TRANSLATION AND COMMENTARY

MISHNAH Two claimants appear before a Bet Din holding on to a garment. One of them says: “I found it,” and the other says: “I found it.” One of them says: “The whole garment is mine,” and the other says: “The whole garment is mine.” The Bet Din resolves such conflicting claims in the following way: One of the two claimants must take an oath that no less than half of the garment is his, and the other claimant must likewise take an oath that no less than half of it is his. They shall then divide the garment or its value between them.

LITERAL TRANSLATION

MISHNAH Two are holding on to a garment. This one says: “I found it,” and this one says: “I found it.” This one says: “All of it is mine,” and this one says: “All of it is mine.” This one shall swear that he does not have it in less than half of it, and this one shall swear that he does not have it in less than half of it, and they shall divide it.

RASHI

The order and internal structure of the tractate. Rishonim raise questions with regard to the place of tractate Bava Metzia in the general sequence of tractates in the Talmud (see Tosafot תוספות). They also question the order of the chapters within the tractate itself. The first chapter, תopo מטצא, would appear to belong to the laws concerning the finding of lost objects. Would it not have been more natural to begin with the fundamental principles underlying these laws (which are found in the second chapter, דפוקה מטצא) and only then to go on to discuss the various details relating to the subject?

Tosafot explain that the tractates Bava Kamma, Bava Metzia, and Bava Batra are really only divisions of one long tractate called Nezikin, comprising thirty chapters. Since the last chapter of Bava Kamma deals with the subject of dividing objects between different claimants and the imposition of an oath in such cases, our tractate begins with a discussion of these laws.

Another explanation is given by Rashi. In the case presented at the beginning of our tractate we suspect that one of the disputing claimants may have obtained possession of the object illegally. Therefore it was appropriate to present it immediately after similar cases in the last chapter of the previous tractate.

Rashbatz gives a different explanation: The tractate should actually begin with the laws and general principles concerning the finding of lost objects. But the specific case of תopo מטצא, in which there are two equal claims to the ownership of a found object, contains unusual and interesting principles; hence the Mishnah begins with this case. This is, indeed, a common practice in the Mishnah, where an individual case of special interest often precedes a discussion of general principles.

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Two men are holding on to a garment. The Mishnah used the word תopo — “a garment” — and not the more general term תopo — “an object” — because, as will be explained below, there are various laws which apply specifically to a garment and to the way in which the claimants are holding it which do not apply to other objects (Torat Hayim and other Abanim).

This one shall swear. In Jewish law an oath is not considered absolute proof but rather as corroboration of a certain claim. The prohibition against uttering a false oath written in the Ten Commandments (Exodus 20:7), and the words of the Torah and the Prophets regarding the many divine punishments imposed on someone who perjures himself (see Numbers 5, Zechariah 4–5), made people very fearful about taking oaths in general and about taking false oaths in particular. In general the obligation to take an oath is used as a threat against someone whose claim, we suspect, is not well founded. For it is possible that he has brought a case to court even though he is not entirely certain of the justice of his claim. Therefore it is assumed that a person would be very reluctant to take an oath in support of such a claim.

This one shall swear... and this one shall swear... Rishonim (Rabbeinu Hananel and others) ask why we do not apply here, as we sometimes do in other cases of property whose ownership is in doubt, the principle of הכה של פליג — “whoever is the stronger wins” —

HALAKHHAH

Two claimants are holding on to a garment. Where two claimants are holding on to one object (or have possession of one animal), and each claims ownership of the whole object, each of the claimants must take an oath that he has a valid claim to ownership of the object he is claiming, and that he is entitled to no less than half of it. The claimants then divide the object, or its value, equally between them, in accordance with the Mishnah here and the Gemara’s elucidation of it (Shulhan Arukh, Hoshen Mishpat 138:1).
TRANSLATION AND COMMENTARY

Similarly, if one of the two claimants says: 'The whole garment is mine,' and the other claimant says: 'Half of it is mine,' since both claimants agree that half of the garment certainly belongs to the one who claims the whole garment and their dispute is only about the other half, their claims are resolved in the following way. 1The claimant who says, 'The whole garment is mine,' must take an oath that no less than three-quarters of the garment is his; and the claimant who says, 'Half of it is mine,' must take an oath that no less than a quarter of it is his. 2The one claimant takes three-quarters of the garment, and the other takes a quarter.

Similarly, if two people were riding on an animal, or if one was riding it, and the other was driving it or leading it, holding on to the halter, 3and if one said: 'The whole animal is mine,' and the other said: 'The whole animal is mine,' their claims are decided on the same basis as in the earlier cases brought and let the more powerful and determined claimant gain possession of the object. Tosafot answer that since in our case the two claimants appear before the court while in (partial) possession of the object, the court is itself a witness to the existing situation and must assert that both claimants have a valid claim to ownership. Several Rishonim do, in fact, lay down the principle that the law of "ריבי עב되었" applies only wherever neither claimant is in possession of the object in dispute. (See Rabbeinu Hananel, Rashba, and others.) Rashi adds that if we were to apply the law of "ריבי עבでしょう" here, where both claimants are in possession of the object in dispute, we would not be protecting the rightful owner and we might be sanctioning the use of force by someone (the other claimant) who does not in fact have a valid claim. Since we do not know which of the two is the rightful owner, we have no choice but to impose an oath and divide the object between them.

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and let the more powerful and determined claimant gain possession of the object. Tosafot answer that since in our case the two claimants appear before the court while in (partial) possession of the object, the court is itself a witness to the existing situation and must assert that both claimants have a valid claim to ownership. Several Rishonim do, in fact, lay down the principle that the law of "ריבי עב是否会" applies only wherever neither claimant is in possession of the object in dispute. (See Rabbeinu Hananel, Rashba, and others.) Rashi adds that if we were to apply the law of "ריבי עבでしょう" here, where both claimants are in possession of the object in dispute, we would not be protecting the rightful owner and we might be sanctioning the use of force by someone (the other claimant) who does not in fact have a valid claim. Since we do not know which of the two is the rightful owner, we have no choice but to impose an oath and divide the object between them.

This one says: 'Half of it is mine.' Commentators ask why this claimant should not be believed, on the basis of the principle of מית - "since." (Where a claimant could have made a claim more advantageous to himself than the one he did make, we believe him with regard to the less advantageous claim.) In our case he could have claimed that the whole garment belonged to him. Why, then, should we not believe him when he claims that only half of the garment belongs to him? Several answers are given to this question: Tosafot and others deduce from this Mishnah that the מית argument is not strong enough to allow a court to take an object out of one persons possession and award it to another (מית לודפק). Rid is of the opinion that in a case where two people bought a garment, the person who claims that half of it is his does not dare to claim that the whole garment belongs to him, because he is afraid that the seller will contradict him. Our case, then, according to Rid, is not one of מית at all, because the more advantageous claim is not available to the claimant.

HALAKHAI

This one says: 'All of it is mine,' and this one says: 'Half of it is mine.' If two litigants claim ownership of something, the one claiming that all of it is his, and the other that half of it is his, the one who claims the entire object must take an oath that he has a valid claim to ownership and that he is entitled to no less than three-quarters of it, and the other must take an oath that he has a valid claim to ownership and that he is entitled to no less than a quarter of it. The former takes three-quarters and the latter a quarter, in accordance with the Mishnah and the Gemara. (Shulhan Arukh, Hoshen Mishpati 138:2.)
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TRANSLATION AND COMMENTARY

in the Mishnah: “One of the two claimants must take an oath that no less than half of the animal is his, and the other claimant likewise must take an oath that no less than half of the animal is his,” and they then divide the value of the animal between them.

If each of the two claimants admits the validity of the other’s claim, or if the two claimants have witnesses testifying that they both have a share in the object in dispute, they divide it without taking an oath. An oath is only imposed when the claimants have no other method of proving their claims.

GEMARA The Gemara begins its examination of the Mishnah by discussing its style and asks: Why does the Mishnah appear to repeat itself by saying: The one claimant says: “I found it,” and the other claimant says: “I found it.” The one claimant says: “All of it is mine;” and the other claimant says: “All of it is mine.” The second clause (“all of it is mine”) seems to be an unnecessary repetition of the first (“I found it.”). Let the Mishnah teach only one clause, containing a single claim.

The Gemara answers: The Mishnah does use only one clause, and the correct way to understand the Mishnah is indeed that one case and one claim was intended. We should rephrase the Mishnah as follows: The one claimant says: “I found the object and all of it is mine,” and the other claimant says: “I found it and all of it is mine.” According to this answer of the Gemara, therefore, the two statements are fused into one.

The Gemara now asks a further question: But let the Mishnah teach only the first clause, where each claimant says “I found it,” and that would be sufficient for us to understand that each claimant means that “all of the object is mine!”

The Gemara answers that, if the Mishnah had only taught the first clause, “I found it,” its intention could have been misunderstood. We might have thought that, by saying “I found it,” the claimant really meant, “I saw the object first, before the other claimant.” We might then have drawn the incorrect conclusion that even though the object had not reached the hand of the claimant and he had not yet taken physical possession of it, nevertheless by merely seeing it he did in fact acquire ownership of it.

In order to avoid this incorrect conclusion, the Mishnah added the second clause and taught that each claimant says: “All of it is mine.” The strong assertive language suggests that the object is physically in his possession. In this way the Mishnah shows that one does not acquire ownership of something merely by seeing it.

LITERAL TRANSLATION

This one shall swear that he does not have in it less than half of it, and this one shall swear that he does not have in it less than half of it, and they shall divide [it].

Whenever they admit, or if they have witnesses, they divide without an oath.

GEMARA Why [is it necessary] to teach: This one says: “I found it,” and this one says: “I found it.” This one says: “All of it is mine,” and this one says: “All of it is mine.” Let him teach [only] one!

He does teach [only] one: This one says: “I found it and all of it is mine,” and this one says: “I found it and all of it is mine.”

But let him teach: “I found it!” and I will know that “all of it is mine!”

If he had taught: “I found it,” I would have said: What [does] “I found it” [mean]? — “I saw it [first].” Even though it has not reached his hand, by merely seeing [it] he acquires [it].

He [therefore] taught: “All of it is mine” [to show] that [merely] by seeing [it] he does not acquire [it].

TERMINOLOGY

Why does he need to teach? — Let him teach!

When the Gemara objects to the wording of a Mishnah and suggests a clearer or more concise form of words, it frequently begins: “Why does the author of the Mishnah use this expression? He would make his point more clearly or more concisely if he instead said…”

Let him teach. This expression is used by the Gemara to introduce an objection to the language or style of the Mishnah: “Why did the Tanna who taught this Mishnah not teach the Mishnah’s contents in another, clearer, way?”

I would have said. This expression is used in the Talmud as an introduction to a possible answer that is later found to be incorrect.

RASHI

(בנהא) (בנהא) (בנהא) (בנהא)
TRANSLATION AND COMMENTARY

The Gemara now raises an objection to the answer just given: Can you, in fact, say that the meaning of the statement ראהתי — 'I found it' — really means 'I saw it'? Surely there is an authoritative statement by Rabbenai (Bava Kamma 113b), who said in explaining the verse (Deuteronomy 22:3): 'And so shall you do with every lost thing of your brother's, which he has lost and you have found.' That the expression ראהתי — 'I found it' — means that the object is considered legally to have been found only when its finder takes actual physical possession of it. Thus, according to Rabbenai, the use in the Torah of the Hebrew root קָנַן — 'to find' — in connection with the finding of a lost object, always means that the object found is already in the hands of the finder. How, then, could the Gemara above have suggested that we might have been under the mistaken impression that one could acquire ownership of an object by merely seeing it?

The Gemara now answers this objection by making a distinction between the use of language in the Torah and the use of language in the Mishnah: Yes, says the Gemara, the expression ראהתי — 'you have found it' — in the Torah, in the verse just quoted, does indeed mean that the object has reached the hand, the physical possession, of the finder. But if the Mishnah had not used the extra expression, 'All of it is mine,' we might have thought that the Tanna of our Mishnah, when he chose the expression ראהתי — 'I found it' — was in fact using a colloquial expression. When a person sees an object that appears to be lost or ownerless, he says: 'I found it,' even though the object has not reached his hand. He imagines that merely by seeing it he has in fact acquired it. Therefore, the Mishnah adds the seemingly superfluous clause, 'All of it is mine,' in order to inform us that merely seeing a lost or ownerless object does not convey ownership of the object.

The Gemara now attacks this explanation and asks: If the Mishnah really intends to show that mere seeing does not convey ownership of a lost or ownerless object, let it teach only the second clause, where each claimant says, 'All of it is mine.' For that purpose it does not need to teach the first clause, where each claimant says, 'I found it!' Surely the second clause alone is sufficient!

LITERAL TRANSLATION

But how can you say: What [does] 'I found it' [mean]? — [It means] 'I saw it'? But surely Rabbenai said: 'And you have found it' means that it has reached his hand.

Yes, [the expression] 'and you have found it' in the Biblical verse does mean that it has reached his hand. But the Tanna used the language of the [everyday] world, and once [a person] sees it [an object], he says: 'I found it,' and even though it has not reached his hand, he imagines that merely by seeing it he acquires it. Therfore he teaches: 'All of it is mine,' [to show] that merely by seeing it he does not acquire it.

But let him teach: 'All of it is mine,' and he would not need [to say]: 'I found it!'

RASHI

The Gemara now proposes an explanation to the objection just raised: The Torah uses the Hebrew root קָנַן — 'to find' — only in the context of the lost object being found by the finder. However, in the Mishnah, the expression ראהתי — 'you have found it' — is used in the same context of finding an ownerless object. Rashi explains that the Mishnah uses the expression ראהתי — 'you have found it' — in order to convey the idea that the object has been found in the literal sense, not just in a figurative sense.

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Surely Rabbenai said. The Shitah Mekubbitzet points out that it seems unlikely that Rabbenai was himself the author of the statement attributed to him here. It is more likely that the source of the statement was appreciably earlier than his period, because it is cited in other places in the Talmud as the authoritative Halakhah.

HALAKHAH

Merely by seeing it he does not acquire it. 'A person does not acquire ownership of a found object until the object is actually in his hand, or in his domain. If he merely sees the found object (even if he wallages towards it in order to take possession of it but does not take hold of it) he does not thereby acquire ownership of it, and whoever is the first to take physical possession of it acquires ownership,' in accordance with the ruling in the Gemara. (Shulhan Arukh, Hoshen Mishpat 268:1.)
CHAPTER ONE

TRANSLATION AND COMMENTARY

The Gemara answers that if the Mishnah had only taught, "All of it is mine," I might have mistakenly said that, as a general rule, whenever the Mishnah uses the expression, "I found it," it follows the idiom of colloquial speech, and its intention is to state that merely by seeing a lost or ownerless object one does acquire it. Therefore, to avoid this erroneous conclusion, the Mishnah first taught, "I found it," and then taught, "All of it is mine." Thus, from the seemingly superfluous expression, "I found it," the Mishnah made known to us the principle that merely by seeing an object one does not acquire ownership of it.

Up to this point in its analysis of the Mishnah the Gemara has sought to establish that the first two clauses, "I found it," and, "All of it is mine," are two necessary features of a single, integral unit, dealing with one particular case. The Gemara now proceeds to attack this basic assumption and asks: Can you, in fact, say that the Mishnah in its two opening statements is teaching one particular case with one particular claim? Surely the wording indicates that the Mishnah is referring not to one but to two separate and distinct cases. Does it not teach, "This one says..." implying one case, and then teach, "This one says..." implying a different case? Thus:

1. "This one says," "I found it," and this one says, "I found it," and (case 2) "This one says," "All of it is mine," and this one says, "All of it is mine." The implication, says the Gemara, is that there are two separate and distinct claims, and not the same claim repeated in different terms!

Rashi

Rav Pappa said, and some say that it was Rav Shimi bar Ashi who made the statement, and others say that it was stated anonymously. The first clause in the Mishnah, where each of the two claimants says, "I found it," deals with something that was found and claimed by two people; and the latter clause, where each of the two claimants says, "All of it is mine," deals with buying and selling, in which each claimant asserts that he is the one who bought the object from the seller and that he is the rightful owner.

And it was necessary for the Mishnah to teach both cases. For if he had taught

LITERAL TRANSLATION

If he had taught: "All of it is mine," I would have said [that] in general wherever he teaches "I found it" [it means that] merely by seeing [it] he acquires [it]. He [therefore first] taught: "I found it" and again he taught: "All of it is mine," so that from the extra [sentence in the] Mishnah he makes known to us that seeing does not acquire.

But how can you say [that] he teaches one [plea]? But surely he teaches: "This one" and "this one": This one says: "I found it," and this one says: "I found it." This one says: "All of it is mine," etc.

Rav Pappa said, and some say (lit., "and if you say") [that it was] Rav Shimi bar Ashi, and others say [that it] was related anonymously. The first clause [deals] with something found, and the latter clause with buying and selling.

And it is necessary [to teach both cases]. For if he had taught

TERMINOLOGY

םלצוי לירש veut, and they say it. An expression used to introduce the revision of a previous statement. This revision may differ from the original either in content or in attribution to a different authority.

It is necessary. A Mishnah or a Baraita often presents two or more seemingly analogous cases (the Torah itself, or an Amora, will occasionally do this, too). When this apparently unnecessary repetition is challenged, the Gemara points out that the statements are both "necessary." The Gemara justifies the inclusion of the various cases either because each case has a unique feature needing to be stated, or because we might have reached erroneous conclusions if one of the statements had been omitted.

RASHI

כָּלָֽהוּ כְּבָלָֽהוּ כְּבָלָֽהוּ This means that the Mishnah is referring to two separate cases. The first case is "I found it," and the second case is "All of it is mine." These two cases are parallel in structure.

Buying and selling. Rashi emphasizes that the law here only applies in the case of buying and selling, as explained below, where the two litigants each gave money to a seller for a specific object, and each of them claims that the seller intended to sell him the object. But in a case where they advance other claims of ownership, such as where each of them claims that he wove the cloth, it is obvious that one of them is knowingly seeking to defraud. In such a case we do not make them take oaths, but instead we deposit the object with the court until the matter is clarified in some other way.

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the case of a found object, I might mistakenly have said that it is specifically in disputes over found objects that the Sages imposed an oath on each claimant, because a person may rationalize his seizing a found object from its rightful finder and say to himself: “My fellow loses nothing if I take the object from him, for he too came upon it by chance. I will go and take hold of it and divide it with him.” I might have thought that it was in order to deter such attempts at self-justification that the Sages decided that both parties in a dispute about a found object must take an oath. But in the case of buying and selling, where such a justification cannot be made, because the other claimant paid money to buy the object, I might mistakenly say that no oath should be imposed. In such a case each claimant may sincerely believe that the seller intended to sell him the object, and the imposition of an oath might have been considered unnecessary. The Mishnah therefore had to bring the case of buying and selling as well.

Conversely, if the Tanna of the Mishnah had only taught the case involving buying and selling, we might mistakenly have said: it is specifically in a dispute over the ownership of a bought object that the Sages imposed an oath on each claimant, because in the case of a bought object, where both claimants paid money, a claimant may rationalize his seizing the object from its rightful owner and say to himself: “My fellow paid money to the seller and I, too, paid money to the seller. Now that I need the object, I will take it for myself, and my fellow can go to the trouble of buying another one.” I might perhaps have thought that it was in order to prevent such attempts at self-justification that the Sages decided that both parties in a dispute about a bought article must take an oath. But in the case of a found object, not a single continuous line of argument.

Others (Citzar Hageonom) go further and suggest that the entire passage is not part of the original text of the Gemara as edited by Ravina and Rav Ashi, but was added later by the Savoraim (the Sages who belonged to the generation that lived after the completion of the Babylonian Talmud). According to this explanation, the Savoraim collected all the various Amoramic explanations of the subject matter of the Mishnah and inserted them in unedited form in the text of the Gemara. (A number of examples of such a process can be found elsewhere in the Talmud.)

Nevertheless, many commentators (Ramban, Rashba, and Shitah Mekubetzet) reject this approach. They attempt, albeit with a certain amount of difficulty, to resolve the passage’s apparent lack of cohesion, and interpret it as one continuous line of thought.
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TRANSLATION AND COMMENTARY

where such a justification cannot be made — the other claimant to a found object cannot be expected to go away and find another similar object, and it will certainly cost him money to replace it — I might mistakenly say that no oath should be imposed, and we should not suspect either claimant of having seized something to which he had no right. In such a case each claimant may sincerely believe that he found the object first, and the imposition of an oath would be ineffective. Therefore both cases are necessary and the Mishnah had to teach them both.

The Gemara asks: But if the Mishnah is dealing with a case of buying and selling, surely the court can investigate and find out from the seller from which of the two claimants he received payment, and thus solve the question of ownership?

The Gemara answers: No, the oath is necessary in a case where the seller took money from both claimants. From one he accepted the money willingly and from the other unwillingly.

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cases must be discussed.

Let them see from whom he took the money. In every case where it is possible to present manifest evidence, this is preferable to proof based on an oath. In the case of a purchase there is the added possibility that witnesses may have been present at the time of the sale, or at least that the seller himself may be able to testify in the matter. See Tosefot (ד"כ, ח"כ), which discusses the extent to which the seller’s testimony may be relied on. In any event, it seems that the fact that the seller agreed to receive the money is proof that he was willing to sell the object to the owner of that money.

One aspect of the difficulty in clarifying the facts here is related to the laws of acquisition. Since a purchaser does not become the owner of an object merely by the act of payment, but must actually take physical possession of it, being the first to pay does not necessarily confer ownership on the purchaser.

Let them see from whom he took the money. According to Rashi’s explanation (which has been followed in the translation), the Gemara’s question is this: In order to determine who bought the garment, we only need to ask the seller who paid him, since we have confidence that the seller will be able to identify the buyer even after the transaction has already been completed. The Gemara answers that the circumstances are such that the seller is not believed, because he received money from both claimants.

HALAKHAH

A seller who took money from two buyers. If two men bought an article from one man, and the seller received payment from both buyers, from one willingly and from the other unwillingly, and he does not know from whom he received the money willingly and from whom unwillingly, both claimants must take an oath concerning half the article in dispute, and each claimant then receives half of the article and half of the money he paid to the seller, in accordance with the Gemara here. (Shulhan Arukh, Hoshen Mishpat 222:1.)
SAGES

Ben Nannas. His full name is Rabbi Shimon ben Nannas, one of the Sages of the Mishnah. It appears that he was a colleague of Rabbi Akiva (though younger than him) and of Rabbi Yishmael. The Talmud quotes his rulings on a number of occasions, and his opponent in Halakhic discussions is frequently Rabbi Akiva.
The Talmud makes no mention of his personal history or family background. The only reference we find to Ben Nannas' personality is the superlative praise accorded him by Rabbi Yishmael (Bava Batra 10:8): "A person who desires to gain wisdom should occupy himself with civil law...and a person who desires to occupy himself with civil law should study under Shimon ben Nannas."

TERMINOLOGY

The Gemara now proceeds to analyze the contents of the Mishnah, to bring out the legal principles upon which it is based, and asks: Shall we say that our Mishnah is not in accordance with the view of Ben Nannas? For if the Mishnah is indeed in accordance with the view of Ben Nannas, he has surely said elsewhere that, where two disputants make contradictory claims, the court must not impose oaths upon them, since it is clear that one of them is lying. "How can an oath be imposed on both of them? Shall one or the other will definitely utter a false oath?" Ben Nannas' view is cited in a Mishnah in tractate Shеваot (7:5), which discusses the case of an employer who told his employee to go to a certain storekeeper to receive goods to the value of his wages, and who told the storekeeper to give the employee the goods to the value agreed upon, and to charge the sum to the employer's account. Afterwards a dispute arises: The storekeeper claims that he gave the goods to the employee, and the employee claims that he did not receive them. According to the Sages cited in that Mishnah, the storekeeper must swear that he gave the goods to the employee, whereupon the employer must reimburse the storekeeper; and the employee must swear that he did not receive the goods, whereupon the employer must

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Several commentators reject Rashi's interpretation and explain the Gemara's question as follows: Let us ask the seller, and even if according to the Halakah he is not believed, the claimant who is lying may be shamed by the seller's presence into admitting the truth, and the imposition of an oath will be avoided.

Rashi and Ri in Tosafot explain that the Gemara's suggestion is that we ask the buyers, rather than the seller, who gave the money. Even though the buyers disagree as to who bought the garment, they are unlikely to lie about the question of fact such as who gave the money.

Ramban explains along similar lines that the subject does not revolve around the evidence of the seller, but rather concerns the question how the claimants can both justify to themselves that they are entitled to claim ownership, when the seller only received money from one! He explains that this difficulty forces the Gemara to conclude that both of the claimants paid money and each is able to justify his claim by saying that it was from him that the seller accepted money willingly.

Shall we say that our Mishnah is not in accordance with...? These inquiries by the Gemara appear to take up a literary-historical question: Who is the author of our Mishnah? (Or, at least, who cannot be its author?) Nonetheless, they have far deeper significance. Our Mishnah, like most Mishnayot, does not set out abstract juridical principles but rather the detailed Halakah regarding specific instances. But in order to understand the more general meaning of the Mishnah, one must understand the abstract principles behind it, and this is done by comparing it to the viewpoints of other Sages. These comparisons lead the Gemara to more fundamental definitions of the function and significance of the oath imposed by the Sages of the Mishnah, and they also bring out a general conception of how contradictory claims in civil suits are resolved.

This one and the other will definitely utter a false oath. The question is raised by the commentators: Why does Ben Nannas maintain, according to the literal meaning of the text, that they will both be uttering a false oath? It is true that the two oaths contradict each other and hence cannot both be true, but there is no need to say that they are both false. One of them may be true!

Some commentators (see Rashi: מִזְבַּח אַלּוֹד הַיְּהוָא הַיְּהוָא) explain Ben Nannas' statement as meaning that, since the matter cannot be resolved, we can be sure that between the two claimants one or the other will definitely utter a false oath. (This explanation is reflected in the translation here.)
TRANSLATION AND COMMENTARY

pay him the wages he owed him. But Ben Nannas disagrees. How can both the employee and the storekeeper be permitted to swear, when one of them is clearly lying? It is better, says Ben Nannas, for the two claimants, the storekeeper and the employee, to receive what they claim without recourse to an oath, since there is no way we can prove which of them is lying. Similarly, in our Mishnah, one of the claimants must have taken hold of the garment after the other claimant had already picked it up and acquired it. Thus one of the claimants will swear falsely. It would, therefore, be better not to impose an oath on either of the claimants, and let them divide the garment without taking an oath. Accordingly, it seems that our Mishnah, which requires both claimants to swear, is not in accordance with the view of Ben Nannas.

1. But the Gemara now rejects this line of reasoning: You may even say [that our Mishnah is in accordance with] Ben Nannas. 2. There, in the case of the storekeeper and the employee brought in tractate Shevuot, there is certainly a false oath, since the two claims are mutually contradictory (for the storekeeper swears that he gave the goods to the employee, whereas the employee swears that he did not receive them); but here, in our Mishnah, it is possible that there is no false oath, because one could say that it is possible that both claimants picked up the garment at the same moment! Thus, even though the two claims ("I found it," and hence "it is all mine") are mutually exclusive, each claimant may believe in good faith that he is the sole rightful owner. Thus the oaths ("No less than half of it is mine") may still be true; for if the two claimants picked up the garment simultaneously, they would each be entitled to half. Similarly, in a case of buying and selling, the seller may have agreed to sell the object to both prospective buyers. In such a case Ben Nannas may well agree that an oath should be imposed on both claimants.

The Gemara continues to analyze our Mishnah, and asks: Shall we say that our Mishnah is not in accordance with the view of Summakhos? 3. For if the Mishnah is, indeed, in accordance with the view of Summakhos, surely he has laid down elsewhere a general principle that property the ownership of which cannot be decided (where two people claim an article but cannot prove their claim), is divided between the claimants without their taking an oath! Since our Mishnah requires both claimants to take an oath, it cannot be in accordance with the view of Summakhos. (See note 4. property the ownership of which cannot be decided. Summakhos’s principle, that property the ownership of which cannot be decided is divided equally between the claimants to it, is applied by the Talmud to an anonymous Mishnah in tractate Bava Kamma (46a). The case discussed there is that of an ox that gored and killed a cow whose newly born calf was then found dead nearby. It was impossible to decide whether the calf had been born

NOTES
Shitah Mekubetzet explains Ben Nannas’s statement more literally: As far as one of the claimants is concerned, the הקו בושב — the main claim — is in fact a false oath (because he is lying). As far as the other claimant is concerned, the oath imposed is an unnecessary one, which is also called הקו בושב because it is imposed as a result of the false claim of the other litigant. Thus both claimants will ultimately utter a הקו בושב.

HALAKHAT
Property the ownership of which cannot be decided. In a monetary dispute where there is a doubt as to whom the money should be given, and there is no conclusive evidence in support of either the plaintiff or the defendant, even if the plaintiff states that he is certain that his claim is correct and the defendant states that he is uncertain of the justice of his position, the burden of proof rests upon the person seeking to extract payment, in accordance with the opinion of the Sages here (Shulhan Arukh, Hooshen Mishpat 223:1, 400:1).