worker’s wage [C]. The note that closes the pericope ([E–F]; either anonymous and continuing [B], or attributed to the sages [D]) qualifies the permissive rulings by agreeing with R. Eleazar Hisama in practice if not in law: "one teaches a person not to be a glutton ...." More importantly, M7:2 distinctly limits the privilege of eating to those workers actually involved with the work of the harvest, but excluding, say, workers engaged in hoeing or weeding in fields where the produce was ripe and ready for harvesting (and perhaps guards as well, against M7:8 [A–B]). Similarly, M7:4 [A–C] limits the right to eat to the produce on which one is actually working (cf. m. Ma’âš. 7:8). If the correct reading of

199 Just what division between activities is intended in this pericope is not immediately clear, and may reflect a conventional division of labor. The Yerushalmi’s comments on this passage (y. Ma’âš. 2:6 [50a]; T7:2 [11b]) gloss “with his hands” as “binding [fruit together],” “with his feet” as mēqammēš (y. B. Mež.) or masmik (y. Ma’âš.) (Lieberman, TK, 9, 261, to T8:7, took these as synonymous terms referring to the stamping on produce [e.g., figs] in order to press it together), and “with his shoulder” as “loading [an animal] (tô‘ên).” Presumably, the Yerushalmi’s glosses are not meant to be exclusive, but merely examples, and analogous divisions of labor could be found in the harvesting and preparation of any crops.

200 On the redaction of this pericope see Chapter II.D.2. The context suggests that “even as much as a dinâr” [A, B] was taken to mean that workers could eat more than the value of their wages [C–F] (see below). In addition, the expression also implies that "cucumber ... figs as much as a dinâr" is intended as a fantastically high sum. If the prices given for figs in m. Ma’âš. 2:5–6; t. Ma’âš. 2:11 (ranging from three to four to the ëssar to ten to the ësser) is any measure of the real price range, a worker would have to eat between 72 and 240 figs to match the value of one dinâr (and presumably more since the cost to the producer is lower than the market price). How many workers could consistently eat that many figs day after day?

201 M7:2 could conceivably apply to any labor and not just to harvesting and processing. However, the restriction to these activities is implied by the language of the pericope (“one who works on [produce while it is still] attached to the ground ... and on [produce] detached
M7:4 [D] is “and [regarding] all of them, they said only ‘[Workers may eat] at the time of the completion of the work,’” we have a traditional rule that limited the right of workers to eat (perhaps to the end of the day, or to other pauses in the workday), the strictures of which are explicitly relaxed because it is in the interests of the householder to do so [E] (presumably to limit the amount of time that workers might take out of the workday to eat the produce).

Finally, the Mishnah recognizes the Biblical right of a worker to be paid “on that day.” One of the most interesting features of the Mishnah’s legislation is an exception to its normal rules of oaths. As a general rule an oath in court (in lieu of evidence) can only exempt one from liability, but does not entitle one to exact payment. However, workers, together with a select group

from the ground ...”), and by other passages in the chapter: M7:4 [F–G] refers to workers who make their way between the rows of vines, and back and forth to the winepress. Guards of produce (presumably during the time that it is harvested and exposed) are given a special dispensation in M7:8 [A–B] that may or may not be presupposed by M7:2 (cf. the Amoramic disputes in the Yerushalmi [Y7:9 (11c), Rab Huna, Samuel] and Babli [B93a, Rab and Samuel] that center on whether certain kinds of guards might be considered permitted to eat even according to M7:2) but the language of M7:2 suggests the active handling of produce itself. This understanding is consistent with other passages as well. See, e.g., m. Ma'as. 3:3:

[E] [One who hires a worker] to weed among his onions
[F] and said to him: “On condition that I have the right to eat vegetables,”
[G] he pulls off one leaf at a time and eats,
[H] but if he combined [two leaves together] he is liable [to tithe what he eats].

Because the worker was weeding, he could only eat with the owner’s permission (hence the stipulation that he be permitted to eat [F]), and therefore became liable for tithes. (The same reasoning applies to the other cases in m. Ma’as. 3:1–3, but this is the only case where the form of labor is specified.) By contrast, a laborer working with the harvest would have been automatically permitted to eat and would have been exempt from tithes (see m. Ma’as. 2:7; t. Ma’as. 2:14; T8:7; y. Ma’as. 2:6 [50a]; Y7:2 [11b]; B89a).

202 See the note to M7:4 in Appendix I and Chapter II.C.2. If we read be-za’a’at mel’aká, i.e., “while the work is going on” in M7:4 [D], the pericope is subject to two interpretations. (1) It is possible to see M7:4 [D–H] as expansive: the permission was given to eat even when not actually working, in addition to that granted by tradition, because in that way the workers would take up less time eating during real work. However (2), it is still possible to take M7:4 [D–H] as restrictive, [F–H] now prohibiting eating during work-time, which according to the traditional rule was permitted. In this case the revision of the traditional rule in [D–H] would more or less agree with the view of R. Judah in the Tosepta: “R. Judah says: ‘He may eat only at a time when he is unloading [an animal], and at a time when he is loading [an animal] [i.e., and not during the harvesting itself] because of the robbery of the work of the householder” (T8:8). (Compare Nahmanides, Hiddatím to B87b, s.v. Hâ’ de-‘amiran, who saw M7:4 as expansive [interpretation (1)], and saw the view attributed to R. Judah in the Tosepta as in conflict with the M7:4.)

of other claimants, are entitled to exact payment on the basis of their oath ("the hired worker (ṣākīḥ) swears at his [proper] time and takes [his payment]," M9:12 [H]; cf. m. Šebu. 7:1). The only limitation imposed within the Mishnah is that the claim must have been made, and the oath taken, at the time that the worker should have been paid, or the worker must at least have witnesses that the claim was indeed made at the proper time.204 Leaving aside the question of whether the Mishnah describes or legislates actual judicial practice, or of the effectiveness of court procedures once formally instituted, this limitation itself is potentially insurmountable since it was the worker who had to manage to get the employer quickly before a court (or at least before a group of people who could serve as a court).205

Studies of workers in the Mishnah typically assume that the worker was poor, and that day laborers in particular had a standard of living quite close to the subsistence level.206 While this seems to be a safe assumption based on

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204 M9:12 [F], [H-J]. The reading of [H] in all the Mishnah texts checked (see Appendix I) makes it clear that the oath too takes place "at his time," and this seems clear from the exception brought in [J] (expanded T10:6) as well. The statement that the employer has not transgressed if he personally did not pay the workers but sent them to a banker or grocer (M9:12 [G]) is not a limitation of the worker's privilege unless the banker or grocer is exempt from the obligation to pay "on that day." See T10:5:

[A] He sent him over to a shopkeeper or to a banker, they transgress it [the commandment],

[B] but he [the employer] does not transgress them.

[C] But if he made a stipulation with him on this condition from the beginning, even they do not transgress it.

[D] And if he told another to hire [workers] for him, neither this one [the employer] nor this one [the agent] transgress it.

In [A–B], the grocer or banker takes the place of the employer, and the worker is protected. On the basis of the rather technical standpoint that the Biblical rule only applies when the relationship is an unmediated one between worker and employee, [D] rules that where employment (and payment) was not carried out by the employer himself neither the employer not hiring agent are liable. [C] is obscure, but if it follows the same principle as [D], where the workers agreed to accept payment from an intermediary they have lost their right to payment "on that day." [C–D], then, would substantially limit the worker's enforceable privilege to prompt payment, but these limitations do not appear to underlie the rulings in M9:11–2. (Alternatively, [C] rules that if the employer hired the workers on condition that he need not pay them immediately, he is exempt [so Rabad, to *Sipra Qēḏāšm* 3:11 [88d], citing the *Tosepta*, Lieberman, *TK*, 9, 299; cf. *Sipre Deut.* 279 (ed. Finkelstein, p. 297), with textual comments by Lieberman in *TK*.)

205 See Heinemann, 1954, 288–9: "... the actual purpose of the law, to ensure prompt payment of the labourer, is almost entirely whittled away."

206 See, e.g., Krauss, 1911, 102; Alon, 1953-7, 2, 94–7; Ayali, 1987, 43–50; Hamel, 1990, 53. See *m. Pe'ah* 5:6 (in which the implication is that the worker is poor); *m. Dem.* 3:1
214 RABBINIC CIVIL LAW AND SOCIAL HISTORY

analogies from elsewhere in the ancient world, it should be pointed out that on the basis of the Mishnah (or Rabbinic literature more broadly), there is simply not enough material to quantify the social and economic position of free labor in Roman Galilee, for a number of reasons. To begin with, there are the problems of the literary evidence. First, we can never be sure that when a figure (a price, a wage level) is given in Rabbinic literature that it is not merely a "round" figure pulled more or less out of thin air. Second, even if we could be sure the figures given in Rabbinic literature had to meet some test of believability, the complex redactional history makes it difficult to assign a wage or price to a particular date and time. Third, the evidence of wages and prices, such as it is, is sporadic and not nearly complete enough to work out a household budget. Beyond this, however, is a set of imponderables such as the availability of labor, the proportion of labor used in agricultural and other production taken up by wage earners, the structure of households, the number of incomes and their sources, and the way they needed to be spent to meet subsistence needs. An example may best illustrate the limits of the evidence. If we assume that the daily wage of a worker is one dinār per day, and that the price of wheat is on the order of one dinār to the šērā (some 13 liters), in one day's work workers can earn a šērā of wheat if they buy nothing else. Now assuming a 300-day work year (leaving off time for Sabbaths and festivals; perhaps this is too optimistic?), the annual wage of one worker in terms of wheat is approximately 3,900 liters, or roughly eight and one third times the minimum caloric requirements of a

(although here the inclusion of workers among poor people and "guests" may be due either to (a) the assumption that they are not fastidious about doubtfully tithed produce, or to (b) the fact that these are groups of people to whom one typically serves food, cf. m. Ter. 6:3).

207 For scholars who have tried to use this material to quantify the standard of living on the basis of the Rabbinic sources see, e.g., Heichelheim, 1938, 178–38; A. Ben-David, Talmudische Ökonomie (Hildesheim: Georg Olms, 1974), 1, 291–311; Ayali, 1987, 57 pays particular attention to the evidence for laborers. Sperber, 1991, 101–11, also gives a table of prices.

208 This seems to be the assumed figure in M7:5 (cf. Mt. 20:1ff., and see one of the two glosses to M7:5 [A–B] at Y7:6 [11b]: “R. Leazar b. Antigono says in the name of R. Eleazar b. R. Yannai: ‘That is to say a worker may eat more than his wage’”), but compare m. Šebi. 8:4, which gives an ḫissār (= 1/24 dinār) as a daily wage (cf. y. Šebi. 8:4 [38a], which quotes the Mishnah pericope but uses dinār where the Mishnah uses ḥissār), and m. Šebu. 7:1 in which the dispute between a šāktir and his employer is over a wage of 50 dinārim.

209 For the size of the šērā I have followed Hamel, 1990, 244. The price of wheat is that of m. Pe'a 8:7; m. Ėrebu. 8:2; m. Kel. 17:11; see also M5:1 in which the price of wheat shifts from 25 to 30 dinārim to the kōr (=30 šērā), i.e., from 5/6 to one dinār to the šērā.

210 R. S. Bagnall (personal communication) points out that an annual wage of 300 denarii was substantial: it was the equivalent of a soldier’s wages.
very active male, age 20–39, as calculated by Foxhall and Forbes. How meaningful is this figure, however? First, how many workers were there who relied entirely on wage labor? Second, how likely is it that a worker whose sole income came from wages could find 300 days of work? Third, how does this figure relate to a household economy? We do not know to what extent women—especially a woman with several children—could rely upon finding paid work, or to which a gender-based division of labor, depicted in the Mishnah and no doubt a widely held social ideal, was maintained at the very lowest level of the economic scale. For a family (such as the sample family outlined by Foxhall and Forbes) depending on one income, the amount of the yearly wage necessary to pay for food alone (in the form of wheat) might come to some 56 percent. However, the size and structure of a household in Roman Galilee is a complete mystery. Even if correct, this figure of 56 percent is presumably a minimum, first, because I have assumed that the caloric minimum is met only with wheat, whereas where it was available and when it could be afforded, families probably ate such other foods as oil.

211 See L. Foxhall, H. A. Forbes, “Sitometreia: The Role of Grain as a Staple Food in Classical Antiquity,” Chiron 12 (1982), 41–90. For the daily caloric minimum (3337 calories) see 49, n. 26; kilograms of wheat per liter are given on p. 43 (Foxhall and Forbes’s sample had a weight-to-volume ratio of 0.782 kg/L); caloric content is given on the table on p. 48 (3340 cal./kg). Taken together these figures give the following calculation of the number of calories earned per year: 3900 L/year x 0.782 kg/L x 3340 cal/kg = 10,186,332 calories. This figure divided by the caloric minimum for the extremely active adult male (3337 cal./day x 365 days/year = 1,218,005) gives 8.36.

212 m. Ket. 5:5 requires a woman to grind, bake, launder, cook, nurse, make up the bed, and work with wool, but her possession (hiknès lō, “she brought in to him,” i.e., as part of her dowry) of servants allows her to forgo some or all of these activities (“... four [servants], she sits on her seat (qâtedrâ; cf. Greek kathêdrâ)”). The pericope has two supplementary attributed statements that even the wealthiest women must work with wool. m. Ket. 5:9 quantifies the amount of work required of the wife (just as 5:8–9 quantify the wife’s basic maintenance), and the pericope ends with the gloss: “In connection with what are these things stated? In connection with the poorest (m.) of Israel, but with an honored [man (the participle is in the masculine)], all is according to his honor.” Clearly, there is an expectation that suitable activity for women ranges from domestic chores to the idleness of wealthy matrons. Granting that outside of the literary world of the Mishnah itself this reflects the social norm for the families of secure landowners, we are in no position to determine at what point economic pressure will overcome this expectation.

213 Using the same total number of calories earned per day (10,186,332) derived in n. 211, but dividing by the caloric requirements of a household consisting of one elderly adult female, one male 20–39, one woman of the same age and three children (15,495 cal./day x 365 days/year = 5,655,675 cal./year) (Foxhall, Forbes, 1982, 49, n. 26) yields 1.8 times the caloric minimum of that household; in other words some 56 percent of the income went to meeting food requirements alone.
wine, and fruit, and second, because I have assumed no loss to the wheat in processing or due to spoilage or vermin. Beyond this, it is not clear how effectively the remaining 44 percent of the wages (132 dinārim) could meet such other needs as clothing or housing: Did workers have to pay rent somewhere? Did they own their own homes? Did they make do in makeshift residences? Were they housed by employers? If every member of a six-person household received the same thirty-dinār outfit that is said in m. Arakim 6:5 to increase the value of a slave, the sample salary would not have met the household needs. However, since this outfit was for someone who was to do domestic service in the home of a relatively wealthy person, it may have been of better quality than a day laborer could afford.

In addition, a family with a single income is a mere assumption: at what point and how much would children or the worker’s wife be able to contribute to the household income? This kind of investigation opens more questions than it answers. At best we can say that for a small farming family that met all or most of its requirements through production on its own land, the income of a dinār per day for some part of the year would have been a substantial supplement, but for a family relying on one income from wages the situation may have been quite precarious. It may be worth noting in this context that a 300-dinār-per-year income is only half again as much as the yearly income per person given in m. Pe'a 8:8 as the cutoff for an individual recipient of certain gifts to the poor.

The rules concerning workers in m. Baba’ Meš‘a’ do not translate simply into either a description of the social and economic position of free labor, nor even into the place they took in the ideological world of the Mishnah. As I have noted, the Mishnah’s rules, and the way they are formulated, show considerable sensitivity to the potential vulnerability of workers in their relationship with their employers. These rules go a certain distance towards securing the position of workers (at least in principle) by such means as allowing them to use an oath to claim their pay or protecting them from

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214 For extraction rates for wheat see Foxhall, Forbes, 1982, 76, who calculate an extraction rate of 94.6 percent; cf. Hamel, 1990, 247, who estimated a somewhat lower rate (90 percent). M3:7 [C-E] assumes that during long term storage (a year?) losses for rice, grain, and linseed will range from 1/40 to 1/10 per year.

215 Compare m. Ket. 5:8, in which the clothing allocation for a wife is given as 50 dinārim, exclusive of a head covering, a belt, and shoes; again, perhaps a higher standard than workers could afford. Sample prices for a tallit (m. Me‘il. 6:4; t. Seq. 2:8; t. Bek. 6:13; t. Arak. 4:3; t. Me‘il. 1:23; 2:10) or for a halluq (m. Me‘il. 6:4; t. Arak. 4:3; t. Me‘il. 2:10) range from 8 to 50 dinārim. Ben-David, 1974, 312, considered a full set of clothing somewhere on the order of 100 to 200 dinārin, citing Mek. Kaspā’ 19 (ed. Horovitz, p. 317). Even if the passage were a reliable indicator of the scale of prices, it would still reflect the prices that could be afforded by wealthier people. On the question of clothing in general see Hamel, 1990, 57–93.
unilateral changes in agreements. At the same time, however, we should try to place the achievement of the Mishnah into its proper perspective. It is worth noting that the same Rabbis who set minimum standards for charity distribution and for the maintenance of one’s wife refrained from setting minimum wages for hired labor. The rules about workers eating in the fields show a considerable tendency towards limiting who can eat the produce of the fields (if not how much). In a case of potential loss to the employer, the Mishnah empowers the employer simply to cheat. With the exception of tithes (m. Ma’as. 2:7), workers remained restricted by ritual prohibitions of produce\(^{216}\) while, according to a story told of R. Gamaliel, an employer need notscruple over feeding his employees doubtfully tithed foodstuffs (m. Dem. 3:1).\(^{217}\) This permission not only allows the householder to cut corners, but also reinforces a social distance between pious householders and the people of doubtful integrity in their employ. In this regard, the rules of m. Baba\(^{2}\) Mesi’a\(^{2}\) reflect the interests of the landholders and employers, and not of their laborers. In doing so, the Rabbis who produced the Mishnah presumably relied on the fact that a work contract was, after all, a contract between “equals,” and was in any case guided by customary practices. Indeed, the Mishnah avoids describing labor contracts where the employee was fully economically dependent upon the employer (e.g., where the employee was bound for a long or short period of time to perform labor for the householder in exchange for maintenance). That such contracts existed seems likely, but is impossible to prove from the Mishnah itself. In depicting the relations of free labor with householders, the sages who produced the Mishnah made a choice to see these relations as between equal Israelites and not between such categories as free or honorable and servile or dishonorable. At the same time, both through the rules themselves and through their presentation, these same Rabbis showed themselves sensitive to inherent inequalities in these relations, without trying to create rules to erase the inequalities. This is an ideological choice, if a realistic one, and one that reflects the interests of the householder and not that of the laborer.

\(^{216}\) In M7:7 workers remain prohibited from fourth-year and second tithe produce (cf. the formulation in T8:7). By informing the workers that the produce was prohibited to them the employer was exempt from his obligation to allow them to eat in the fields, and only became obligated when he neglected to inform them. Similarly, according to both views in m. Ter. 6:3 if workers were fed produce separated for priests (térūmāḥ) they are required to make up at least part of the penalty payment.

\(^{217}\) The suggestion in the Yerushalmi that the householder tithes the produce (y. Dem. 3:1 [23a]) surely cannot be what the author of the pericope of the Mishnah intends. Cf. m. Dem. 7:3, which discusses a worker who does not trust the employer to have put tithed food before the workers.

Under what we would consider the rubric of leasing, the Mishnah considers two distinct kinds of contract. The first is rental of an object for use, for instance, an ox for threshing or an ass to carry a load (what students of Roman law would call *locatio conductio rei*, “lease and hire of a thing”). In this case the relationship between the parties is relatively straightforward: a lessee pays the owner a fee for the privilege of using an object. The second involves letting out the productivity of a thing (an animal to produce offspring or wool, a field to produce crops). The relationship of lessor to lessee in this case is necessarily more complex: the lessee is acting only partly in his (or her) own interests; on a certain level the lessee is also working for the lessor. From the point of view of the lessor, a lease of this type is one of the ways of exploiting the economic productivity of his property, and the lessor therefore retains an interest in how the property is managed. For the first type of contract the Mishnah uses forms of the verb *skr.* For the second type, forms of *skr* do occur, but more frequently a different set of terms is used, of which the one with the widest application is *qbi,* “receive.”

That the Mishnah itself attributed this two-fold character to *gablănūt*-type contracts may be seen from a brief examination of two texts from outside *m. Baba*<sup>2</sup> Mesî’a. In *m. Baba*<sup>2</sup> Batra<sup>2</sup> 10:4 land leases (*šēṭārē ’arrisūt wē-gablănūt*)

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218 See the brief discussion by von Bolla, 1940, 3–5, who notes that both the Greek *mischthōsis* and the Latin *locatio conductio* cover these two types of contracts.

219 *Sākar* (“hire”, “lease [from]”), used of animals: *m. Ter.* 11:9; *m. B. Mes.* 3:2, 3; 6:3, 4, 5; 8:1, 2; see also references to the sōkēr, the renter: *m. B. Qam.* 4:9; 7:6; *m. B. Mes.* 7:8, 10; *m. Šeb. 8:1, 6;* used of real estate (e.g., a house, but not a field): M8:7, 8; cf. *m. B. Bat.* 5:7 (a place where produce is stored). Curiously, *hīṣkēr* (the causative form, “lease [out to]”) does not occur in connection with animals, and only occasionally in connection with other objects (*m. Ned.* 4:1; *m. B. Mes.* 6:7 [an unspecified pledge]); but more frequently of real estate (*m. Šebi.* 9:7; *m. B. Mes.* 2:3; 5:2; 8:6–9; *m. Ab. Zar.* 1:8–9; cf. *m. Ma‘ās. Š.* 5:9 [a place where produce is stored]). On *m. Ned.* 5:3, see the discussion below in the text.

The verb *skr* is used only rarely for the lease of productive land. The only textually secure occurrence is *m. Ab. Zar.* 1:8, where, however, the permissibility of leasing of fields (*šādēt*) is compared to that of houses, and the use of a single verb may suit the Mishnah’s rhetorical purposes. (In M9:2 [B] the manuscripts KRMP and the Naples *editio princeps* read *haikēr/ haikīr,* where L and the Babli manuscripts have *hakōr*; see Appendix I.) This usage is reflected in the Tosefta as well: in addition to T9:3, 4, 6, 7, 8, 33, see *t. Dem.* 6:2, 3; *t. B. Bat.* 2:12; *t. Ab. Zar.* 2:8, 9.

220 On the use of *qbi* for a variety of different contracts see Maimonides to M9:2. For the use of this term for contracts involving animals see, e.g., M5:4 [G]; M5:6 [A, C]; as well as *m. Bek.* 1:1; 2:4. For land see M9:1–10, where *ha-mēqabbēl* is used for all the lease contracts discussed, despite the differences in the way rent (and risk) is determined (see Appendix I, notes to M9:1 and 2). Sometimes, however, *gablănūt* is used technically for a sharecropping arrangement, to be distinguished from leases for fixed payment in kind (*m. Dem.* 6:1–5).
are grouped with betrothal and marriage documents and documents for the selection of lay judges (נשתה בֶּרֻרִין) preparatory to a trial (cf. M1:8 [A]), as documents that can only be written with the knowledge of both parties. All of these documents create obligations on both sides (and in the case of marriage and lease documents, privileges as well). By contrast, documents for a one-sided obligation (e.g., sales, in which the point of the deed is to transfer ownership, and loans) can be written with the knowledge of the party that obligates itself (the seller, the borrower) alone (m. B. Bat. 10:3). In general,,arglnut-type leases are discussed in terms of animals or agricultural land; leases of a business installation, such as a bath, are treated like leases for use (e.g., M8:8 [F–H]). For this reason, m. Ned. 5:3 is especially interesting:

[A] One who is prohibited by oath from enjoying benefit from his fellow—
[B] and he [his fellow] has a bath or an olive press leased out [to a third party] in the village:

221 Note, however, that the fragments of lease formulae cited in Tannaitic literature are formulated in the first person, from the side of the lessee: M9:3 [D] (see the note to this pericope in Appendix I); T9:13; t. Ket. 4:10; see Gulak, 1929, 116 and n.3. Compare also the following tradition from the Tosepta (t. B. Bat. 11:6):

[A] Wills (דיוטיקה, cf. Greek διάθηκα), mortgages (יוֹתִיגָטְיָה, cf. Greek hypothēkai), and gifts—
[B] [are written] without the knowledge of the giver,
[C] but one may not write them without the knowledge of the receiver.
[D] Sale documents and documents of land tenancy (שֵּׂרְסֵיה) and the receipt of animals (גזבָּלָת) in the village:

I have cited the entire pericope because the text is problematic. All of the documents listed in [A] are unilateral acts of transfer, and following the rule of m. B. Bat. 10:3 we should expect [B] to read “without the knowledge of the receiver” and [C] “without the knowledge of the giver” (so Lieberman, TK, 10, 456–7, citing Rashba). Indeed, in T1:8 the same documents, if found, are to be returned to the receiver only if the giver consents, for precisely the same reason: it is the giver alone who obligates himself through the contract. In [D] the Tosepta deals with both deeds of sale and deeds of lease and gives the same ruling for both of them. [D–F], too, is problematic. First, unlike m. B. Bat. 10:3–4, the Tosepta here treats both qablunut leases and sale together. Moreover, the ruling of m. B. Bat. 10:3 is that “one may write a sale document for the seller, even though the buyer is not with him,” because the sale document is a unilateral transfer of ownership to the buyer. The text of t. B. Bat. 11:6 [D–F], however, presupposes just the opposite. Lieberman proposes reading “[are not written (assumed in [D]?) ... without (for [b]?) the knowledge of both of them ([יתרנָה] for [nuטִן])” in [E], and omitting [F] altogether (Lieberman, TK, 10, 457). In support of this emendation is the fact that T1:8 also discusses the documents listed in [D] and rules that when found they are not to
The distinction between the cases of [C] and [E] seems to be precisely whether the installation is simply leased out (šekirāt), or whether the owner maintains some sort of interest in the management and profitability of the installation. Therefore, in the latter case [C] use of the press or the bath-house constitutes a benefit derived from the owner, and is prohibited. In a case of lease for use, the lessor, although retaining ownership, is not thereby considered to have maintained an interest in its operation.

It is difficult to get a clear sense of the scale of these transactions and of the social and economic position of owners and lessees. In connection with the lease of animals, it is possible that the picture that the texts presuppose is that of property owners who own animals making them available to people

be returned at all, presumably because they are not considered merely one-sided documents. In this way, [D–F] would disagree with m. B. Bat. 10:3–4 in the case of sale, and t. B. Bat. 11:6–7 would agree clause by clause with T1:8–9. However, and this is the reason for citing this tradition, it is possible that the same emendation as suggested for [B–C] should apply to [E–F], with the result that this pericope would agree with m. B. Bat. 10:3–4 in the case of sale, but disagree in the case of qablanāt leases, because, since they are formulated only from the point of view of the lessee, they may be viewed as documents obligating only the lessee.

That this is the way this pericope was taken in antiquity is indicated by the gloss in both the Yerushalmi and the Babli: “How much is ‘a handhold’? For a half, for a third, for a quarter” (y. Ned. 5:2 [39a]; b. Ned. 46b). [In the Yerushalmi the tradition is cited anonymously, in the Babli it is put in the mouth of R. Nahman; it is possible that it is a bāraitā being cited in both cases, and in the Babli the dispute between R. Nahman and Abbaye is whether to take the proportions given literally.] The formula “for a half, for a third, for a quarter,” is regularly used to describe a sharecropping arrangement in the lease of land (e.g., m. Pe’a 5:5) and of animals (e.g., T5:1, 2). This gloss implies that where the rent paid to the owner was dependent upon the money taken in, the owner maintained an interest, and the lessee was, at least in part, the agent of the owner. Whether these same commentators would apply the rule of m. Ned. 5:3 [C–D] only in the case of a proportional rental arrangement, or whether in taking any kind of active part in management (however the rent was to be paid) the owner was considered to have “a handhold,” is not clear.

Compare, however, m. Ter. 11:9, in which one who leases (soker) an animal for use from a priest can feed it priestly produce (tērumāh), whereas one who has made a contract for production (šām, cf. M5:5 and the note thereto in Appendix I) cannot feed it priestly produce. The implication is that in the case of the contract for production, at least in the present case where the contract depends on a valuation of the animal, the animal becomes (partially?) the property of the lessee, whereas in a lease for use the animal remains entirely the property of the priestly owner.
who otherwise could not afford them. This makes particular sense in the context of a *qablānūt*-type loan (see the discussion below and section B.4 of this chapter), and especially if flocks or herds and not single animals are leased.\(^{224}\) As in the case of tenant farming, the owner turns the exploitation of the property over to someone else in whose interest it is to work effectively; in principle this both affords security and absolves owners of the need for direct and minute management of the property. The discussion of letting out animals for use (*ṣekitrūt*) might similarly reflect wealthier landholders exploiting (and paying for the upkeep of) extra animals. However, the texts may presuppose another pattern: relatively poor people (perhaps small farmers) who can improve their position if they can buy, say, an ox and a yoke and lease them out with or without their own labor.\(^{225}\) The relative availability of such animals might allow other landowners to economize by not maintaining their own livestock.\(^{226}\) The lessee of a bathhouse (for twelve golden *dīnārim*, i.e., three hundred *dīnārim*, per year) is presumably not among the very poorest (M8:9). Similarly, the lessee of an entire courtyard (presumably to sublease individual units) (M5:2 [F–H]) is probably not to be taken for a pauper, although in absolute numbers the rent given in [G] is not extremely high (ten to twelve *ṣēlārim*, i.e., forty to forty eight *dīnārim*).\(^{227}\) Indeed, there is no reason to exclude at the outset the idea that lessees of houses—in

\(^{224}\) E.g., T5:1–2 (discussed above, n. 163, and the note to M5:4 in Appendix I), which deal with a lease of one hundred sheep or calves.

\(^{225}\) See, e.g., *m. Arak.* 6:3, which refers to an *ḥkkār*, who owns his own yoke of oxen. Arguably, this is presupposed by M8:1 in which both worker and animal are “borrowed.” (According to those versions of M8:1 that include the case “he hired the cow and hired its owners with it” [see the note to this pericope in Appendix I, see also T7:20], the case is explicitly raised). However, this may equally be a hypothetical working out of the implications of the wording of Ex. 22:14. See also T8:4:

[A] A householder [here, the owner of an animal] is permitted to starve and afflict his cow so that it may eat much at the time that it is threshing;

[B] and the renter [who rents it for the purpose of threshing] may feed it bunches of sheaves so that it not eat much at the time that it is threshing.

Hamel, 1990, 122, assumed that this text implies endemic poverty and chronically malnourished animals (as well it might), but careful economizing at another’s expense (not to say miserliness) is hardly the preserve of the poor.

\(^{226}\) For this strategy on the part of estate owners see Kehoe, 1992, 63–5 and index *s.vv.* “draft animals” and “livestock.”

\(^{227}\) T8:31 gives a figure that works out to three hundred *dīnārim* per year, but this is clearly a doublet of M8:9, which deals with a bathhouse. If it could be taken to reflect the possible range of domestic rental rates, T8:31 would imply that some residences, at least, were well beyond the means of anyone close to the subsistence level, which must have included a large portion of the population.
particular the lessees about whom the Mishnah is concerned—should not be members of the propertied classes.\textsuperscript{228}

Of particular interest is the position of tenant farmers, since this goes directly to the question of the exploitation of free (at least nominally), independent peasant producers on the part of larger landowners in Roman Galilee. To be sure, there are passages that imply that tenant farmers might be poor and vulnerable, and that particular tenants or their families might hold the same leasehold for many years or for generations.\textsuperscript{229} On the other hand, the discussion of leases in M9:1–10 presupposes rather short terms (M9:9 [B, E] opposes “for a few years” to “seven years”). It is certainly possible that the system the Mishnah envisages is one in which the same tenants repeatedly negotiate new leases, that is, in practice, one of permanent tenancy. It is

\textsuperscript{228} For comparison see B. W. Frier, \textit{Landlords and Tenants in Imperial Rome} (Princeton: Princeton University, 1980), 52 and \textit{passim}, who argues that in Rome a large proportion of the aristocracy leased homes, and it is with precisely these leases that the Roman jurists were concerned.

\textsuperscript{229} \textit{m. Pe'a} 5:5 discusses the rights of a tenant farmer to the gleanings and other agricultural gifts for the poor; cf. \textit{t. Pe'a} 3:1. The story in \textit{Sipra Bê-hugōtai} 3:3 (111b) about a king (i.e., God) and his \textit{ṣārû} (the righteous of Israel) who used to quake before the king until he reassured him (“I am like you”) makes use of both the vulnerability of the tenant farmer and his nominal freedom (such a story could not have been told about a king and his slave, who was not free and therefore not “alike”) as a trope to illustrate a theological point. See also the story in \textit{y. B. Qam.} 5:7 (5c); \textit{y. Šebu.} 7:2 (37d), describing a case of a tenant who deposited something and then both tenant and landlord died. The judge (R. Ishmael b. R. Yose, of the last Tannaitic generation) is said to have assigned the deposit to the heirs of the landlord and not to the heirs of the tenant with the explanation: “Is there anyone who does not know that that which belongs to bar Ziza’s tenant belongs to bar Ziza?” If this tradition does not presuppose an exceptional relationship between a specific landlord and his tenant, truly dependant tenants were imaginable in late antique Palestine.

On traditional tenancy see the discussion of Gulak, 1929, 124–36 (who notes that the best Rabbinic evidence for “eternal tenancy,” such as it is, comes from Babylonian sources). At any rate, \textit{m. Dem.} 6:2 refers to one who receives “the field of his fathers” as a leasehold. It is at least possible that what is presupposed here is a farmer now permanently leasing land that his family once owned (see also \textit{t. Dem.} 6:7; \textit{t. Ter.} 2:11). \textit{t. Ma'asî.} 3:13, discusses one “to whom were appointed \textit{ṭarṭišîn},” apparently because they came with the land that the landlord bought or inherited (Lieberman, \textit{TK}, 2, 706). While this could occur in the case of short term leases, it is also possible that a longer (and traditional) leasehold is implied. Such an institution is also implied by the story told of a king (God) who was displeased with his tenants and replaced them with the next generation, and then the next generation after them (\textit{Sipre Deut.} 312 [ed. Finkelstein, p. 353]). Cf. the inscription from Aga Bey Köy in early third-century Asia in which tenants on an imperial estate threaten to leave their “ancestral hearths and family tombs” (\textit{heías patriōnas kai taphous progonikōs[ujōs]} and move to (i.e., take up tenancy on?) private lands (text with translation in Broughton, 1938, 656–8). Even allowing for melodramatic language, the traditional possession of these lands as leaseholds seems presupposed.
worth suggesting, however, that whether or not such a system of tenancy existed in Roman Galilee (and presumably it did), it is not these tenants that *m. Baba*<sup>2</sup> *Mesi*<sup>2</sup> is concerned with, but rather with wealthier tenants, perhaps landholders of some substance in their own right, who supplement their income from their own holdings by taking up the lease of other land.<sup>230</sup>

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<sup>230</sup> M9:10 discusses a lease whose yearly rent is one hundred *dinārīm* per year, which by the typical valuation of wheat in the Mishnah of one *dinār* to the *seṭḥa* (see the preceding section) comes to 1300 liters of wheat (or approximately 33 artabas of wheat in Egyptian measures). This fits quite well with the evidence collected by H. J. Drexhage, *Preise, Mieten/Pachten, Kosten und Löhne im römischen Ägypten bis zum Regierungsantritt Diokletians* (St. Katharin: Scripta Mercaturae, 1991), 141–54, 158, on Egyptian leaseholds of grain land: in the second and third centuries these were for the most part smaller than ten arouras, and of those most were smaller than five arouras. A rental yield of 33 artabas (our Mishnaic example), at a rent varying between, say, 3.5 and 9 artabas/aroura would have implied a leasehold of between 9.4 and 3.7 arouras. (For Egyptian rental rates see the table in D. Hennig, *Untersuchungen zur Bodenpacht im ptolemäisch-römischen Ägypten* [Diss. Munich, 1967], after p. 26, for the second and third centuries; I have taken the maximal range given by Hennig without attention to regional differences since what I am interested in is an impression of the range of possibilities). How taxes were allocated, the rates of rents, and differential yields between Palestine and Egypt might alter this result considerably. If anything, yields in ancient Palestine will have been considerably lower than those of second century Egypt (see B105b, which gives a range of 1:3.75 to 1:7.5, cf. yields from the Negev from the seventh century as reflected in *P. Ness. III 82* [an account recording yields of approximately 1:7] and 83 [from which yields of 1:3.6 and 1:5.6 can be reconstructed]; see the discussion by Hamel, 1990, 127–32; within Palestine conditions were also quite variable), which means that to extract the same rent a larger plot would have to be sown. What is important here, however, is that the rent itself, as it is presented in M9:10, implies a scale of leaseholds that would yield rents comparable to those of Egypt for the owners. According to the material collected by Drexhage, 1991, 167, leases tended to be in the range of one to four years (three to four years in the Arsinoite nome; one or four years in the Oxyrhynchite), which also accords well with the implication of M9:9 that a seven year lease is a long one.

Certainly, not all of the lessees represented in the papyri at this scale are poor. For instance, in *SB IV 7468* (221 CE) a Lucius Nonius Casianus (a Roman citizen whose citizenship does not derive from the Constitutio Antoniniana, and presumably not poor) asks to be released from an eleven aroura leasehold. (It should be pointed out, however, he had been leasing for a number of years; in his words “a long time.”) In other leases the scale of operations and of rents are considerably more substantial (e.g., *P. Oxy. XIV 1630*, which records a bidding war for a lease in which the final offer made by the author is one talent and three thousand drakhmas; see also the Oxyrhynchite agricultural leases involving multiple forms of cultivation and production, vast sums of money and substantial payments in kind, e.g., *P. Ross. Georg. II 19*; *P. Oxy. IV 729*; *P. Oxy. XIV 1631*). For landholders also engaging in the leasing of property, see, e.g., Kehoe’s discussion of Aurelius Isidorus (Kehoe, 1992, 158–65). Compare also D 19.2.25.6 (Gaius): although greater damage to the crops than is bearable should not be at the lessee’s liability, “the tenant, whose substantial profit (*immodicum lucrum*) is not lost, must bear with equanimity moderate damage (*modicum damnum*).” Unless this is sheer perversity
In *m. Baba‘Mesi‘a*, the material pertaining to the lease for use (*šěk♭rū́t*) of animals is scattered throughout the tractate. On the side of the lessee, there is, first of all, the obligation to pay rent on time (M9:12 [A–B]). Secondly, the lessee is expected to take proper care of the animal, and to assume a certain level of liability (M3:2; M6:3–5; M7:8). From the point of view of the lessor, the one requirement that is mentioned is the requirement to supply an animal for use during the entire term of the lease if the animal “died or was broken,” but not if “it was blinded or carried off for the *angareia*” (M6:3 [F–J]). Death and “breaking” are standard terms for accidental damage for which the renter is not liable; here M6:3 adds that not only is the lessee not liable, but it is the lessor’s responsibility to allow him to finish his lease. Perhaps the reason that in the case of an animal that has become blinded the owner is under no obligation to replace it (he may say to the lessee “Lo, yours is before you” [H]) is that the animal is still of some utility on the part of Gaius, surely some agricultural lessees gained substantial income from their leaseholds. It should not surprise us, then, that in M9:7 a lease is presented whose rent is some three times that of M9:10 (ten *kōr*; i.e., three hundred *šě̀ e`a* [ca. 3900 liters]; cf. also T5:13, increase in rent from ten *kōr* to twelve [ca. 4680 liters]). T9:26 refers to someone who leases an *š̀ e`r*, which contains multiple fields.

231 See also M7:9–10 [D], in which it is not clear whether a shepherd (i.e., a paid depositary) or a renter is referred to. The implication of the Tosepta is that these pericope were taken in connection with paid depositaries. The end of T8:15 (perhaps an introduction to the parallel to M7:9, which follows in T8:16) reads “Which are the forms of *ôt̀ enes* for which a paid depositary is exempt...” T8:17 and 18 both discuss the case of a shepherd. In the Babi, too, both in a narrative attributed to Abbaye and in an anonymous question, M7:9–10 are fleshed out by referring to the person in whose possession the animal is, as a shepherd (B93b). Since M7:8 [G–H] makes no distinction in liability between the renter and the paid depositary it should follow that the rule is nevertheless the same. Liability of the renter is also discussed at *m. B. Qam.* 4:9; *m. Šèbu.* 8:6. See also *m. Ter.* 11:9 and *m. B. Qam.* 7:6, where other aspects of the effects of transferring property to a renter (or, in *m. B. Qam.* 7:6, any of the “watchmen”) are discussed.

232 Cf. Ex. 22:6–14; M7:8 [C–H]; *m. Šèbu.* 8:1; and the opening discussion of the section of this chapter on deposits (above, section III.B.2).

233 That it is the lessor who is presumed to speak (see Rashi, *ad loc.* B78a) seems implied by other examples of the opposition “he is liable to supply ...” and “he says to him: ‘Lo, yours is before you,’” e.g., *m. B. Qam.* 10:5 in which the same person is the subject of both verbs (“he is liable,” “he says”). In T7:7 (and in the citation of the parallel *bǎrā̀ Háit*; Y6:3 [11a]), the analogous opposition is between “he is liable to supply” and “he is not liable,” implying that the latter expression (where the subject is clearly the lessor) is the functional equivalent of “he says to him, ‘Lo, yours is before you.’” (See the discussion in Friedman, 1990, 153–4.) Compare H. Danby, *The Mishnah* (Oxford: Oxford University, 1933), 358: “he [the lessee] may say to the owner ‘Here before thee is what is thine.’”
Institutions and Relationships (depending, of course, on the task for which it was hired).\textsuperscript{234} An animal requisitioned by the government cannot be understood as still useful to the lessee unless we assume that the animal would eventually be returned, and this may indeed lie behind the rule of the Mishnah.\textsuperscript{235} However, it is also possible that in this case the author of the pericope considers the seizure of the animal at least partially the fault of the lessee.\textsuperscript{236}

\textsuperscript{234} Cf. T7:7 (with parallels Y6:3 [11a]; B78b), which, on the face of it contradicts M6:3: “And thus R. Simeon b. Eleazar used to say: ‘One who says to his fellow: ‘Lease me your ass that I may ride on it ...’ [if it became blind, or mad, he is liable to supply him with an ass.’” The view attributed to Rabbah b. Rab Huna (B79a) that this passage deals with riding specifically, and M6:3 with leading a pack animal may well be correct. Although the use of the animal is not specified in M6:3 [F–J], it occurs between two passages dealing with hiring an ass \textit{le-holikdh}, “to lead it” (see also M6:5, in which the ass serves as a pack animal).

\textsuperscript{235} The problem of the animal seized for the \textit{angareia} is further complicated by the following traditions in T7:7 (both with parallels Y6:3 [11a]; B78b): (1) “One who rents an ass ... [if] it died, or the \textit{angareia} took it (\textit{nētsāḥ}) he is liable to supply him with an ass”; (2) “R. Simeon b. Eleazar says: ‘If [the \textit{angareia}] takes it (\textit{nētsāḥ}) on the road on which it (fem.) was going, he is not liable to supply him with an ass; if [the \textit{angareia}] takes it not on the road on which it (fem.) was going, he is liable to supply him with an ass.” The first tradition (1) seems clearly to contradict M6:3 [G–H] (see Epstein, \textit{Nīṣāḥ}, 199). It is to resolve this contradiction that the view attributed to Rab at B78b proposes that M6:3 deals with “an \textit{angareia} that returns,” that is, one in which the animal will eventually come back (Friedman, 1991, 157–8, proposes that the animal has been seized for a round trip), while the \textit{bāratīṭ} deals with “an \textit{angareia} that does not return.” The tradition attributed to R. Simeon b. Eleazar (2) may be taken to make the same kind of distinction between (possible) retrieval and permanent loss, if we take the expression “the road on which it (fem.) was going” to refer to the animal. This seems to have been the understanding of the second of two glosses to this tradition, attributed to R. Abbahu in the name of R. Yose b. Hanina in the Yerushalmi (the owner is liable to supply an animal if the lessee was going to Lydda [in the south] and the animal was taken to Tyre [in the north], but not when he and the animal went to Lydda; it follows that the lessee needed the animal for carrying on the return journey [see Tos. s.v. \textit{ym}]). The view attributed to Samuel (B78b), which closely parallels tradition (2), was taken by Rashi in essentially the same way (see also the Geonic commentary cited by Friedman, 1990, 165, n. 76).

\textsuperscript{236} An anonymous comment in the Yerushalmi (Y6:3 [11a]) on the contradiction between M6:3 [G–H] and the anonymous view preserved in T7:7 (cited as tradition (1) in the previous note) distinguishes between a case where the lessee could have bribed the official requisitioning the animal (where it ceases to be the lessor’s problem) and one in which the lessee could not have bribed (see on this passage Epstein, \textit{Nīṣāḥ}, 119; Lieberman, \textit{TK}, 9, 251–2; Friedman, 1990, 163–4; all three [Lieberman and Friedman with some misgivings] follow the reading of the Yerushalmi given in Nahmanides, \textit{Hiddāšim}, s.v. \textit{Pe(rūš) ʾangāryāʾ hēzeret} [B78b]). In a somewhat similar vein, the first gloss attributed to R. Abbahu in the name of R. Yose b. Hanina to the view of R. Simeon b. Eleazar (tradition 2 in the previous note) distinguishes between a case where the lessee was on a major road (\textit{bāsīlīkē}, i.e., Greek \textit{hodos} \textit{bāsīlīkē}), and one in which the lessee was on a shortcut (\textit{qapendāryāʾ}; cf. Latin \textit{via} \textit{compendiāria}). Apparently, by failing to stay on the major road the lessee became liable for mishaps such as
In Chapter II, I suggested that M6:3 [K–R] appears to be a revision of [A–E], and that a similar case can be made for the relationship between M6:5 [F–H] and [A–E]. In both of these cases what seems like a simple exposition of the principle that anyone who alters a contract is in a weaker legal position (M6:2 [F]) has been revised to take account of “probable cause.” The same concern underlies M6:4 as formulated as well. The revised pericopae are not only more nuanced (animals slip on steep mountains, and become overheated in the valley), they decidedly take the interest of the lessee to heart. It is interesting to note that M6:3 [F–J] is formulated as a supplement but seems to be in some tension with its present surroundings, suggesting that it may constitute a later addition to an already existing pericope.

If I am correct in taking the force of M6:3 [F–J] as extending (and not limiting) the obligations of the lessor, this passage, too, revises the ha-sōker series in the interests of the lessee. The process is evident in the final form of the Mishnah, and may extend back to an earlier redactional level of the ha-sōker series, before it was utilized as a source.

Contracts for the raising, reproduction, and by-products (e.g., wool or dung) of animals are dealt with in m. Baba Mesi’a in the context of loans (M5:4–6), where what is at issue is the possible usury in such transactions if perceived as loans (See the discussion above, in section B.4. of this chapter). Here it should be recalled that in the sources themselves such transactions are also considered types of leases. It should also be noted that in all of these arrangements the lessee acts as the agent or worker of the lessor; hence, the obligation of the principal to compensate the contractor in order to avoid the taint of usury receives the most attention. Even in these pericopae, these, and the lessor is no longer required to supply another animal. (Cf. also the interpretation of R. Hananel [cited Tos. s.v. 'Im, and Nahmanides, ibid. (both B78b)] of the traditions of Samuel and R. Simeon b. Eleazar, which distinguished between officials happening to requisition animals on their way, and those making a sustained search for animals. This comment takes the expression “on the road on which it [fern.] was going,” to refer to the progress of the officials making requisitions [the “angareia”], and not to the animal.)

237 Chapter II.B.2

238 The shift of tense from the participle (present) [A] to the perfect (past) [F] is a clue that the material that follows is to be taken as supplementary. In addition, whereas the rest of M6:3–5 deal with the liability of the lessee for misuse of the animal or its equipment, M6:3 [F–J] is concerned with the liability of the lessor. However, the variance in the order of the sections of M6:3 (on which see the note to this pericope in Appendix I) is presumably to be explained on the basis of the great similarity in language between [K–R] and [A–E], rather than the “lateness” of [F–J].

239 See, once again, m. Ter. 11:9, comparison of a lessee (sōker) and “receiver on estimation” (šām); T1:8; t. B. Bat. 11:6, both referring to “documents of land tenancy (aritsūt) and the receipt of animals (gabbalat bēhēma),” and implying that these are analogous contracts.
Institutions and Relationships

however, the duty of the lessee ("borrower") to raise and care for the animal is also dealt with (M5:4 [H–I]; M5:5 [B–C]). Finally (and unaccountably), the Mishnah seems unwilling to let the same rules apply for tenant farming as for the raising of animals. The sharecropping tenant does not need to be paid a wage; moreover, loans involving a leasehold, which would under normal circumstances have been considered usurious (such as a loan of seed, to be paid back in kind, and ordinarily prohibited, M5:8; and loans of money for improvement of the property, and the concomitant exaction of a higher rent, M5:5 [E–F]) are permitted.

Even a cursory review of the traditions about the rental of dwellings in *m. Baba* Mešiça (M8:6–9) shows that its treatment of domestic leases is not evenly balanced. The only contractual issue applying to both lessor and lessee that is discussed is the question of payment for an intercalated month (M8:8): here the focus is on the implication of the agreement as it was stated (was the house leased for a year or for twelve months?). Beyond this, there is not a single reference to the obligations of the lessee. On the other hand, we are told of a number of obligations of (or at least restrictions on) the lessor. The lessee is given a minimum term for a lease during which time his occupation is secure ("he is not allowed to remove him") (M8:6).

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240 Although the exaction of a higher rent is not explicit in the Mishnah, this surely must be the implication of the qualifying "and he ought not hesitate because of interest" (M5:5 [F]). See also T5:13, which glosses M5:5 as follows: "How? He received a field from him at ten kōrin of wheat, and said to him "give me two hundred dinārim and I will improve it ('aparnēšāh), and I will give you twelve kōrin of wheat for the year, it is permitted." Notably, this is followed with an explicit prohibition of this kind of loan in a lease for a shop or a boat, "or anything which does not produce from its body" (reading bēh bē-gāpō as proposed by Lieberman, *TK*, 9, 216). (Since T5:13 attributes the words maprīn 'es šadēhā [=M5:5 [E]] directly to R. Simeon b. Gamaliel, the author of T5:13 apparently considered all of M5:5 [D–F] to belong to the tradition of R. Simeon b. Gamaliel.)

241 This is a common Mishnaic preoccupation; consider M9:10 (for "seven years," or for "a week of years")?; M9:2 ("a field" or "this field")?

242 Compare, however, the tradition in T8:27 (cf. Y8:8 [11d]; B101b; and above Chapter II.B.2) that the time limits set (apparently in the Mishnah) do not refer to the duration of the lease, but "that he [must] inform him [of his eviction] before thirty days and that he inform him before twelve months." At any rate this passage reinforces the impression of a tendency to strengthen the position of the lessee: the lessee can only be evicted (even if the lease is formally up?) if the lessor informs the tenant that the lease would not be renewed. The same tendency is reflected by the material that precedes this tradition in T8:27: according to a tradition attributed to R. Judah, shopkeepers whose year lease is up at the end of Passover are to be given an additional "three festivals." Since the passage distinguishes between leases ending at the end of Tabernacles, which do not merit this special rule, and leases ending at the end of Passover, the force of "he gives him three festivals" may be to allow the lessee to hold the lease through Tabernacles, an additional six months (so Lieberman, *TK*, 9, 273, if I understood
connection it should be noted that the Mishnah is sensitive to the needs or expectations of city dwellers as opposed to village dwellers (M8:6[D–E]) and the special needs of shopkeepers [F–H]. The lessor is to supply certain basic equipment such as doors and bolts ("anything that is the work of an artisan") (M8:7). Moreover, as with the lease of animals, where someone leased a house and it collapsed (through no fault of the lessee's) the lessor has to supply another house and allow the tenant to complete the term (M8:9). The language of the pericope ("[If] it was small—let him not make it big; [if] it was big—let him not make it small .... Let him not increase the number of windows nor decrease ...." [D–H]) suggests, on the one hand, limits to what the lessor is liable to supply, but more importantly it stresses the right of the lessee to a dwelling of exactly the same quality (the lessee cannot be forced into taking a worse dwelling [even with a reduction in rent?] or a better one [with an increase in rent?]!). It should be noted, however, that the lessee of a house is not entitled to the dung produced in the courtyard in which the house is situated (M8:7 [E–F]): although it is not formulated as such, there may be an implicit distinction here between a lease of a house for use, and for its productivity.

By contrast, the material on leases of agricultural land (M9:1–10) proceeds from the perspective of the lessor as landowner. Certain pericopae balance the interests of lessor and lessee. Since during the sabbatical year no work was to be done, M9:10 examines the implications of whether the agreement was made for seven years for a fixed sum (in which case the lessee pays for seven years of harvests) or whether it was made for a week of years (in which case the lease is up after seven years even though one of them was a fallow

him correctly). However, this interpretation is problematic since the extension is technically granted for leases terminating after Passover, in which case “three festivals” will extend to the end of the following Passover (i.e., a year’s extension).

On the other hand, at the end of this pericope of the Tosepta are two traditions, one in which the requirement of the lessor to inform the lessee is balanced with that of the lessee, and one, attributed to R. Nehemiah, that dispenses with the minimum term (or notice period) of a year for potters of “white earth.”

243 Cf. D 33.7. 12.16–26 (Ulpian), on the instrumentum of a house (a rather broader concept than merely things that it takes a specialist to install).

244 The Tosepta preserves a tradition that reflects some discomfort with the absolute formulation of the Mishnah (T8:33) “When [can the lessor not alter the quality of the house]? When he leased it from him for a long time; but if he leased it for a short time, he [the lessor] may say to him ‘Lo yours is before you.’” Compare also the comment attributed to Resh Lakish in the Babli, apparently to be attached to M8:9 (B103a): "Where (דכו) he said to him the [Munich, Florence, and Rome B mss. "this"; see Rabbinovicz, DS, 300] house that I am leasing to you (maskir lak) its length is such and such [etc.].”
In M9:1 the methods of cultivation of land are to be determined by custom [A–E], a rule that in principle works in the favor of either side. Moreover, where the contract was for a proportional rent in kind, *ərīṣāt*, both parties supply necessary products [H] and share in the produce of the leasehold [F–G].246 Finally, where payment was to be in kind (the pericope deals with a fixed payment, but the same should apply to a sharecropping arrangement as well) payment was to be from the produce of the field itself, whatever its quality (M9:7).

However, the bulk of the pericopae deal with the rights of the lessor or the duties of the lessee. In the case of failure of a field, the anonymous first view of M9:5 obligates the lessee (contracted to pay a proportional rent) to work as long as “there is in it enough to erect a pile in it” [C]. Whatever the quantity of a “pile” (and the objection in [E] may imply that it is not a specific quantity),247 the view attributed to R. Judah states that the lessee is obligated as long as the amount of seed grain can be recovered.248 Where a particular field has suffered (dryness, felling of trees, M9:2 [B]; blight or locusts, M9:6 [B]), the lessee is not thereby granted a reduction in rent; only where the locusts or blight were widespread (M9:6 [D–F]), or the lessee specified a specific field (because of its particular characteristics, M9:2 [E–G]) does the lessee merit a reduction. Moreover, the traditions presented in *m. Baba* and *Milī* take a specific interest in the management of the leasehold, in connection with both recalcitrant lessees and the selection of crops. M9:2 considers the case of a lessee (apparently a sharecropper) who has not worked the field. Of more interest is M9:4, in which the lessor can demand that the lessee carry out certain activities because of the owner’s interest in maintaining the productivity of the field (“Tomorrow you leave and it grows grass before me”). M9:8–9 are of considerable interest because they shed a certain amount of light on assumptions about the effects of crops on soil and the proper rotation of crops. In contrast to the absolute position attributed to R. Simeon b.

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245 See *TYT*, *TY* *ad loc.*
246 Compare, however, M9:9, which limits rights to sycamore prunings to leaseholds of seven years or more.
247 See the related traditions defining “a pile” in Y9:5 (12a) and B105a.
248 Presumably, the determination *kēdē nēpilā*, literally “enough for falling” M9:5 [C], is the designation of the net (after deductions for taxes and expenses) and not gross production (this is the way the quantity of a “pile” in [C] is taken in the tradition attributed to R. Yose b. R. Hanina at Y9:4 [12a]; presumably the same applies to the amount given in [E]). If it is taken for granted that owners typically provided seed grain (cf. M5:8) and that this is repaid first before the division of the produce (neither of these is inherently unlikely, but they are assumptions on my part), the view attributed to R. Judah would seem to be that as long as the lessor can retrieve the invested seed grain, he can force the lessee to continue with the work, although the lessee derives no benefit from it (because there is nothing left to divide).
Gamaliel that prohibits any variation in the contract (M9:8; cf. M6:2 [F]), the anonymous view of M9:8 permits changes that are thought to improve the soil, or at least to damage the soil less (planting wheat instead of barley, legumes instead of grain), but prohibit those that harm it. Similarly, the lessee is prohibited from planting flax unless the lease is for seven years (M9:9). The issue in this rule is that the field must be restored to the lessor


The typical strategy of cultivation seems to be a two field system, e.g., T9:7: "... rather, he leaves half of it fallow and seeds half of it ..."; so, also, T9:8, 24–6. (However, "half" may be a simplification; it is not impossible that a three field system was known and used.) Other, supplementary forms of soil improvement are also referred to, as in the following expansion of M9:3 (T9:12): "But they do not estimate it [the field] against the fields that are on its sides, lest this one is fallow and this one is not fallow, this one is manured and this one is not manured, this one is improved [by multiple plowings during the fallow year] and this one is not improved."

There is some reason to think that crop rotation (as a supplement to or in place of fallowing), and not merely the "harmfulness" of certain kinds of crops is presupposed in M9:8–9. In Y9:9 (12a) (the entire text is quoted in the next note) a rule about restrictions on planting crops other than those specified is explained on the basis of the deleterious effects of planting "flax after flax" and "wheat after wheat." According to this explanation, the basis for the specification by the lessor depends at least in part on the crop of the previous year. In T9:25, one who leased a field for a fixed payment in kind for a short term may not let it lie fallow year after year nor may the lessee plant it year after year; by contrast, where the lease was for long-term the lessee may do so. This can be explained as the granting of more leeway to a longer term tenant, but only if we assume that there is a way of properly planting year after year without exhausting the soil. (This might, however, entail manuring and not rotation; but rotation is certainly possible.) Considering that hay (Greek khortos) was often rotated with grain in the Egyptian leases, the statement in M9:1 [F]: "Just as they split the grain, so let them split the hay and the straw," may presuppose a leasehold of two lots or a lease of more than one year.

250 Cf. Columella 2.10.17, on the harmful qualities of flax. M9:9 [E–G] presupposes that the field will take seven years to recover ("If he received it from him for seven years he may plant flax in the first year" [E–F]). There are, however, other traditions. Compare T9:31: "In a place where it was the custom to seed it with flax even [every] five years, he may grow it in the second year ...." [Lieberman, *TK*, 294, takes the reference to five years as the term of the lease, and assumes (following the tradition from the Yerushalmi cited below) that flax is taken to cause three, and not seven, years worth of damage; but since T9:31 clearly amplifies M9:9 (which speaks of a contract of seven years) and the language of the Tosephta ("a place where it was the custom to seed it with flax") refers to the practice of seeding and not the term of the contract, this interpretation seems problematic.] Compare Y9:9 (12a):
in its original condition, and therefore sufficient time for recovery must be allowed. It is interesting to note that the longer the duration of the lease the greater the freedom allowed to the lessee in choosing the crops.

The divergence between the interests reflected in šekirūt leases (especially of dwellings, but also, through a process of revision, of animals) and those in qablānut leases (especially of agricultural land) requires explanation. It is not likely that these are the only rules available to the redactors (at whatever level) of the Mishnah. Indeed, if the Tosepta is any indication of the range of topics that might be covered in connection with these contracts, Rabbis were certainly capable of framing rules that concerned the obligations of the lessee of a house with respect to the property, and of the demands that the lessor might justifiably make of the lessee. The presentation of the materials in m. Baba' Meš'ā' is thus the result of a choice to present certain kinds of relationships in certain kinds of ways. In connection with the lease of agricultural property what is stressed is the owner’s continuing interest in receiving the rents on the one hand, and the maintenance and productivity of the property on the other. Regarding leases of houses it is the right of the tenant to secure and uninterrupted possession that is emphasized. We should, of course, be cautious in drawing conclusions about the economic status or practices of Rabbis in late second-century Palestine from the contents of

(1) It is understood (nḥā) that “[If he contracted for] wheat, let him not seed it with flax.”
(2) [but why does the tradition state also] “flax, let him not seed it with wheat”?
(3) Flax damages the earth for three years, and you state thus?
(4) R. Menahem the brother of R. Gorion explained before R. La: “It is better to seed it with flax after flax than to seed it with wheat after wheat [so ms. E schon]; Leiden ms. and Venice editio princeps: “barley after barley”].

251 T8:27 (end) has been cited above. Note also T8:29 (cf. B102a):
[A] One who leases a house from his fellow—
[B] [the landlord] prevents him with respect to the place of the oven,
[C] but he does not prevent him with respect to the place of the stove (kird).
[D] [If] he leased a courtyard from him—
[E] he does not prevent him either with respect to the place of the oven or with respect to the place of the stove.
[F] Rather he places the oven where it belongs and the stove where it belongs.
[The Erfurt ms. read “shop” in [A], which Lieberman preferred, TK, 9, 276.] While it is possible that what is at issue in the case of the oven is whether the building was properly prepared to withstand the heat or weight of the installation (cf. m. B. Bat. 2:1), I am inclined to think that the significance of the contrast between courtyard [D] and house [A] is that the ovens belong outside (cf. m. Ta'an. 3:8), and the lessee has no rights to the use of the courtyard (just as the lessee has no rights to the refuse that accumulates there). (The problem of whether a tenant may have a fire in the house also occurs in Roman law, e.g., D 19.2.11 [Ulpian].)
legal traditions. However, if the above analysis is correct, the material discussed here reflects the interests of landholders. It is at least possible that in discussing leases in these terms Rabbis were reflecting their own interests as landowners as well.

C. Conclusions

The purpose of this chapter was to outline the way in which m. Baba\textsuperscript{2} Mesi'a\textsuperscript{2} describes economic institutions and their functioning, and structures economic relationships. Of necessity, the treatment of this subject has focused considerably on terminological and legal issues of a technical kind. However, I have tried in my analysis of Rabbinic legal texts to keep the tractate's claims about society, and the possibility of locating those claims within a wider social, economic, and historical context, constantly in view.

Let me begin with the seemingly obvious. The Mishnah clearly presupposes an agrarian economy. The rhythms of that economy dictate when market prices emerge, for example, and therefore when one can make sales for delayed delivery (M5:7). The objects that people rent or borrow, we have seen, are connected either with agriculture or the preparation of food. Among other things, landed property is assumed to be a typical form of collateral for loans (M5:2-3). When the Mishnah considers the rights of workers, their privilege of eating in the fields is an important area of discussion because this is where workers are thought to be engaged in work.

Second, the Mishnah also presupposes an institutional framework in which economic transactions take place, consisting, at the very least, of money, markets, and banks. Rabbis are clearly comfortable with the notion of money, so much so that the Mishnah reports a dictum of Hillel that all loans of commodities (even a neighborly loan of a loaf of bread) should be made on the monetary value of the commodities (M5:8 [E–G]). This same dictum, and other passsages discussed above, also underscores the Rabbinic claim (surely not invented for ideological purposes) that commodities may vary in price in the marketplace. Money changers ("bankers") in m. Baba\textsuperscript{2} Mesi'a\textsuperscript{2} serve to test and exchange coins and accept deposits.

More difficult, if not entirely impossible, is the evaluation of the depth or pervasiveness of this institutional framework. The common examples of transactions being carried out in kind rather than in coin may, I suggested above, reflect the limits of the reach of coinage. The rule that one might need several days to go to a nearby city to show a coin to a money changer assumes that (some) coinage is available in villages, but professional handlers of money are not. The failure of the Mishnah to regulate with respect to the
rules of usury the kinds of loans or investments that "bankers" may engage in might arguably derive from the internal "systemic" reason that interest-bearing loans are prohibited and no special specifications for bankers are necessary. Yet the grouping of "bankers" with shopkeepers as money handlers seems to indicate instead the rather restricted scale of economic activities available to "bankers." That is to say, *m. Baba' Mesi'a* may well assume that it is householders who engage in substantial loans of produce or coin, and not professional handlers of money, the extent of whose credit capability (which should not be minimized) consists of being able to advance a day's wages to workers for a short term (M9:12 [G]). The various treatments of issues related to sale also raise the question of the limitations of the market system for organizing production and exchange. In *m. Baba' Mesi'a*, it seems to me, markets are addressed as places where householders purchase produce for consumption. By contrast, the descriptions of substantial sales of produce may locate them outside of the framework of the marketplace and as taking place between non-professionals.

Third, and more tentatively still, I have suggested in this chapter that the Mishnah regularly addresses the concerns of one particular group of people: substantial landowners whose wealth is sufficiently great that they need not engage in the labor of production themselves, but instead exploit their holdings through leases or hired labor; who live "in town"; and who sell off their produce and store their wealth (at least in part) in the form of money, and feed themselves from purchases in the marketplace. The claim that Rabbis themselves were wealthy landowners is largely beyond the limits of the evidence of the Mishnah itself, but this claim is consistent with occasional stories (see, e.g., M7:1, cited below), as well as material from outside of the Mishnah.²⁵² That *m. Baba' Mesi'a* addresses the concerns of the propertied

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helps to make sense of the way in which the tractate treats leases of dwellings and farm leases, in particular, the concern in connection with agricultural leases with retaining the long-term productivity of the land. Where there is some indication of the scale of transaction (e.g., in connection with sales of produce, leases, or deposits) these appear to reflect possession of lands, houses, livestock, and substantial stores of produce. The rules regarding the hiring and maintenance of labor, we have seen, were concerned to protect certain rights of workers within the framework of customary practice. However, an employer faced with financial loss due to recalcitrant workers is empowered to cheat (M6:1). The hypothesis that the Mishnah reflects the concerns of wealthier property owners helps explain the absence in discussions of civil law of much attention to how (or whether) small farmers brought their produce to market. By contrast, such questions are raised in the Mishnah in ritual contexts, where the permissibility of produce affects the householder as consumer.

In many respects, this picture of agrarian-based wealth is not specific to Jews or Rabbis. *m. Baba' Mesi' a* constructs contracts in much the same way that documentary sources (primarily, but not exclusively, from Egypt) and Roman juristic texts do. This should not come altogether as a surprise: Rabbis, too, lived and worked in a province of the Roman empire and in an economy that was constrained by the same structural and material limitations as other areas in the empire. What is peculiar to the Mishnah (and to early Rabbinic culture more generally) is the way in which rules concerning money and contracts are utilized to articulate the boundaries of a Jewish society. The prohibition of usury, for instance, does not apply to gentiles. Sharply distinguished from “the gentiles,” the community of Jews is imagined as an egalitarian one. It is in part for this reason, I suspect, that certain legal topics such as truly dependent labor or long-term traditional tenancy, although we have every reason to think that these existed, are not addressed in *m. Baba’ Mesi’ a*.

The seemingly paradoxical tension between the consistent attention to the concerns of wealthier owners of property and status egalitarianism. at least for free adult Jewish males, is perhaps best expressed in a story in M7:1, in which a Rabbi is cast in the role of employer and householder:


[H] And he agreed on food with them.

[I] And when he came to his father [his father] said: “Even if you make them [a meal] like the meal of Solomon in his time, you have not fulfilled your obligation with respect to them, for they are sons of Abraham, Isaac, and Jacob.
[J] “Rather, before they begin working go out and tell them:

[K] “On condition that you have [a claim to] only bread and pulse.”

To be sure, there is an important contractual problem addressed in this pericope: when can one assume that conventional or traditional terms apply, and when must terms be made as explicit and clear as possible (in contrast with M7:1[A–F] and the view attributed to R. Simeon b. Gamaliel in [L–M], R. Yohanan b. Mattya holds that terms must always be specified). However, the language in which R. Yohanan b. Mattya’s reproach to his son is cast is highly significant. To say that one’s workers are Israelites, and therefore entitled to “the meal of Solomon in his time,” certainly expresses their theoretical equality with their employers (and may be an expansive way of saying that at the very least they are entitled to the same meal their employers habitually eat). Yet there is something deeply ironic about this story, which describes how R. Yohanan, precisely because he recognizes this equality, requires his son to stipulate in a contract with the workers that as workers they will only receive that to which laborers ought to be entitled, bread and beans.