

TIME 4 MISHNA

summaries

בבא מציעא

• Finding an item:

When the item is ownerless and can be kept:

- If **2 people come to דין בית** holding onto the edge of a cloak and each one claims that he found it and picked it up first, **they should each swear that they are entitled to no less than half** of it and then split it **equally**. (They don't make an oath about their entire claim, since it's considered a disgrace for two oaths which contradict each other to be made together in **דין בית**.)
 - If **ראובן** claims that he lifted it up first and **שמעון** claims that they lifted it up **simultaneously**, half of the item is agreed upon and they are disputing the other half, so **ראובן** should swear that he's entitled to no less than $\frac{3}{4}$ of it and **שמעון** that he is entitled to no less than $\frac{1}{4}$, and it should be split accordingly.
 - The same applies if **a seller receives money from 2 people** for an item and he isn't sure to whom he intended to sell it.
 - The same applies if 2 people bring an animal to **דין בית** whilst doing an act which is a valid form of acquiring, e.g. **riding** or **leading** it which is considered to be a '**משיכה**' – acquiring an animal by making it move.
 - If **they agree to split it**, they don't need to follow the **דין בית**'s instructions to swear.
 - If **there are witnesses**, this is the strongest form of evidence and no oaths are necessary.
- If **ראובן** is riding an animal and **asks שמעון to pass him an ownerless item** which is lying on the ground, **שמעון can decide to keep it for himself until he gives it over to ראובן**, since **ראובן** has shown that he doesn't intend to acquire it until he receives it.
- If **ראובן falls on top of an ownerless item in order to acquire it** and then **שמעון** picks it up, it belongs to **שמעון** since **ראובן didn't acquire it** by being within 4 **אמות** since he intended to acquire it by falling on top of it which is an invalid form of acquisition.
- If an item is located within one's property and he has the ability to stop it leaving his property, **he can acquire it by the mere fact that it's situated in his property**.
- That which one's **child who he supports**, one's **non-Jewish slave** or one's **wife** finds **belongs to him**.
 - If **one's wife is possibly divorced**, **he doesn't receive that which she finds** even though he still needs to support her until he gives her another **גט**.

'השבת אבדה' – the **מצוה** of returning a lost item to its owner:

- **ר' מאיר**: If one finds a '**שטר חוב**' – **document which records a loan** – on which **it's written that the lender has 'אחריות נכסים'** – hold on somebody's property that allows them to collect their debt from it, even once it has been sold – then **he shouldn't return it to the lender** even if the borrower agrees that he hasn't paid yet, in case they are plotting together in order to make the buyer lose out.

שטר חוב applies to every loan **even if not written in the שטר חוב**.

TIME 4 MISHNA

summaries

בוא מציג

- If one finds **a document which one person gives to another**, e.g. a גט or a receipt that a loan has been repaid, **he shouldn't give it to the person who was supposed to receive it**, in case the person who wrote it changed his mind and never gave it.
 - However, if it's **found inside a bag or pouch** then **it should be returned** together with it.
 - If **at least 3 documents** are **found rolled up together**, **they should be returned** since there is a 'סימן' – unique aspect of an item which the owner can state to prove that it belongs to him.
 - **רבן שמעון בן גמליאל**: If one finds **at least 3 documents** with **the same lender or borrower** in all of them, **he should return it to him**.
- If it's **a document written by בית דין**, e.g. to record the evaluation of a borrower's land for the lender to collect his debt from there, **it should be returned to the receiving party**, since these documents are given as soon as they were written.
- If one has a שטר חוב and he **can't remember whether it was given to him by the lender or the borrower**, **he should put it aside** and not give it to either of them.
- If **one has a receipt which records that somebody who borrowed from him has paid back**, **he should follow what it states** even though the receipt would ordinarily be in the hands of the borrower.

TIME 4 MISHNA

summaries

בוא מציעא

Which items may be kept and which ones must be returned to their owner:

- The תורה adds an example of one who finds an item of clothing when talking about the מצוה of אבדה, השבת, in order to teach that if one finds **an item which hasn't got a סימן**, then **he may keep it for himself**, since the owner is assumed to have 'יאוש' – when one gives up hope of retrieving his item – and thus lost his ownership.
 - If it is **an item which the owner wouldn't realise is lost until a while after it is lost**, then **the finder is obligated to return it**, since 'יאוש שלא מדעת' – when it's assumed that the owner of an item will have יאוש when he finds out that his item is lost but he hasn't yet found out – doesn't take away ownership, so the finder becomes responsible to guard the item such that even when the owner does have יאוש the finder doesn't acquire it.
 - **ר' יהודה**: Money inside a piece of bread **is considered a valid סימן**, even though **the owner is possibly unaware of this סימן**.
 - An item which is found in an area with many תלמידי חכמים needs to be returned, since **a תלמיד חכם is able to take a lost item merely by claiming that he recognises it as his**, even without stating a סימן.
 - **ר' שמעון בן אלעזר**: If it's new, **it can be kept** since a תלמיד חכם isn't yet able to recognise it as his.
 - If something is **placed down in an unusual way**, e.g. 3 coins one on top of the other, **this can be used as its סימן**.
 - **The location of an item can be used as a סימן**, it's in unusual.
- If one finds **an item which appears to have been placed there intentionally** by the owner who plans on coming back to get it, **he should leave it there**, e.g. a relatively large item which is covered in a garbage heap.
- If one finds an item in a pile of rubble or a very old wall and it **has clearly been there for a long time**, **he may keep it**.
 - If it's not an old wall but **it's evident that the item was placed into the wall from the public domain** and not from the inner side, e.g. a knife whose handle is on the outer side of the wall, **he may keep it**.
- If one finds an item **inside a house which is rented for a short term** to people on a constant basis, **he may keep it**.
- If one finds an item **in between a shopkeeper and his counter**, **he must give it the shopkeeper even if it doesn't have a סימן**, since he is clearly the owner.
- One who **receives produce from a merchant who buys from many different sources and he finds money with it**, **he may keep it** as long as it doesn't have a סימן.

TIME 4 MISHNA

summaries

בבא מציעא

The fulfilment of the מצוה of אבדה השבת:

- **ר' מאיר**: The finder must announce the finding of the item until it becomes known to those living in that area.
- **ר' יהודה**: He must announce it in ירושלים on the שלש רגלים when everybody is present, and wait for a week after the 3rd one, to give time for somebody to return home to check if he lost his item and to return and claim it.
- If the person claiming the item is known as a liar, the finder shouldn't give it to him based on a סיכון, unless witnesses testify that it belongs to him.
- If one finds an animal which costs money to keep but whose work covers the costs, he must keep the animal and when the owner is found, he must pay him for what he spent and he receives all the gain from the work that the animal has done.
 - If it's a non-working animal, e.g. a sheep, he should sell it, rather than spending lots of money on it and demand repayment from the owner.
 - **ר' טרפון**: He has the status of a borrower of the money, so he can use it and is liable to pay the owner even if this money is lost totally accidentally.
 - **ר' עקיבא**: He has the status of a guard, so he cannot use it and isn't liable if the money is lost accidentally.
- Although one who finds an item is forbidden to use it, if it will get mouldy if left unused for a long time, he must use it the minimum amount which is necessary to prevent this, e.g. by reading or unrolling a scroll or airing out an item of clothing.
- An important person is exempt from השבת אבדה if it's an item which will be degrading for him to carry through the street.
- One is obligated to return the same item multiple times if the owner loses it.
 - One is obligated to fulfil the מצוה of 'פריקה' – unloading the load off of an animal – and 'טעינה' – reloading a load onto an animal – even multiple times.
 - The obligation only applies if the owner himself also helps, unless he is unable to do so, e.g. he is old.
 - **חכמים**: פריקה is an obligation even if the owner doesn't pay him, but טעינה is an obligation only if the owner pays him.
 - **ר' שמעון**: They are both an obligation even without payment.
 - **ר' יוסי הגלילי**: If the animal is carrying more than the normal amount, there is no obligation of פריקה.
- If one needs to take time off work in order to return an item, he can only demand from the owner the amount that somebody would be willing to take as a wage for an easy task rather than his regular higher salary for doing more difficult work.
 - If he is unwilling to receive any less than his regular wage, he can stipulate in בית דין that he will return it on condition that the owner will pay him his full wage and the owner is obligated to do so.
 - If there is no בית דין, he is exempt from השבת אבדה.
- If one finds an animal inside its enclosure from which it's able to escape easily, it's not considered to be a lost item since there is nothing urging the animal to escape.

TIME 4 MISHNA

summaries

בוא מציג

- If the item is **situated inside of a cemetery**, a **כהן** (who is forbidden to become **טמא**) **is exempt** since there is both a positive and negative **מצוה** which obligates him not to become **טמא**.
 - Even if **his father tells him to return the item** and thus there is an additional positive **מצוה** to return it, **he is exempt**.
 - Similarly, if **one's father tells him not to fulfil the מצוה of אבדה** in a regular case, **he shouldn't listen to him** since the honour of one's father is irrelevant when it contradicts the honour of Hashem.
- If one **finds his own item and his father or main תורה teacher's item** and is only able to take one of them, **his own item takes precedence**.
- **One's teacher takes precedence over his father** for the **מצוות** of **honour**, **פריקה** and **ransoming from captives**, unless his father also taught him **תורה**.

TIME 4 MISHNA

summaries

בוא מציעא

- **The responsibility of a 'שומר' – one who is responsible to guard somebody else's item:**
 - If an item which a 'שומר חנם' – a guard who cannot use the item and isn't paid to guard it – is guarding is **stolen or lost**, he is **exempt from paying** the owner for the item as long as he makes an oath that it wasn't due to his 'פשיעה' – negligence in guarding it.
 - If he **pays instead of swearing** and later the thief is found, **the thief should pay** 'תשלומי כפל' – a payment of **double the item's value** – **to the שומר**, since there is an assumption that the owner transfers ownership to the שומר when giving the item to him on condition that the שומר will pay instead of swearing, since he would prefer a definite payment of the item's value than a possible payment of double.
 - The same applies to the 'תשלומי ארבעה וחמשה' – payment of **4 or 5 times the item's value** in a case where a thief slaughters or sells the sheep or ox that he stole.
 - **חכמים**: If **שמעון rents ראובן's animal and then lends it to לוי** with ראובן's permission after which it dies, **שמעון is exempt from paying** as long as he swears that he wasn't negligent, and **לוי must pay שמעון**.
 - **ר' יוסי**: **לוי must pay ראובן the owner**, since he's considered to be borrowing from him.
 - If **one tells 2 people that he owes one of them money but he isn't sure who**, he **should give the full amount to both of them** in order to fulfil his duty towards Heaven, but **he isn't obligated** to do so since 'המוציא מחבירו עליו הראיה' – one who wishes to take money from somebody else can only do so if he proves that he is entitled to it.
 - **חכמים**: If **2 people give somebody money or an item at the same time for him to guard and they later both return and claim the higher amount** of money or more valuable item, **he should give both of them the smaller value** and the rest should be kept on the side until the matter is resolved, since he can claim that the reason why he wasn't careful to see who was depositing which item is because they weren't careful to make it clear even though they deposited their items in front of each other.
 - ר' יוסי**: **All of it should be left on the side**, so that the liar has a motivation to own up.
 - **חכמים**: A שומר **shouldn't sell produce which he's looking after** if it is diminishing in size due to rotting or mice at a normal pace, since 'רוצה אדם בקב שלו מתשעה קבין' – one prefers 1 קב of his own produce than 9 קב of somebody else's produce.
 - רבן שמעון בן גמליאל**: **He should sell it**, in order to return the full value to the owner.
 - **חכמים**: Although it's forbidden to mix produce which one is guarding with his own produce, if he does so then **he can give back less produce to the owner corresponding to the amount that is generally diminished** from **each כור** or produce over time.
 - ר' יוחנן בן נורי**: This is true only for **1 כור** of the produce, since the mice don't eat more due to there being more produce.

TIME 4 MISHNA

summaries

בבא מציעא

- **ר' יהודה**: If the owner deposits **10 כור or more** in the summer and collects it in the winter, **the שומר must return the full amount** since the produce expands due to the added moisture and this makes up for that which is diminished.
- If wine or oil is deposited, the amount which is **absorbed in the barrels** and that which **turns hard is reduced from that which the שומר returns**, unless the barrels are old and no longer absorb, or if the oil is pure and none of it hardens.
 - **ר' יהודה**: If **one pays somebody to provide him a specific amount of oil for the next year**, and the seller gives him pure oil, he can give him less than the amount that he sold since the agreement was made with regards to regular oil, part of which hardens and cannot be used.
- If **a שומר חנם uses the item which he is guarding for his own use** and something out of his control causes it to break **whilst he is using it**, **he is liable to pay** since a '**שואל**' – one who borrows something without the owner's permission – is considered a thief.
 - **ר' ישמעאל**: If this happens **after he stops using it**, **he is exempt**.
 - **ר' עקיבא**: **He is liable**, since a thief stops being responsible for whatever happens to the item only once the owner knows that he has returned it.
- **Hanging money in a cloth over one's shoulder or giving it to his young children isn't considered to be a sufficient guarding of the item.**
- If one **gives money to a moneychanger** for him to guard, he may use the money and therefore has the status of a '**שואל**' – **borrower** – who is liable even if something out of his control causes it to be lost, unless he gives him the money in a pouch.
 - If he gives it to **a regular person**, he has the status of a **שומר חנם**.
 - **ר' מאיר**: If he gives to **a shopkeeper**, he has the status of a **שומר חנם**.
 - **ר' יהודה**: He has the status of a **שואל**, since he is in constant need of money so the owner is assumed to allow him to use it.
- **בית שמאי**: '**שליחות יד**' – when a שומר illegally **uses the item which he is guarding in a way that causes a loss to the item** – obligates the שומר to pay **the value of an animal with wool** if it had wool either at the time that he received it or when he used it, if the animal is lost.
 - בית הלל**: He pays **whatever it was worth when he used it**.
 - **בית הלל** and **בית שמאי**: If **the market value changes**, **he must pay the higher amount**.
 - **ר' עקיבא**: **He must pay what the animal would currently be worth**.
 - **בית שמאי**: A שומר **becomes liable** even if something out of his control causes the item to be lost as soon as he even **states in front of witnesses that he is going to do שליחות יד**, as learnt from **פסוקים**.
 - **בית הלל**: **He becomes liable only once he uses it**.

TIME 4 MISHNA

summaries

בוא מציג

• Laws of monetary transactions:

- **חכמים**: If **silver** is being exchanged for **gold** or **copper**, the gold is viewed as the item being bought and the silver as the payment, such that **the transfer of ownership occurs when the gold or copper is lifted up**.
 - **Money which is less readily accepted**, e.g. a coin lacking an image, is considered the item being bought in relation to money which is more readily accepted.
 - However, as soon as the payment has been given, **one who backs out of the sale will be punished** for not keeping his word.
- **ר' שמעון**: Once **somebody has paid** the money, **he cannot back out** of the sale.
- **Two items** can be exchanged via **'חליפין'** – when two people exchange items and as soon as one of them acquires the item that he is buying, he automatically transfers his item to the other person.

'אונאה' – over/under-pricing:

- **חכמים**: If the mispricing of an item is **more than 1/6** of its real value, the one who has been taken advantage of **has the right to invalidate the entire sale**.
 - If it's **exactly 1/6**, the sale is valid but **he can claim the difference in money**.
 - **חכמים**: The purchaser can make a claim of **אונאה** for up to **the amount of time that it takes to show the item to a merchant** or relative who can evaluate it.
 - **ר' טרפון**: He has **that entire day**.
 - **ר' טרפון**: The amount is **1/3**.
- **A merchant can make an אונאה claim**, even though he's expected to know the prices.
 - **ר' יהודה**: If a merchant buys something from somebody and then **sells it on for a smaller price**, **he cannot make an אונאה claim** on what he sold.
- **ר' מאיר**: One can pay a **סלע** using a **סלע** coin which has been worn out up to **1/24**.
 - **ר' יהודה**: It can be worn out up to **1/12**.
 - **ר' שמעון**: It can be worn out up to **1/6**.
 - If it is worn out more than this, the one who receives it can make an **אונאה** claim for up to **the amount of time that it takes to show the coin to a money-changer**; if he lives in a village then this is until **ערב שבת**.
 - If the person who gave him the coin recognises it, **he should accept his claim** even later on.
 - **One can treat such a coin as its full value** for **redeeming שני מעשר**.
- **אונאה** **only applies to something which has intrinsic value and is movable**, which excludes **land**, **slaves** (who are compared to land) and **documents**.
 - These 4 things are also excluded from: **a thief's fines**; what a **שומר חנם** needs to swear about; what a **'שומר שכר'** – a guard who cannot use the item and is paid to guard it – needs to pay for, since the Torah specifies in all these instances something which has intrinsic value and is movable.
- **חכמים**: **אונאה doesn't apply** to a transaction involving **הקדש**.

TIME 4 MISHNA

summaries

בבא מציעא

ד' שמעון: If the **הקדש** is an animal which was **designated in order to fulfil somebody's vow** to designate a **קרבו** to the **בית המקדש**, **אונאה** **does apply** since it's considered to belong to him to some extent as he would need to replace it if it gets lost.

- **ד' יהודה**: **אונאה** **doesn't apply** to something for which **certain people would be willing to pay beyond its monetary worth**, e.g. a **ספר תורה** or an animal which is similar to somebody's animal.

חכמים: It **does apply**.

- There is a prohibition of '**אונאת דברים**' – taking advantage of somebody and **causing them pain verbally**, e.g. asking the price of an item with no intent to buy it, or reminding somebody of their sinful past.
- If somebody is '**מודה במקצת**' – when one **admits to at least a פרוטה of somebody else's claim** that he owes him money – **he is liable to swear that he doesn't owe the rest**, as long as the rest is at least 2 silver **מעה**.

→ The following are the other instances where a **שוה פרוטה** is the minimum:

1. The amount that a woman needs to receive for '**קידושין**' – **the first stage of marriage**, when the man acquires the woman.
2. The obligation of **השבת אבידה**.
3. Violating '**מעילה**' – the prohibition of **benefitting from something belonging to the בית המקדש** – with something worth at least a **שוה פרוטה** obligates one to bring a **קרבו אשם** and to pay its value plus a '**חומש**' – $\frac{1}{4}$.
4. **Returning a stolen item plus a חומש** to its owner after one stole it and swore falsely that he hadn't.

- The following are the other instances where one needs to pay an additional **חומש**:

1. A **non-כהן** who eats food which is permitted only for **כהנים** must pay its value plus a **חומש**.
2. One who **redeems** '**נטע רבעי**' – fruit which has grown in its tree's fourth year – or '**מעשר שני**' – $\frac{1}{10}$ of one's produce which must be eaten in **ירושלים** – needs to add on a **חומש**.
3. One who **redeems something which he designated to הקדש** needs to add on a **חומש**.

Honesty in business:

- If one agreed to sell somebody produce of a particular field, he **may not mix with it produce from a different field**, even if it's the same quality.
 - **It's permitted to mix weaker wine with strong wine**, since it improves it.
 - One **can sell wine with its dregs**, but **may not add dregs from other wine**.
 - One **may not sell diluted wine** unless he tells the customer.
- He **may not sell it to a merchant** who will sell it on, since he might trick people, unless the practice of people is to dilute their wine.

TIME MISHNA

summaries

בבא מציעא

- A merchant **may mix produce from different fields** together, since people realise that he obtains his produce from multiple sources.
- **ר' יהודה**: A shopkeeper **may not give out treats to children** in order to encourage them to buy from his shop, since he is taking away other shopkeepers' business.
חכמים: **This is permitted**, since the other shopkeepers are able to do the same.
- **תנא קמא**: A shopkeeper **may not lower his prices** below the market prices.
חכמים: This is praiseworthy.
- **אבא שאול**: A shopkeeper **may not pick out the bad parts of the grain**, since he's likely to exaggerate the increase in its worth.
חכמים: **This is permitted**, since the customer is aware.
→ **It's forbidden** to do this just with **the top layer**.
- **It's forbidden** to **improve the appearance** of an item in order to make it look better than it is.

TIME 4 MISHNA

summaries

בוא מציג

'רבית' – the prohibition of interest:

- 'נשך' and 'רבית קצוצה' are terms which describe interest which is **fixed in advanced as a condition of a loan** and **is forbidden מדאורייתא**.
- 'תרבית' is when one does **business which includes or leads to רבית**, and **is forbidden מדרבנן**.
- If **ראובן** **pays שמעון to supply him with wheat for the next year and then the price of wheat rises**, **שמעון may still give him the same amount of wheat**, since we consider it as if **ראובן** acquired the wheat as soon as he paid for it, even though money is generally not a valid way of acquiring and even if **שמעון** didn't yet have wheat at the time of payment, since this is a leniency regarding **תרבית**.
 - If **ראובן** wishes to take all of the wheat at once due to its raised price so that he can buy wine with it, **שמעון may agree to give him that value of wine** instead of wheat since **ראובן** acquires the wine now by exchanging it with the wheat which is entitled to him.
 - However, if **שמעון doesn't currently have wine**, then **it's forbidden מדרבנן** since **ראובן** is considered to be lending **שמעון** the current value which he is entitled to in return for wine, and if the value of the wine rises then **שמעון** will be paying back a higher value than what he borrowed.
- 'אבק רבית' – a secondary form of interest, i.e. **doing a favour for the lender – is forbidden מדרבנן**, e.g. renting for a lower price than normal.
- **ראובן may rent** his courtyard to **שמעון** for a year and **take a lower price if he pays up-front** than if he pays at the end of each month, since 'שכירות אינה משתלמת אלא' – **לכסוף** – payment for rental is due at the end of the rental – so the higher, monthly price is the real price and the lower, up-front payment is considered a discount.
 - **ראובן may not sell** something to **שמעון** and take a lower price for an up-front payment, since the sale occurs now so that's the real price and demanding more for a delay in payment is considered interest.
- **שמעון may not pay for part of ראובן's field** with the understanding that when he brings the rest of the money then **the entire field will retroactively be owned by him from the time of the first payment**. This is because if **שמעון** does end up paying for the rest, **ראובן** would have gained from (what is retroactively) **שמעון's** produce due to **שמעון's** delay in payment. If he doesn't pay for the rest, then he takes back his money and it emerges that the entire field remained **ראובן's** and **שמעון** was gaining from **ראובן's** produce due to his money being 'loaned' to **ראובן**.
 - If they do this deal, **they should give the produce of the field to a third party** to keep until the rest of the money is/isn't paid.
- If **ראובן** lends **שמעון** money and **שמעון tells him that if he doesn't pay it back by a certain deadline then he can take his field**, **he cannot take his field** since **שמעון** didn't intend to give it to **ראובן** as he was sure he'd be able to pay back ('אסמכתא').

TIME 4 MISHNA

summaries

בוא מציג

- But if שמעון tells him that the field will **retroactively** be his from the time of the loan, then **the transfer of ownership is valid**, and in the meantime the produce should be given to a third party to look after.
 - רבן גמליאל did this with the חכמים's permission.
- ראובן **may not give produce or animals to שמעון** to sell with an agreement that they will **split all profits and losses**, since half of the produce belongs to שמעון and half is being loaned to him and he is working for the lender in return for this, which is **אבק רבית**, **unless ראובן pays him for the work which he is doing with his half**.
 - **It is permitted** if שמעון agrees to **split the profits but not pay for losses**, since then it's not considered a loan; **it is forbidden** if שמעון agrees to **pay for all losses**.
 - ראובן may give his **working animal** to שמעון to take care of and split the profits (e.g. children) & losses (e.g. if it dies), since the animal does work which benefits שמעון so it's like he's being paid.
 - **רבן שמעון בן גמליאל**: **The animal's children can be given to שמעון with it**, since they don't require lots of care or food as they follow their mother, and their manure is enough to compensate for what they need.
 - If **it gives birth**, שמעון either gives half the children to ראובן immediately or once he's raised them, **depending on the general practice in that location**.
 - If שמעון **accepts upon himself to raise ראובן's calf**, he must do so at least **until it has grown to a third of its full size**, and for a donkey **until it can carry burdens**, since this was what was generally done.
- One who rents a field **may pay extra rent to the owner so that he gives him fertiliser**, since he's now renting a better quality field.
- **The laws of רבית don't apply** if either the borrower or lender is **a non-Jew**.
 - ראובן may borrow from a non-Jew with interest and then **bring שמעון to the non-Jew in order that he gives him ראובן's loan** and שמעון will pay him back the money with interest.
- ראובן **may not pay שמעון for something** which ראובן is going to give him later **before the market price has been fixed**, since if the price will be set higher than what he pays, it will emerge that ראובן is receiving produce of higher value because of the 'loan' of money, and this is considered to be **אבק רבית**.
 - If **the market price has already been fixed**, **it's not אבק רבית** since he could have got that produce from somebody else immediately, so this isn't considered a gain.
- One **may pay someone for something which is almost fully processed**, since he acquires the future product from now.
- **תנא קמא**: **One may pay for manure even if the seller doesn't have any** at the moment, since it's always available so it won't be considered a gain if its value rises.
 - ר' יוסי**: He may only do this **if the seller has manure**.
 - חכמים**: **In the winter** when it's less available, he may only do it **if the seller has manure**.

TIME 4 MISHNA

summaries

בוא מציג

- **חכמים**: **ראובן** can stipulate that if the price goes down before he receives it, he'll pay the cheaper rate and **ראובן** will have to give him back the extra money.
ר' יהודה: Even if he didn't stipulate this, he can force **ראובן** to sell it to him for the cheaper price, since the sale has not yet taken place.
- It is forbidden to lend somebody 'סאה בסאה' – a loan of an amount of produce for the borrower to return the same amount of produce, in case the value rises.
 - But one may lend his 'אריס' – one who rents and works a field and pays an agreed percentage of that which the field produces as rent – seeds if their agreement was that the אריס provides the seeds, since the fact that the אריס isn't doing so allows the owner to throw him out of his field, so this is like a new arrangement that the אריס will receive the same percentage minus the value of the seeds.
 - **חכמים**: It's permitted if the borrower has what to pay back with but can't access it at the moment.
 - הלל**: It's still אסור.
- **ראובן** may not do a service for שמעון in return for שמעון's different service.
- **רבן גמליאל**: It's forbidden to give or to do something for somebody from whom you wish to borrow or have already paid back is forbidden, because of the loan.
- **ר' שמעון**: A borrower may not tell his lender information because of the loan.
- **תנא קמא**: The lender, borrower, guarantor and witnesses who sign on the loan document all transgress at least one of the עבירות of רבית stated in the Torah.
חכמים: Even the scribe transgresses an עבירה.

TIME 4 MISHNA

summaries

בוא מציג

• Laws of hiring workers:

- If the employer or the worker **pulls out of a job** after the agreement has been made but before the job has been begun, **neither is obligated to compensate the other** as long as no monetary loss was caused.
 - If one hires somebody to deliver something which is **needed without delay**, e.g. for the sake of a wedding or funeral, and the workers pull out, the employer may hire other workers for a higher cost and **force the original workers to compensate him for his loss**, or trick them that he'll pay them extra.
 - If **workers pull out in the middle of a job** and the employer finds other workers only for a higher cost, **he can pay the extra from the original workers' wages**; if the cost is lower, the original workers cannot claim extra wages.
 - If **the employer pulls out in the middle** due to finding cheaper workers, **he must pay the original workers the full amount for all of the work that they had agreed to do minus that which he pays the other workers**.
 - If a dyer dyes wool a different colour to what the owner wished, he receives for his work either **the amount that the wool went up in value** or **the amount that they agreed that he would be paid**, whichever is less.
 - If **somebody pays part of the cost of a field, which doesn't acquire it, and then one of them pulls out**, **the other party can choose to receive money or land for the amount which has already been paid**.

• When one is liable for injury or death of an animal which he has rented:

- If it was **hired to take on a valley and he takes it on a mountain** or vice versa, **he is liable** since the owner can claim that what occurred was due to the different conditions.
- If one hires something to use in a particular location and he uses it elsewhere, and **something happens to it which would have been more likely to occur in the location where he was allowed to use it**, **he is exempt**, e.g. if an animal was hired to take on a mountain and he takes it in a valley and it slips.
- If **it goes blind**, **the owner doesn't need to replace it** as long as it's still fit to work.
- If **it is snatched for the king's service**, **the owner doesn't need to replace it** since it's only because he went to that particular location that it was snatched.
- If it was **hired to carry a particular weight of wheat and he carries the same weight of barley**, **he is liable** since the larger volume makes injury more likely.
 - **סומכוס** in the name of **ר' מאיר**: If one **increases the volume** by $\frac{1}{15}$ more than the agreed volume for a camel, or by $\frac{1}{30}$ for a donkey, **he is liable**.

• People's status as שומרים:

- A **craftsman who is working on somebody's item on his territory** is a **שומר שכר**, since he gains from being able to refuse to return the item until he is paid.
 - If **the worker tells the owner that he can take the item**, **he is a שומר חנם**.
- If **ראובן** looks after **שמעון's** item in return for **שמעון** looking after **ראובן's** item at a later date, **he is a שומר שכר**.

TIME MISHNA

summaries

בבא מציעא

- A שומר becomes responsible once he does one of the acts of acquisition.
- חכמים: If **ראובן lends money to שמעון and takes a deposit from him**, he is a שומר שכר since 'העוסק במצוה פטור מן המצוה' – one who is involved in one מצוה is exempt from performing another מצוה – so if a poor person would ask him for צדקה at the time of the loan and the taking of the deposit, he would be exempt and this is considered to be a benefit.
ר' יהודה: He's a שומר חנם, since this isn't considered a significant enough benefit.
- One who lends fruit to somebody and takes a deposit from him is a שומר שכר since he benefits from receiving fresh fruit upon return of the loan.
- אבא שאול: One who is a שומר of his poor borrower's deposit can rent it out and treat the proceeds as repayment of the loan.
- חכמים: If a שומר breaks a barrel whilst transferring it, he can swear that it was an accident, and even a שומר שכר who is generally liable on this level of accident is exempt, since this is an especially common accident and otherwise people might withhold from accepting the responsibility.
ר' אליעזר: A שומר שכר is liable to pay.

TIME 4 MISHNA

summaries

בוא מציג

What food a worker is entitled to:

- One who hires a worker for a day **must provide food** for them **according to the general practice in that location**, unless stipulated otherwise.
 - **ר' יוחנן בן מתיא** once told his son to hire workers and he did so and stipulated that he would give them food and his father told him to stipulate with them that they'll only receive what is generally accepted in that location, since otherwise the implication of his son's stipulation is that they'll receive a feast because he added on to what they would already be entitled to, based on general practice.
 - **רבן שמעון בן גמליאל**: He didn't need to re-stipulate, since it's obvious that the son just stated that they'll receive food according to general practice.
- One who is hired to **pick produce from the ground** **may eat from the produce with which he is working at that time**, as well as one who is **working with detached produce** until it becomes liable in its final tithe.

ר' יוסי בר יהודה: Only a worker who **works with both his hands and feet**, like an ox, has this right.

 - **מדרבנן**, the workers may eat from the produce whilst walking from one row in the field to another, even though they aren't working at that point, so that the workers will work properly and not eat a lot whilst working.
 - **תנא קמא**: A worker **may fill himself up** with the produce.

ר' אלעזר חסמא: He **may not eat more than the value of his wage**.

חכמים: He may fill himself up, but he **is advised not to eat too much** that people would withhold from hiring him in the future.
 - A worker **can stipulate with his employer to receive a higher wage and in return not eat from any of the produce**, on behalf of himself, his wife, his children and his slaves who are under his authority.
 - **He can't do this if his children or slaves are under the age of בר מצוה**, since they lack sufficient understanding to forgo on their right.
 - If one **hires workers to work with 'נטע רבעי'** – fruit which grows during a tree's 4th year and must be eaten in **ירושלים** – without telling his workers, **he needs to redeem the fruit** so that they can eat from it whilst working.
 - **Guards of fields aren't entitled to eat the produce** which they're guarding, since they aren't doing any physical work with the produce itself.

• Laws of the 4 types of שומרים:

- 1) A **שומר חנם** is liable to pay only if something happens to the item **due to him not looking after the item** on a sufficient level.
- 2) A **שומר שכר** and a **שוכר** is liable to pay if something happens which **he could have prevented by looking after the item on a higher level**.
- 3) A **שואל** is liable to pay if **anything** happens to the item, even if it's totally out of his control.

TIME 4 MISHNA

summaries

בוא מציג

- When they aren't liable to pay, **they must make an oath** that they looked after it properly in order to exempt themselves from paying.
- If a **שומר** causes an animal to suffer by putting it out in the hot sun and it later dies, and **it's a doubt as to whether this was due to the suffering**, **he is liable to pay** since he isn't able to swear that what happened wasn't due to his lack of sufficient guarding.
- **A שומר can make an agreement with the owner to be exempt** from paying or swearing if something happens to the item, since their entire responsibility is based on the two parties' agreement.
- Although **the תורה exempts** all **שומרים** except for a **שואל** from paying when **the animal which they are looking after is torn up**, this is only if it couldn't be prevented.
 - If **a שומר allows an animal to go to a dangerous place and then an accident occurs** which kills the animal, **he's liable** since **'תחילתו בפשיעה וסופו באונס חייב'** – one is liable for an accident which happens as a result of the **שומר** not guarding properly.
- 1) **'כל המתנה על מה שכתוב בתורה תנאו בטל'** – **a condition which goes against the תורה is invalid**, and the legal statement or action remains valid in full force.
 - 2) For a condition to be valid, it **needs to be stated before the legal action is stated**.
 - 3) A condition which is **impossible to fulfil isn't a valid condition**.

TIME 4 MISHNA

summaries

בוא מציעא

- The **תורה** gives an **exemption** regarding a **שואל**'s liability in a case where **the owner is working for the שומר at the time that the loan is given** (and it's irrelevant whether he is working for him at the time of the accident).
- If **somebody sends his item to a שואל with a messenger who the שואל has appointed**, the **שואל becomes responsible** as soon as the messenger has received it.
 - When returning the item to the owner, **the שואל releases his responsibility** once it reaches the owner himself or the owner's messenger.
- **Rules for settling monetary claims:**
 - **ראובן has the status of a שואל for part of the time that he is using שמעון's animal and the status of a שוכר for the rest**, and it dies a natural death and it's a doubt as to whether he was a שואל or a שוכר when this occurred. In addition, he borrowed an additional animal from שמעון, which died. If שמעון claims from ראובן two animals, and ראובן admits to owing the fully borrowed one but isn't sure regarding the other one, **he is liable to pay for both** according to the rule of '**מודה במקצת הטענה**' – when one admits to part of somebody's claim and he must swear in order to exempt him from the rest.
 - The same applies if in addition to the borrowed animal which died, he **borrowed another animal and rented another one** and one of these died.
 - If שמעון **doesn't know** whether it died whilst being borrowed or rented and ראובן **claims with certainty that it was rented** so he is exempt, **he is exempt** and only needs to pay for the animal which was definitely borrowed, since '**ברי' ושמא ברי עדיף**' – a certain claim is stronger than a doubtful claim.
 - If **they both make certain claims**, ראובן **needs to swear** in order to exempt himself, because of '**גלגול שבועה**' – one who is already obligated to swear about something (e.g. that he looked after the animal properly) can be forced to swear about other things by extension.
 - **חכמים**: If **they both say that they don't know**, ראובן **is exempt** since '**המוציא מחבירו עליו הראיה**'.
 - **סומכוס**: **It should be split**, since '**ממון המוטל בספק חולקים**' – money which is in a state of doubt between two owners should be split.
 - **סומכוס**: If ראובן does '**חליפין**' – when two people exchange items and as soon as one of them acquires the item that he is buying, he automatically transfers his item to the other person – with his donkey and שמעון's cow, and **it's unknown whether the cow gave birth before or after the transfer of ownership took place**, **the child should be split**.
 - If one **sells his olive tree for the buyer to cut it down for its wood** and before he cuts it down it produces olives from which at least **a רביעית of oil can be extracted per סאה of olives**, **they must be split** since the buyer's tree and the seller's ground were necessary for their production.

TIME 4 MISHNA

summaries

בוא מציעא

- If a river washes away ראובן's tree together with some earth and resituates it in שמעון's field, it's forbidden נדרבנן to cut down the tree, so that the owner of the tree will replant another tree in his field and there will be more trees planted in ארץ ישראל, and שמעון becomes the new owner of the tree and needs to pay ראובן for it. However, since 'ערלה' – the prohibition to benefit from fruit which grows in a tree's first 3 years – doesn't apply and if שמעון would have planted a new tree himself then it would apply, he must give half of the fruit which grow in the next 3 years to ראובן.
- **Renting a house:**
 - One who rents a house to somebody cannot force the tenant to leave during the winter, and during the summer he must give him 30 days' notice.
 - In large, busy cities where it is difficult to find a place available to live, he must give him 1 year's notice.
 - One who rents a building to a shopkeeper must give him 1 year's notice, since he sells items on credit of up to a year.
 - רבן שמעון בן גמליאל: A baker or dyer needs to be given 3 years' notice, since they sell items on credit of up to 3 years.
 - One who rents a house to somebody needs to provide anything which requires a skilled worker, e.g. a door and bolt, unless stipulated otherwise.
 - The manure of animals which are brought into the house's courtyard by agreement with the owner belongs to the owner, except for the manure of the renter's animals.
 - If a house is rented "for a year" and it becomes a leap year, the extra month is included and the renter doesn't need to pay extra, unlike if he sells it "for 12 months".
 - If it is rented "for 12 דינר for the year, 1 דינר for each month", he needs to pay half rent for the extra month since it's a doubt.
 - If a rented house falls down, the owner doesn't need to provide another house unless the agreement was to provide him any house and this one wasn't specified.
 - If the agreement was that the owner would rent him a house similar to a specific house, he needs to provide a replacement which is the same as the fallen down house, unless they settle on something different.

TIME 4 MISHNA

summaries

בוא מציעא

• Renting a field:

- An 'אריס' is one who rents and works a field and pays an agreed percentage of that which the field produces as rent.
- A 'חוכר' is one who rents and works a field and pays an agreed fixed amount of that which the field produces as rent.

Laws which apply to both an אריס and a חוכר:

- Whether the renter harvests the field by **uprooting the entire plant or by cutting off just the produce** is dependent upon the general practice in that location.
- If he receives a field which **has a spring of water** that makes the work easier, or a grain field which also **has a tree** in it which is easier to tend, and then the spring dries up or the tree gets destroyed, **he cannot reduce the rental cost** unless the spring or tree was included in the agreement between him and the owner.
- The **rent is paid from that field's crop**, even if it's especially good or bad quality.

Laws which apply to an אריס:

- A אריס pays rent with **a percentage of both the more desirable and less desirable parts** of the produce, e.g. grain and straw.
- **Both the אריס and the owner supply the reeds which are used to keep vines growing straight**, so when they are no longer needed **they are split equally**.
- If he **doesn't work the field**, **he needs to pay the owner the agreed percentage of the estimated amount** that would have been produced.

Laws which apply to a חוכר:

- Even though the owner is paid the same amount regardless of how much is produced, **he can force the חוכר to weed the field** at least once a year since otherwise more weeds will grow once he leaves.
- If **the field is destroyed by locusts or wind**, **the renter can reduce the rental cost if it occurred to other surrounding fields too**, but if it only occurred to this field he may not, since this catastrophe was a decree directed at him.
 - **ר' יהודה**: If **the rent is paid with money** and not produce, **the rental cost cannot be reduced** since the owner has nothing to do with the produce.
- **חכמים**: If he rents it to plant **barley** or **grain**, **he may not plant wheat** or **beans** respectively since it weakens the ground more.
 - רבן שמעון בן גמליאל**: **Even the reverse is forbidden**, since changing what is planted in a field from year to year is detrimental to the field, so the owner is particular.
- He may only **plant flax** or **cut the big branches of a sycamore tree** if he is renting it for the next **7 years**, since the ground or tree takes that long to fully recover and the owner doesn't gain from it since he receives a fixed amount of rent.

TIME 4 MISHNA

summaries

בוא מציג

- If he rents it “for a **שמיטה** cycle” for 700 זוז, the **שמיטה** year is counted as 1 of his 7 years even though he can’t work the field.
→ But if he rents it “for 7 years”, it’s not counted as one of the years.
- **The laws of paying one’s employees:**
 - **ר' יהודה**: If a worker **finishes work at night**, the employer must pay him **by morning**.
ר' שמעון: He has **until nightfall the next day**, since that is the end of that Halachic day.
 - If a worker **finishes work during the day**, the employer must pay him **by nightfall**.
 - The prohibitions of delaying payment apply to a **renter** too.
 - The prohibitions don’t apply if **the worker doesn’t request his wages**.
 - If the agreement was that the worker should **collect his wages from somebody else** and there was a delay in payment, **the employer has not violated a prohibition**.
 - If an employee claims **within the time** that he is supposed to receive his wages that he hasn’t received them and the employer claims that he has, **the employee can make an oath מדרבנן and receive his wages**, since the employer is suspected of making a mistake due to being busy.
→ **After the time has passed, the employer is believed** since he isn’t suspected of allowing the day to pass without paying the wages.
 - If **the worker brings witnesses to בית דין** the next day who testify that he **made his claim within the time**, then **he can still make an oath and receive his wages**.
 - From the language of the **תורה** it is learnt that the prohibition of delaying the wages of a worker who **finishes his work during the day**, but not during the night, **applies to a worker who is a ‘גר תושב’ – a non-Jew in ישראל who keeps the ‘שבע מצוות’** – **7 מצוות** which apply to non-Jews.
- **The laws of taking a משכון:**
 - A lender may only take a ‘משכון’ – deposit which is taken by somebody who is owed money by somebody else in order to make sure that he will be paid – by **appointing a messenger of בית דין** to do so, in order that he doesn’t come to violate the **prohibition מדאורייתא** of **entering the borrower’s house in order to take the משכון**.
 - If one **takes a basic necessity from a poor person**, **he needs to return it to him as and when he needs it**, e.g. his pillow needs to be returned at night.
 - **חכמים**: If **the borrower dies**, **the lender may sell the משכון** and keep the money.
רבן שמעון בן גמליאל: Even if the borrower is alive and **30 days have passed** since he took the **משכון** without the borrower paying back the loan, **he may sell it**.
 - One **may not take a משכון** from a **widow**, whether wealthy or poor.
 - One **may not take an item which is used in the production of food** as a משכון.
→ If he takes a **millstone**, **he violates 2 prohibitions** since the **תורה** specifies both parts of a millstone separately.

TIME MISHNA

summaries

בוא מציג

• Laws which apply to neighbours:

- If **ראובן** owns the upper storey of a building and **שמעון** owns the lower storey and the **building falls down**, **that which remains amongst the rubble should be split between them** in proportion to the size of each storey.
 - If it fell in such a way that the **lower or higher stones are more likely to be the ones which broke**, this is taken into account.
 - If **ראובן** **claims to recognise certain stones as belonging to him** and **שמעון** **agrees to part of his claim** but isn't sure about the rest, **ראובן** **receives all of the stones which he claims to be his**, since this is a case of **'מודה במקצת הטענה'**.
- **חכמים**: If **ראובן** owns a house and **rents his upper storey to שמעון**, **and the floor of the upper storey caves in**, **שמעון** **can live on the ground floor** until **ראובן** does the repair, as long as this is understood from the language of their agreement.
ר' יוסי: **ראובן** **only needs to repair his own ceiling** but not the plaster on top of it for the sake of the floor of the upper storey.
- **חכמים**: If **ראובן** owns the upper storey of a building and **שמעון** owns the lower storey and the building falls down, and **שמעון** **doesn't wish to rebuild the lower storey**, **ראובן** **can do so and live there until שמעון pays him** for the cost of building it.
ר' יהודה: This isn't a good solution, since **ראובן** will need to pay rent to **שמעון** even though it's a situation of **'זה נהנה וזה לא חסר'** – when a person benefits from something which belongs to somebody else but the owner isn't losing out. Rather **ראובן** **should build his upper storey as well and then live in the lower storey**, which would be a situation of **'זה לא נהנה וזה לא חסר'** – when the person using something which belongs to somebody else doesn't benefit monetarily and the owner doesn't lose out.
- If **one's wall or tree falls down suddenly into a public area** and injures somebody or causes damage, **he is exempt from paying for the damages** unless he intended to retain ownership of it and somebody tripped over it after he had enough time to remove it from the public area.
 - If the **דין** **gave him a deadline** to cut down the tree or wall before it falls down and it falls down after the deadline, **he is liable**.
- If **ראובן's wall falls into שמעון's garden** and **he tells him that instead of him clearing away the stones שמעון may keep them**, **שמעון** can force **ראובן** to clear them away, but if he accepts his offer then **ראובן** **cannot retract** since **שמעון** has acquired the stones.
- **ר' מאיר**: If one garden is next to another but lower down, the **vegetables growing on the slope** in between them belong to **the owner of the higher garden**, since he could dig downwards and get rid of the entire slope.
ר' יהודה: Except for the roots, they belong to **the owner of the lower garden**, since he could fill his garden with plants which would take away the vegetables' airspace.
ר' שמעון: Only **the ones which the owner of the higher garden can reach** belong to him, since he gives over the rest to the other owner as he is ashamed of asking him permission to go through his garden in order to access the vegetables.

TIME 4 MISHNA

summaries

בוא מציג

Usage of a public domain:

- When it isn't the fertilising season, **one may place manure in a public domain only if somebody else is ready to take it** from there straight away.
- One **may not soak clay** or **form bricks** in a public area, since it takes away the usage of that area from the public for a long time, but **it's permitted to mix the clay for cement**.
- **חכמים**: A builder may **place bricks** in a public domain only if there is somebody else who is ready to take them from there very soon after.
→ If they **cause damage or injury**, **he is liable**.
- **רבן שמעון בן גמליאל**: He may place things in the public domain for up to 30 days, and if they cause damage he is exempt from paying.