

VARIANT TRADITIONS OF CASES (עובדא) IN THE BABYLONIAN TALMUD¹

By ELIEZER LORNE SEGAL

IT IS WELL KNOWN that the use of Talmudic materials for historical study is a perilous undertaking. Beyond the uncertainties involved in determining the text, attention must always be paid to the peculiar literary character of Talmudic literature: the continual oral reworking of earlier traditions, and the hypothetical academic nature of much of the discussion. Indeed, there are few historians who would accept at face value, let us say, a late Tannaitic version of an early Tannaitic tradition, or a Babylonian rendering of a Palestinian source. The methodological problems, however, begin to be a bit more touchy when we have to deal with a Babylonian source as presented in TB itself. True, current source-critical studies pay strict attention to the problems of redaction by which later redactors ("the anonymous Talmud") alter and reinterpret the original intentions of the Amoraim in the course of the construction of the *sugyah*. In fact, however, the theoretical legal and exegetical dicta to which these methods are applied are relatively limited in their value as sources of historical information. The bulk of the materials

¹ The following abbreviations are used in this article:

DS (*Diqdūqē Sōferim*)—R. Rabbinowicz, *Variae Lectiones* (reprint), New York, 1960.

DS to Keth.—*The Babylonian Talmud with Variant Readings, Tractate Kethuboth* (II), ed. M. Hershler, Jerusalem, 1977.

HG—*Halakhoth Gedoloth*:

HGB—*Die Vaticanische Handschrift der Halakhoth Gedoloth*, ed. J. Hildesheimer, Berlin 1885-86.

HGW—*Halakhoth Gedoloth*, Warsaw, 1874.

HP—*Halakhoth Pesuqot*, ed. S. Sasoon, Jerusalem, 1950.

OG—*Oṣar ha-Ge'onim*, ed. B. Lewin, Haifa-Jerusalem, 1928-44.

ShM—*Shiṭṭah Mequbbeṣeth*, by R. Bezalel Ashkenazi.

TB—*Babylonian Talmud*.

that find their way into historical studies of Amoraic Babylonia are the many reports of cases (עִיבֵדָא) to be found in the pages of TB. These cases, involving the (usually) legal decisions and actions of the important Babylonian Jewish scholars, are generally cited in the form of straightforward narratives.² It is generally assumed, it seems, that such case reports are free from the continual literary abridgement which has been undergone by other types of Talmudic sources.

By way of an investigation of the general question of the nature of the transmission of cases, we will focus here on the particular problem of *variant traditions* of cases. If we can properly explain the creation of such variant traditions and evaluate their extent, we will, it seems to me, have made some progress toward the understanding of how we can use them as historical sources (the term "variant traditions" is to be distinguished from "variant readings"—i.e., textual variants—in that the former signifies variants which were before the final redactors, while the latter designate variants that were added afterwards, by copyists, etc.). The corpus from which the following examples will be taken includes the Order Neziqin of the Babylonian Talmud (*Baba Qamma*, *Baba Meši'a* and *Baba Batra*).

I. *Variant Traditions of Cases of the 'Oḅāḏā Type*

In regard to their *external* forms, the Babylonian cases cited in TB can be divided into two principal types. This typology is based on elements of terminology and literary structure.

The structural criterion divides the material into (a) cases which constitute independent literary units, and can be understood as narratives even when removed from the context of the *sugyah*; as against (b) cases that are worded in such a way that they take on meaning *only* in the context.

² See, e.g. J. Neusner, "Rabbis and Community in Third Century Babylonia," in Neusner, J., ed., *Religions in Antiquity*, (Leiden, 1968), p. 443. Cf. *idem*, *History of the Jews in Babylonia*, (Leiden, 1968), III, 272 ff.; IV, 125 ff., etc.

The terminological criterion divides the material into (a) cases which follow a standard typology of the sort of . . . אתא לקמיה דר"פ . . . and similar wordings ("A certain man . . . came before R. X. . ."); as against (b) cases which employ the word *'obāḏā* ("case") in various forms, particularly (הוה עובדא -ב), "There was a case (at) . . .," or . . . עבד ר"פ עובדא," "R. X decided a case. . ."

The two (a) criteria mentioned above generally coincide, as do the (b) criteria almost invariably. Virtually never do we find an independent story employing the *'obāḏā* formulae, or a context-defined case using the "a certain man" wording.³ This consistent distinction of structure and terminology between the two types of cases is particularly prominent in contrast with the situation in the Palestinian Talmud, where אתא עובדא קומי דר"פ is the common form of cases. Similar formulae are found in TB in the speech of the Amoraim

³ To be exact, there are instances of context-defined cases which do not contain the word *'obāḏā*, although they should probably be considered members of the same "family"; see, e.g., B.BB.144a (. . . מר זוטרא אנסביה), 100a (. . . יצחק בר אמי), etc. The typology does not apply to Palestinian cases cited in TB (BB. 59a, הוה דאתא לקמיה דר' אמי; 155b, . . . כי אתא לקמיה דר' חייא . . .).

A concordance check (Kasowski, *Thesaurus Talmudis*, XXVIII, 88 ff., s.v. עובדא) bears out the fact that *'obāḏā* is not used to designate "independent" cases (one must rule out those instances in which the word is used in a nontechnical sense (B.BQ.117a; BM. 70a, etc.); direct quotations of Amoraim; and Palestinian materials).

In B.BB.29b a number of variant texts read הוה עובדא דהוה בנהרדעא (במהוזא) דהוה גברא . . . אתא לקמיה דר' . . .

The text of the printed editions (as in MSS Hamburg, Munich, Vat.) omits הוה עובדא דהוה, etc., is to be preferred there. The longer version (apparently Gaonic in origin) is probably the result of a mistaken attempt to fit the text into the mnemonic *siman* which mentions the cities Nehardea and Maḥoza. In fact the *siman* simply indicates the identities of the presiding judges (R. Naḥman of Nehardea and Raba of Maḥoza) without implying that the names of the cities are actually found in the text. In B.BM. 68b Nahmanides seems to read (in the case of "the sons of R. 'Ilish") "and the case (*'obāḏā*) came before Raba," but I have found no other support for this reading. See also B.BB. 153a.

themselves and in the Palestinian cases cited.⁴ It seems to me that these differences are sufficient to prove that the two form-types are indicative of different sources, though the exact nature of these sources is difficult to define. It would appear, in any case, that the 'obādā-types are more integral with the body of the Talmud and were incorporated into it at an earlier stage in its evolution. This impression is perhaps supported by the high proportion of variant traditions which developed in the transmission of these cases. Out of some seventeen 'obādā-type cases⁵ in the Order Neziqin, we find that four (perhaps also a fifth) are presented with variants:

B. BM. 18a (cf. Giṭ. 27a; BM. 20a):

A. Rabbah said: There is no difficulty. Here we are dealing with a place where caravans are common, and there with a place where they are not common.

B. And even where caravans are common, it must also be known that in this city there are two men named Joseph ben Simeon; for unless you say so, Rabbah will have contradicted himself, since. . .

C. A bill of divorcement was once found in the court of R. Huna. . . R. Ḥisda said to Rabbah, Go study the problem, since R. Huna will question you about it in the morning. Rabbah went and studied the matter and found the Mishnah, . .

D. Which implies: If there are known to be two men named Joseph ben Simeon, it is so; but if there are not, then it is not so.

⁴ B.BQ. 99b (a case of R. Johanan reported by Rabbah bar bar Ḥannah); BB. 32b (quoted from Abaye); BQ. 73a, BB. 52a (quoted from R. Jeremiah of Difti); BM. 7a (quoted from R. Ḥiyya bar Abin); BM. 67a (quoted from R. Pappi); BB. 54b, 82b (quoted from R. Joseph), etc.

⁵ BQ. 27b, 59a, 98a, 98b; BM. 16a, 18b, 38b, 66a, 67a; BB. 5b, 6a, 31b, 51b, 96b, 111a, 142b, 143a.

E. Rabbah decided a case according to his view ⁶ (עבד רבה עובדא כשמעתיה),

F. Some say (איכא דאמרי): Where flax was sold, and there were not known to be [two men of that name], even though caravans were common.

G. Some say: Where flax was soaked, and even though there were known to be [two men of that name], since caravans were not common.

This *sugyah* is built around an apparent contradiction between (A) Rabbah's solution of a problem between a Mishnah and a baraita, and (C) his decision in a case (of the **ההוא גברא** type). In the former he decides that in a place where caravans are common the bill should not be returned, while in the latter (in R. Huna's court), in a place where caravans are common, he decides that the document should be returned. The Talmud ⁷ resolves the contradiction (B, D) by distinguishing between places where there are or are not known to be two men named Joseph ben Simeon. The anonymous redactor solved the problem by combining the two sources (Rashi: "Rabbah demands two criteria"), "for unless you say so, Rabbah will have contradicted himself." ⁸

As I see the development of the passage, the original *sugyah* included only parts A and E, **כשמעתיה** referring to a case involving a distinction between places where caravans are and are not common (the ambiguity of the details is typical of the 'obādā-type cases). Once the legal factors had

⁶ According to a marginal gloss in MS Escorial G-1-3, the case should be preceded by the words **ההוא עובדא ר**.

⁷ See Rashi, *s.v.* **ואפילו**: "This is not Rabbah's own conclusion, but rather that of the Talmud" (i.e. of the redactor).

⁸ Cf. Tosafot, *s.v.* **והוא שהחוקר**, who object that according to the conclusion of the *sugyah*, Rabbah in (a) could just as well have explained the contradiction by distinguishing between the case where there were known to be two Josephs and one where there were not! This indicates that the double distinction was not Rabbah's own; see Ishbili and *Tosafot Sens*, etc., who raise some grave objections to the logic of the *sugyah*.

become complicated by the subsequent development and comparisons of sources (B, C, D), the E case had to be adapted to the new possibilities of legal criteria. Thereby perhaps there were created the two versions, which constitute a sort of Midrash on what possibly was an originally ambiguous phrase **בֵּי כִתְנָא** ("place of flax").⁹ However, it is also possible that the versions originally evolved only with reference to the "frequency of caravans" question, and existed already in the earliest stages of the *sugyah's* evolution (the "flax" Midrash relates only to the "caravan" question; see Rashi); the "coincidence of names" was introduced later, to fit the case to the developed *sugyah*.¹⁰

The relationship between the versions of Rabbah's decision and the subsequent two versions of R. Zeira's statement (see below on B.BM. 18b and Giṭ. 27a) is not clear, although obviously a close one. It is possible that the "coincidence of names" principle was introduced through the intermediary of R. Zeira's *sugyah*, but the concept appears in other passages in Yeb. and Giṭ.

In the end we are left without a clear conclusion as to the nature of this particular variant. It may have originated at an early stage in the evolution of the *sugyah*, referring to Rabbah's "frequency of caravans" distinction, or at any later stage, either before or after the "coincidence of names" criterion had been attributed to Rabbah. The inconclusiveness of the

⁹ See J. Obermeyer, *Die Landschaft Babylonien* (Frankfurt a/M., 1929), p. 239, n. 1: p. 299, n. 4.

¹⁰ See Ishbili, *s.v.* **איכא דאמר**. D. Halivny, *Meqōrōt u-Mesōrōt, Nāshīm* (Tel-Aviv, 1968), p. 522 pointed out most of the literary problems in the passage and offered a different solution: "There were two versions of Rabbah's view; according to one of them, the criterion is the frequency of caravans, and according to the other, the coincidence of names." I disagree and point out that nowhere (see also B.BM. 20a) is the "coincidence of names" criterion in itself actually stated by Rabbah himself.

Note the controversy between the Geonim and early authorities about whether the halakhah is to be decided according to Rabbah or not (OG Giṭ., Responsa, p. 50 ff.).

study is created (or tolerated) by the typically ambiguous nature of *‘obādā*-type cases, which must be interpreted according to their context.

B.BM. 66a:

R. Huna said: [If he had stipulated] when lending the money, it is acquired completely; if after the lending of the money, he acquires only to the value of the money actually owing.

R. Naḥman said: Even after the lending of the money, he acquires it entirely.

R. Naḥman decided a case involving the Exilarch according to his own view **עבד רב נחמן עובדא גבי ריש גלותא** (כשמעתיה). R. Judah tore up his deed. When the Exilarch reported to him, “R. Judah tore up your deed,” he replied, ‘Did a schoolboy tear it up? A great man tore it up! He obviously tore it up for a reason.’

Others say (**איכא דאמרי**): He replied, “A schoolboy tore it up! Compared to me everyone is but a schoolboy in judicial matters.”

Subsequently R. Naḥman [retracted]... Raba objected...

Again, the case can only be reconstructed from the context. The case appears in the middle of a theoretical discussion which is resumed afterwards, and we find there that R. Naḥman changed his position. It is probable that the two versions, which vary basically only in punctuation (i.e., as to whether the words **דרדקא קרעיה** are to be read as a declaration or as a rhetorical question), originated in an attempt to relate to this fact. Perhaps there is reflected here a basic divergence of tradition, in which the scholars of Sura (who held R. Huna’s opinion) hold that R. Naḥman had retracted his decision, and those of Maḥoza (Raba’s Academy) denied this.¹¹ It is equally possible that all accept the factuality

¹¹ It is, however, unlikely that a Maḥoza tradition would disagree with a Pumbeditha one, and Pumbeditha’s R. Judah is here on R. Huna’s side. Cf. A. Weiss, *Le-Ḥēqer ha-Talmūd* (New York 1954), p. 248, n. 214.

of Rab Nahman's retraction, and the point at issue is simply whether the case occurred before the retraction or was in fact the occasion for it.

B.BM. 67a:

R. Ashé said: Now that you have stated, "If usufruct exceeds the loan, [the balance] is not returnable," it follows that even if it [merely] equals it, he may not be dismissed...without payment...

[R. Ashé decided in an actual case according to his view].

Others say (איכא דאמרי): R. Ashé decided in a case involving minor orphans, etc.

The bracketed sentence is found only in the Escorial MS. In other, variant texts only the *second* version is found, introduced by איכא דאמרי.¹² A number of variant texts (including the printed editions) omit the words איכא דאמרי as well, which were apparently felt to be meaningless. It would have been very unusual for a medieval scribe or scholar to have the audacity to interpolate a whole sentence here, in particular when it does not alter the sense in any significant way. And yet it is difficult to accept the authority of one MS against all other texts and medieval authorities.¹³ I am therefore of the opinion that what we have before us in MS Escorial is a "contaminated" text, in which two variant textual traditions have been juxtaposed. In support of this hypothesis, note a similar phenomenon in B.BQ. 59a: "R. Pappa and R. Huna ben R. Joshua decided in a case according to R. Nahman's opinion, estimating by sixty. *Another version* (לישנא אחרינא): R. Pappa and R. Huna ben R. Joshua estimated the value of a date palm," etc.

As in our case, there is no significant difference between the two versions, except that the first is more dependent on the

¹² See DS; so too in the Antonin MS of *Miqṣōṯōth* (ed. Asaf, p. 55).

¹³ Note also Nahmanides in Sh.M. in the name of R. Hananel; see gloss of the Vilna Gaon.

context, while in the second the details are described more explicitly. The term *lišānā 'ahrinā* designates a *textual* variant.¹⁴

The words **איכא דאמרי** are in any case well attested in our *sugyah*, and if we choose to regard only one version of the case as original, we must see the variant traditions as being

- 1) a theoretical formulation: "R. Ashé said," etc.
- 2) a formulation of a case: "R. Ashé decided in a case involving minor orphans," etc.¹⁵

It is questionable whether we are to regard the following instance as an example of a variant tradition, but precisely because of its doubtful nature it raises some important problems relating to the subject of this study.

B.BQ. 98b:

Rabbah further stated: If one destroyed by fire the bond of a creditor, he would be exempt. . . .

Amemar said: He who adjudicates cases of indirect damage collects the full value of the bond, while he who does not adjudicate cases of indirect damage may only collect the value of the paper.

¹⁴ See S. Abramson, *Inyanot be-Sifrut ha-Geonim* (Jerusalem, 1974), p. 207, n. 3, *contra* J. N. Epstein, *Introductions to Amoraic Literature*, pp. 133 ff., and the literature cited there.

It is interesting to note that the same MS Escorial to BQ. cites the variant as **לישנא אחר** (to be exact, the marginal gloss in the MS; a homoioteleuton was filled in there, apparently by the original scribe). Note also the reading in Genizah fragment Oxford Bodl. 2833-4.

¹⁵ Adret, troubled by a contradiction between R. Ashe's lenient ruling here and his stringent views expressed elsewhere, explains "that R. Ashe's case was not cited in relation to the type of mortgage discussed in the previous passage, nor did it involve the same sort of case, rather it relates to the [earlier] statement of Mar, son of R. Joseph, in the name of Raba," etc. Adret himself concludes that such an interpretation is "unlikely, since the terminology 'R. Ashe decided in a case' must certainly refer to the type of mortgage discussed in the immediately preceding passage." In any case, his doubts reflect the difficulties generally involved in understanding context-defined cases; cf. Nahmanides (*Sh.M.*).

There was such a case, and Rafram compelled R. Ashé (to submit) and collected in it (something) like a beam fit for decorative moldings. *היה עובדא וכפייה רפרם לרב אשי*.
 ואנבי ביה כי כשורא¹⁶ לצלמא

Compare B. Ket. 86a, where we find the following:

Samuel said: He who sells a bill of indebtedness and then remits the debt, it stands remitted. . .

Amemar said: He who adjudicates cases of indirect damage may collect the full value of the bond, while he who does not. . . may collect the value of the paper.

There was such a case, and Rafram compelled R. Ashé (to submit) and collected (something) like a beam fit for decorative moldings.

We confront again that peculiar feature of "context-defined" cases which forces us to interpret the case according to its setting in the respective *sugyot*, in entirely different ways. In BQ. we are apparently dealing with a case of *destroying* a bond (or a decorative beam),¹⁷ whereas in Ket. the suit is apparently for a remitted debt. (A curious disagreement among the commentators surrounds R. Ashé's role in the suit. Rashi on BQ. says that he was the defendant "in his youth," while in Ket. he says that R. Ashé was the judge).

In fact, many commentators to Ket. have pointed out that Amemar's statement about repaying the value of the paper is singularly inappropriate in the context of Ket., where there is no question of the bond's having been destroyed,¹⁸ and several are willing to write it off as a slip of the pen influenced by the *sugyah* in BQ. It is, in any case, very unlikely that we are dealing with two separate cases, and

¹⁶ In Genizah fragment Oxf. Bodl. 2833/19: *גשורא*.

¹⁷ R. Jonathan of Lunel to BQ., ed. Friedman, p. 61, n. 612 (and p. 307); OG, BQ. (Responsa), nos. 243, 244.

¹⁸ See the authorities cited in n. 25 to DS on Ket., II, 295. Cf. H. Albeck, *Introduction to the Talmud* (Tel-Aviv, 1969), pp. 648 ff.

the most plausible explanation for this phenomenon is that the case originated in BQ., whence it was taken over by Ket. attached to Amemar's statement.¹⁹ The improbability of a coincidence of two separate but similar cases probably influenced those commentators who explained **כי כשורא לצלמי** as being merely a proverbial expression and not referring to the concrete details of the particular cases.²⁰

If we are to summarize the general picture that emerges from our study of the variant traditions of cases of the 'obādā-type, the most striking feature to be noted is perhaps—once we have made allowances for the ambiguous nature of much of the evidence—that the status of the cases is in principle no different from that in Talmudic sources in general. In the course of their transmission, the cases were tampered with and adapted to the halakhic assumptions of the various schools in which they were studied, and to the literary demands of their respective *sugyot*. In this particular category of cases—which constitutes a fairly small minority of the total corpus of cases in TB as a whole—a particular difficulty is created by the fact that we often have no way of reconstructing with certainty the original details of the cases, and must trust the evidence supplied by the surrounding context of the *sugyah*. In several of the above examples, we had reason to doubt the reliability of this contextual evidence.

II. *Variant Traditions of Cases of the Narrative (ההוא גברא) Type*

By far the greater part of the Babylonian cases cited in TB belong to this type (up to three hundred of them in tractate Nez.). As we shall see, relatively few of them were transmitted in variant traditions, and several of the variants are fairly insignificant.

¹⁹ The words **הוה עובדא** are missing in several witnesses to Ket.; see DS there, nn. 26, 27.

²⁰ 'Arāk, s.v. **כשר** II (ed. Kohut, IV, 354 ff.) in the name of a "Gaon" (but cf. n. 4 in Kohut's ed.); OG to BQ. (Responsa), *ad loc.*

B.BQ. 58b:

A certain man chopped down another's date tree (קשבא). He came before the Exilarch. He told him: I saw it, and there were three date-trees (תאלי) in one place. . .

MS Munich (DS) reads: ההוא גברא דקץ קשבא מחבריה ואיכא דאמרי תלת. This reading, approximately, is cited by Adret. In MS Hamburg the addition is lengthier, ואיכא דאמרי ההוא גברא דקץ תלתא מחבריה. RABaD reads: איכא דאמרי דקץ תלתא.²¹ MS Escorial has only one combined version: ההוא גברא דקץ תלתא; דקשבא מחבריה; Genizah fragment Oxford Bodleian 2833-4 reads ההוא גברא דקץ קשבא מחבריה אמרי לה תלתא; Aghmati reads הקץ דקץ תלתא דיקלי קץ ליה] אמרי לה תלתא קשבא . . . [מחבריה אתא].²² The 'Aruk²³ cites ס"א דקץ תלתא מחבריה. R. Hananel (cited in Aghmati) explains: "Qšb' is an Aramaean date palm which is lighter and weaker." His is the only explanation that ties the variant tradition to a halakhic distinction found later on in the *sugyah*. This interpretation is, however, not supported by the language of the Talmudic passage.²⁴

Most of the commentators seem to agree that there is no substantial difference in content between the versions, and the 'Aruk's wording suggests that what we have here is a textual, rather than a redactional, variant. T(?)l' apparently means a date palm,²⁵ and the word appears later on in the passage. Though qšb' also is a date palm (perhaps tl' is a subspecies or a younger tree; cf. the commentaries and

²¹ So in Atlas' edition; in *Sh.M.* corrupt: דקל תלתא. Cf. Adret, "Some call it qšb' and others call it simply dql."

²² He offers two Arabic explanations: (1) date palm; (2) a species of the soft core in a palm frond (?).

²³ *S.v.* קשב, ed. Kohut, VII, 222 (OG, R. Hananel, p. 62).

²⁴ HG in both recensions (HGB, p. 349; HGW, p. 88a) reads as in the printed editions of the Talmud; so also does the Gaon in *Geonica*, II, 246 (OG).

²⁵ See Kohut, *ibid.*; Drower and Macuch, *A Mandaic Dictionary*, p. 478; Brockelmann, *Lexicon Syriacum*, p. 813; Payne-Smith, p. 603; BDB, *s.v.* תאנה; Löw, *Flora*, I, 224, Cf. Tosafot *ad loc.*

dictionaries), it is somewhat difficult to understand why the Talmud changes its vocabulary in mid-story. In any case, it would be easy to understand why a medieval student would have tried to overcome this bothersome inconsistency by simply introducing an alternative reading (or explanatory gloss) in order to create harmony between the beginning and the end.

B. BQ. 80a:

Rab and Samuel and R. Assi met once at a "Week of the Son", or as some say (ואמרי לה), at a "Salvation of the Son."

There is no halakhic significance to the variant, and it is possible that the two terms are wholly synonymous, although the meanings have not so far been fixed with certainty.²⁶

B. BM. 42a:

A certain man deposited money with his neighbor, who placed it in a cot of bulrushes. Then it was stolen.²⁷ Said R. Joseph: Though it was proper care in respect to thieves, it was negligence in respect to fire; hence the beginning was marked with negligence but its end was fraught with an accident; [therefore] he is liable.

Others say (איכא דאמרי): Though it was negligence in respect to fire, it was due care in respect to thieves; and when its beginning is fraught with negligence and its end with an accident, he is not liable.

And the law is that when the beginning thereof is fraught with negligence and the end with an accident, he is responsible.

²⁶ The relevant literature is briefly summarized by Lieberman in his commentary to Tos. Meg. (p. 1186). None of this material was apparently known to Neusner, *History*, II, 145. Note also parallels in P. Shebi. 9:1; Meg. 2:2 (*Ginze Schechter*, I, 428).

²⁷ HGB, p. 373; HP, p. 83; Aghmati, p. 91a (in the name of R. Isaac ben Judah); all add, "He came before R. Joseph."

The same order as in the printed editions is found in MSS Escorial and Vatican 117. In the Hamburg and Florence MSS the order of the versions is reversed and the halakhic decision omitted (in the latter the decision was added in the margin in the name of "old manuscripts"). MSS Munich and Vatican 115 also reverse the order, but both include the decision. HGW (p. 93b), R. Hananel,²⁸ pseudo-Ishbili, and others all have the order reversed. HP records only the first version ("liable"), so also HGB, Alfasi, and Aghmati, who conclude "and such is the law." From a number of authorities (Ishbili, 'Agudah, and others) it can be deduced that the decision was not in their texts, while others, such as Tosafot and Tosafot ROSH, make a point of establishing the decision in the texts, proving that they were familiar with both types (Tosafot ROSH says "most MSS" contain the decision).²⁹

There is a well-known dispute among medieval scholars concerning B. BM. 36b:

It was said: If [the bailee] was negligent therewith and it went out into a meadow and died naturally, Abaye in Rabbah's name ruled that he is liable; Raba in Rabbah's name ruled that he is not liable... Abaye... said... he is not only liable on the ground that if the beginning is fraught with negligence and the end with accident one is liable, but even on the ground that one is not liable...

R. Hananel deduces there: "The accepted law here is that if the beginning is fraught with negligence, etc., he is liable... since the whole tenor of this *sugyah* is according to the view of Abaye."

R. Isaac Alfasi retorted: "We do not agree. Rather, the law is according to Raba, since in disputes between Raba

²⁸ It is difficult to distinguish between his text and paraphrase; cf. *Tosafot ROSH*.

²⁹ In many authorities, especially codes and works based on Alfasi, it is difficult to determine what their readings were in their copies of the Talmud.

and Abaye the law is always decided according to Raba, except in *y'l qgm* . . .”

The Tosafists to B. Qid. 52a objected to R. Hananel's view: “Why is the case of [BM. 36b] not included in the list of six places where the law is with Abaye against Raba? . . . In [our] manuscripts there is no legal decision in that passage, though it is found in HG and in the Talmud manuscripts on [BM. 42a]. . . The explanation for this might be that the halakhic decision was established at a later date, by the Saboraim.”

The Tosafists were properly sensitive to the special character of the “case of the cot of bulrushes.” There is no reason to suppose that R. Joseph himself had ever said more than “Even though it was proper care in respect to thieves, it was negligence in respect to fire”, or *vice versa*. He himself did not relate at all to the general question of “negligence at the start and accident at the end.” Also, the textual situation and the disputes of the commentators tell us that as is common in such instances, the halakhic conclusion is not original to the *sugyah*, but was added later, probably according to Geonic rulings.

Apparently the reversal of the order of traditions reflects also an early dispute regarding the determination of this halakhic issue, and the proponents of the various views tried to have their particular views cited last, according to the accepted rule of halakhic decision.³⁰

In fact it is not entirely clear where the original source is of the dispute concerning “negligence at the start and accident at the end.” Each *sugyah* seems to be quoting it from another. Rashi on B. BQ. 21b says that it originated in B. BM. 42a (i.e., in R. Joseph's statement).³¹ Rashi's theory appears to be

³⁰ In B.BM. 93b it is presupposed that one is liable, and Rashi there refers us to our *sugyah* on p. 42a.

³¹ “There is an Amoraic dispute as to what R. Joseph said.” Cf. his comment on B.BQ. 56a: “A disagreement . . . between two versions of the Talmud according to R. Joseph.”

the most reasonable; ³² namely, that R. Joseph's decision formed the basis for the various anonymous disputants who formulated the principle "negligence at the start," etc., and this principle was afterwards applied to other *sugyot*. It is not certain whether a theoretical legal disagreement created the conflicting versions of the case, or whether a problem in transmission created the theoretical conflict. It appears likely, however, that the variant traditions have their origins in the respective schools of Abaye and Raba, who disagree in B. BM. 36b.

B. BM. 97a:

A man borrowed a cat from his neighbor, but the mice got together and killed it. R. Ashé sat and pondered thereon: How is it in such a case? Is it as though the cat had died because of its work or not? Thereupon R. Mordecai said to R. Ashé: Thus did Abimi of Hagronia say in Raba's name: A man killed by women, [for him] there is neither judgment nor judge!

Others say (**איכא דאמרי**): The cat ate many mice, wherefrom it sickened and died. . . . ³³ Thus did Abimi of Hagronia say in Raba's name. . . .

Though there is unquestionably a halakhic difference between the two versions, one nevertheless gets the impression that the case is cited as a humorous anecdote, in particular according to R. Hananel's explanation of the second version (cited in ShM.): "Such as a man who has many maidservants and hires a slave to impregnate them, and the slave dies from sexual exhaustion." ³⁴

³² This is also the opinion of A. Weiss, *Studies in the Law of the Talmud on Damages* (New York, 1967), p. 313, n. 8.

³³ Note the readings cited by Ishbili (ed. Halpern).

³⁴ Cf. Meiri, who draws a legal lesson from R. Hananel's explanation, although he denies the relevance of Abimi's statement to the cases actually dealt with in the Talmud. Tosafot also fail to understand what doubts R. Ashé could have entertained. Several codifiers (Alfasi, Maimonides) omitted it from their works.

It is likely that behind the two versions lies an original ambiguous one (“it was hurt by mice”).

B. BM. 104b:

A certain man once said, “Give my daughter four hundred zuz as her *kethubbah*.” R. Aḥa ben R. Awia sent an inquiry to R. Ashé. . . R. Ashé replied: We see it thus: if he said “Give her four hundred zuz,” eight hundred [are to be recorded]; but if he said, “Write her four hundred zuz,” he means actually two hundred.

Others say (איכא דאמרי): R. Ashé replied: We see it thus: if he said “For her *kethubbah* . . .” if he said “In her *kethubbah* . . .”

Yet this is incorrect: Whether he said “for” . . . or “in” . . . , it means four hundred, which is two hundred. Unless he says “Give her.”

A mnemonic *siman* in MS Vatican 115 (DS) attests to the antiquity of both versions. The anonymous closing remark ³⁵ in effect rejects the second version entirely.

B. BB. 52a:

Rabba bar Ḥana’s wife, when about to die, said: These jewels belong to my daughter Martha-Bānē. The case came before Rab, who said: If you trust her, act according to her interpretation [i.e., statement]; if not, make an interpretation of her interpretation.

Others say (איכא דאמרי): He said: If she is well-to-do, act according to her interpretation; if not, make an interpretation of her interpretation (see DS).

The case relates to a baraita quoted above, which reads (according to MSS and the medievals):

It is forbidden to accept deposits from women, slaves,

³⁵ See *Kerem Hemed*, VI, 250.

or minors. If one does accept such from a woman, he should return it to her. If she dies, he should return it to her husband. . . . And in all the above cases, if they said at the time of decease, "It belongs to X," he should act according to their interpretation.

Others say (**איכא דאמרי**): He should make an interpretation of their interpretation.

RaShBaM emends the text of the baraita in such a way that there are not two versions but only two possibilities: "If they said. . . [If they did not say] . . ." According to the emended text, both versions of the case parallel loosely the two eventualities described in the baraita. If we accept the unemended text, the comparison between the baraita and the case becomes rather difficult.³⁶ (R. Jonah, cited in ShM., nevertheless observes: "It seems to me that the two versions [of the baraita] reflect the disagreement of the two versions of the case.") RaShBaM argues: "If such is the reading, then when Rab says 'If you trust her,' etc., which version does he follow? Neither the first nor the second!" The meaning of the passage remains obscure.

It should be noted that in the parallel P. BQ. IX, 7a we find in the baraita (as in Tos. BQ. 11:1) only the version "he should make an interpretation of his interpretation." In the case, neither phrase appears. The entire passage in P. is at least as difficult as the one in B.³⁷ and I can offer no satisfactory explanation for either. The case cited in the Babylonian Talmud, though it apparently took place in Babylonia, may nevertheless have reached TB through a Palestinian source.³⁸

³⁶ Cf. E. S. Rosenthal' "*Rav Ben Ahi R. Hiyah Gam Ben Ahot*", *Sefer H. Yalon* (Jerusalem, 1963), pp. 313 ff., and n. 75.

³⁷ See the commentaries *Pene Moshé*, *Netivot Yerushalayim*, *Yefe Enayyim* (to B.BB.), etc. Note also Nahmanides and Aghmati to B.BB.

³⁸ Note the reading in MS Escorial: **ואיב' אימ' ליה אי אמידא לך בריתה עשה כפירושה אם לאו עשה פירוש לפירושה**.

B. BB. 54a:

A certain woman had the use of a date palm. . . The case was brought before Levi [Abulafia and some MSS: R. Levi], or alternatively (אמרֵי לה), before Mar 'Uqba. . .³⁹

I have found no other instance of a variation between the names of Levi and Mar 'Uqba.⁴⁰ In two instances (B. Shab. 108b; MQ. 26b) we find Mar 'Uqba citing in the name of Levi.⁴¹

A doubtful, but methodologically interesting passage is the following:

B. BM. 97a:

Mari ben Hananiah hired out a mule to Be Ḥozai. When he went to load it with them, they acted negligently and it died. Rab Mari ben Hananiah brought the case before Raba, who ruled against them. The Rabbis objected: This was a case of negligence in the presence of the owner! [Raba] was embarrassed [at his error].

This is fine according to him who says that where there is negligence in the presence of the owner one is exempt—that is why Raba felt embarrassed. But according to him who says that one is liable, why was he embarrassed? . . .

Rather, it was stolen and died naturally in the possession of the thieves, etc.

As the *sugyah* appears here, the Talmud, on the basis of a contradiction between the premises of this case and the view of R. Aḥa or Rabina (B. BM. 95a), completely changes the

³⁹ MS Florence: Mar Zuṭra.

⁴⁰ As far as I could find, not even this case was cited by Bacher, *Tradition und Tradenten in den Schulen Palästinas und Babyloniens* (Leipzig, 1914). Cf. A. Hyman, *Toledot Tannaim we-Amoraim* (London, 1910), p. 862.

⁴¹ Cf. B.MQ. 10b, where most of the rulings cited here in Samuel's name are attributed to Raba (but note DS to both passages).

details of the story, so as to eliminate the contradiction.⁴² There is no apparent justification for this radical rewriting, other than the said difficulty.

However, in the version quoted in *Ginze Schechter* II (p. 393 ff.), and in the Genizah fragment TS F 1 (1) 17, the structure of the *sugyah* is completely different. No objection is raised, and the second version is brought simply as an "איכא דאמרי"! If this reading is original, then we are to view the other reading as a later development whose purpose is to emphasize the legal difference between the two versions of the case. It would be reasonable, then, to see the two versions as the recensions of the schools of R. Aḥa and Rabina respectively.⁴³

If we pause now to review the material presented in the last chapter, there does not appear to be any significant difference between the cases of the "narrative" type and those of the "context-defined" type. And yet there are some major divergences that should be briefly noted. First of all, the proportion of variant traditions. The maximum number of variants that we were able to find among the "narrative" cases did not exceed seven, out of about 300 cases in the whole corpus. And even among these seven, we frequently

⁴² Cf. B.B.M. 81a, where a *sugyah* is similarly structured (note Tosafot *ad loc.*, s.v. הניחא), although there the difference between the versions of the case is relatively minor and could conceivably be attributed to an ambiguity in the original formulation; see Albeck, *Introduction to the Talmud*, p. 475.

⁴³ In fact, it is now clear that the *Ginze Schechter* fragment belongs to Aghmati's compilation, which has since been published by J. Leveen, *A Digest of Commentaries on . . . Tractates of the Bab. Talmud* (London 1961) from a Gaster codex (cf. *Intro.* p. 16). The texts of this particular passage are very different in the two MSS, and Leveen's text is abbreviated (p. 135b). In any case, the second version is introduced there by the word "אסיקנה" ("We conclude"), implying that the intermediate objection was in his text (though the word is likely a gloss by the copyist-adaptor).

In *Metiboth* (ed. Lewin p. 74) only the "corrected" version is cited.

found reason to believe that the variants might in fact be textual, i.e., dating from the period following the redaction of TB. Some variants were single words, not necessarily important ones. And is it not conceivable that some of these might be part of the *original* formulation of the case, and did not result from the process of transmission? (Note, in particular, variants of the *אמרי לה* type).

And yet, despite these differences in degree, there are nevertheless a number of instances in which there is clear evidence of cases having been altered and adapted in the course of their transmission through the Amoraic Academies. Such instances ought to arouse a degree of suspicion even in cases where we have no explicit reason to suspect their authenticity.

III. *The Problem of "Ideal Sequences"*

There are a number of places where we find a series of cases, all of which were brought before the same judge. In such a series, each case is almost identical with its predecessor, with the exception of one legally significant detail. Consequently there is created such an "ideal" progression of logical possibilities that it is difficult to believe that the Talmudic account is actually an historically accurate one. One of the classic instances of this phenomenon is the large collection of cases starting in B. BB. 29b.⁴⁴ The first two cases begin, "A man said to another, 'What are you doing in this house (cf. DS)?', "while the remaining cases begin, "A man said to another: 'What are you doing in this field?' " In the first two cases, the counterplea is "I purchased it from you and used it for the years necessary for *ḥazāqāh*"; in case 3, "I purchased it from X who purchased it from you (cf. DS)"; in

⁴⁴ The list of cases is preceded in some MSS by a mnemonic *siman*; see DS; HGB, p. 407; HP, p. 88; J. N. Epstein, *Mabo' le-Nusah ha-Mishnah*, p. 917; A. Weiss, *Al ha-Yeširah ha-Sifrutit shel ha-Amoraim* (New York, 1962), pp. 316 ff. The *siman*, especially as it appears in MSS Munich and Vatican, emphasizes some of the literary characteristics of the collection.

cases 4-6, "I purchased it from X and used it for the years necessary for *ḥazāqāh*"; and so on, each case basically similar to the preceding one, but one important detail is slightly altered so as to point out clearly a fine but significant legal principle.

The first case was tried by R. Naḥman, and objections were raised by Raba. All the others were tried by Raba.

How are we to regard such a phenomenon? Is it conceivable that Raba was blessed with such a fortunate coincidence of "textbook" cases? ⁴⁵ Or are we to regard the entire series as fictitious? I suggest that we can find the beginning of a solution by examining some related phenomena.

B. Ket. 94b cites the following case:

The mother of Rami ben Ḥama gave her property in writing to Rami ben Ḥama in the morning, but in the evening she gave it in writing to Mar 'Uqba ben Ḥama. Rami ben Ḥama came before R. Shesheth, who confirmed him in the possession of the property. Mar 'Uqba then appeared before R. Naḥman, who similarly confirmed him in the possession of the property. R. Shesheth thereupon came to R. Naḥman and said to him, "What is the reason that the master has acted in this way?"

"And what is the reason," the latter retorted, "that the master has acted in that way?"

"Because," the former replied, "[Rami's deed was written] first."

"Are we then," the latter retorted, "living in Jerusalem where the hours are inserted [in deeds]?"

"Then why did the master act in this way?," [asked the former].

"[I treated it]," the latter retorted, "[as a case to be decided at] the discretion of the judges."

"I, too," the former said, "[treated the case as one to be decided at] the discretion of the judges."

⁴⁵ Neusner accepts the whole list without question, *History*, IV, 236-38.

“In the first place,” the latter retorted, “I am a judge and the master is no judge; and furthermore, you did not come at first with this argument.”

Now in B. BB. 151a we find the following:

The mother of Rami ben Ḥama gave her property in writing to Rami ben Ḥama in the evening, but in the morning she gave it in writing to R. ‘Uqba ben Ḥama. Rami ben Ḥama came before R. Shesheth, who confirmed him in the possession of the property. R. ‘Uqba ben Ḥama went to R. Naḥman, who similarly confirmed him in the possession of the property. R. Shesheth thereupon appeared before R. Naḥman and said to him, “What is the reason that the master has confirmed R. ‘Uqba ben Ḥama in possession? Is it because she retracted? Surely she died!”

He replied to him, “Thus said Samuel: In any case where a [sick] person may retract if he recovers, he may withdraw his gift.”

Already the early commentators were troubled by the relationship between these two cases. The anonymous Gaon cited by Alfasi concluded that we have here two conflicting versions of the same event. “The one in Ket. contradicts the authority of a mishnah and ought therefore to be disregarded and not seen as authoritative.” Alfasi summarizes the Gaon’s approach thus: “What he means is that he believes the case of Rami ben Ḥama here [Ket.] to be the same as the one reported in BB. And since he saw that there are differences between the two accounts, he said that the former is corrupt and not authoritative.”⁴⁶

Alfasi himself decided that we have here two separate cases. In BB. we are dealing with a gift made in contemplation of imminent death, therefore the later gift is decisive (only in BB. is it stated that the donor died), while in Ket. the

⁴⁶ See OG, Ket. (Responsa), p. 323, n. 3.

gift is a normal one made by a healthy person, hence the *earlier* gift should have priority.

Alfasi continues to point out a subtle difference in the wording of the two cases. In Ket. the gift to Rami was made in the morning and to 'Uqba in the evening. In BB. Rami's was made in the evening and 'Uqba's in the morning. Alfasi sees this as an intentional device used by the Talmud to show that the cases are to be differentiated from one another.⁴⁷

There is little doubt that Alfasi's explanation (which was accepted by most subsequent commentators) does indeed capture the literary truth of the matter. The similarity of the wording indicates an intentional parallelism which proves that the formulators of the two cases were aware of one another, and the versions of the story take on the appearance of variant traditions.⁴⁸

⁴⁷ In fact the textual evidence is not without ambiguity. In Ket. MS Vatican 130 reads "evening . . . morning"; see the textual evidence collated in DS to Ket., II, 363. All the other MSS and commentators, however, are in basic agreement with Alfasi and the printed editions.

Similarly, Alfasi's order in BB. is borne out by all of the MSS and most of the medieval authorities (see DS), including Aghmati (p. 313a). It is interesting that several Gaonic writings have BB. reading like Ket.: *Sheiltoth* (ed. Mirsky, *Wayehi*, no. 38), p. 254 (and in the apparatus); HGB (p. 459) and HGW (p. 112b); *Hilkhot Re'u* (ed. Schlosberg, Versailles, 1886), p. 91. R.N.Z.J. Berlin, in his commentary to the *Sheiltoth*, has already pointed out that this seems to support the explanation of the anonymous Gaonic opponent of Alfasi.

A number of omissions and slight changes in word order in both *sugyot* suggests that the texts have been tampered with; see Abulafia and MS Hamburg to BB., and especially MS Florence which reads neither "morning" nor "evening." Cf. Abraham Maimonides, cited by E. Horowitz, "*Ma'amar 'al Derāshōt ḤaZaL le-Rabbenu Abraham ben ha-RaMBaM*," *Joshua Finkel Festschrift* (New York, 1974), p. 164.

Some commentators (e.g., the students of R. Jonah to Ket.; ShM.) have felt that the "morning-evening" order in Ket. is very problematic, since the Jewish calendar would regard them as belonging to two separate days.

⁴⁸ R. Jacob Tam has pointed out that conflicting parallel *sugyot* should be regarded as basically similar to *'yḳ' d'mry* in a single *sugyah*; see Tosafot on B. Nid. 23b, Men. 58b, etc. Cf. A Weiss, *Le-ḥēqer ha-Talmūd*, pp. 270, 273; Ibn Migash to BB. (Aghmati, p. 313a).

The question remains, however, how are we to see the historical truth of the phenomenon? The Gaon is still very convincing when he argues that it is difficult to imagine two separate yet so similar cases actually occurring in reality.

With this question in mind, let us look at this final example:

B. BB. 32a ff.:

A. A certain man said to another, "What are you doing on this land?"

He replied, "I bought it from you, and here is the deed of sale."

"It is a forged document," said the former.

At this the latter leaned over to Rabbah and whispered to him, "It is true that this is a forged document.⁴⁹ I had a proper deed but lost it, so I thought it best to come into court with some sort of document."

Said Rabbah, "What motive could he have for telling a falsehood? If he had wished, he could have said, [without fear of contradiction], that the document was genuine."

Said R. Joseph to him, "On what do you base your decision? On this document? But this document is only a piece of clay."

B. A certain man said to another, "Pay me the hundred zuz that I am claiming from you—here is the bond."

Said the latter, "It is a forged bond."

The former thereupon leaned over and whispered to Rabbah, "It is true that the bond is forged, but I had a genuine bond and lost it, so I thought it best to come into court with some sort of document."

Rabbah thereupon said, "What motive could he have for telling a falsehood?"...

⁴⁹ The commentators disagree as to what sort of forgery this is that is not subject to detection. RaShBaM accepts the story literally, but R. Hai Gaon, R. Hananel, and others explain that the deed (i.e., the signatures) was genuine but the transaction was fictitious.

Said R. Joseph to him, “. . . But this document is only a piece of clay.”

C. R. Idi ben Abin said, “The accepted ruling follows the view of Rabbah in the case of land, and that of R. Joseph in the case of money. . .”

(R. Idi ben Abin’s decision was known to Abaye in the subsequent *sugyah*).

This *sugyah* is apparently no different from the others discussed above. Again we are confronted with two events that are so similar as to arouse our suspicions regarding their veracity. Nevertheless, this particular passage has a feature absent in the others, which in my opinion contains the key to the solution of the problems that we have posed. The cases are followed by the decision of R. Idi ben Abin, which distinguishes between the first case, involving land, where Rabbah’s view is to be adopted, and the second case, involving a monetary claim, where the halakhah is according to R. Joseph.

It is probable that there is more to R. Idi’s statement than meets the eye. His contribution to the *sugyah* goes beyond his legal decision. Apparently he is to be regarded also as the redactor of the whole passage; that is to say, R. Idi (or whoever redacted the cases) had in front of him only one version of the case, perhaps a version in which it was not clear whether the suit involved land or money. R. Idi then split the case into its two possibilities, in order to emphasize the important difference between them, in that depending on whether the case involves land or money we must arrive at opposite conclusions.

This analysis enables us to reconstruct the development of the versions of the case of Rami ben Ḥama’s mother. Only one of the versions is authentic (here it is difficult to posit an ambiguous prototype; I tend to feel that the Ket. version, which depends more on personality and less on legal sophistication, rings truer). But in order to emphasize the

distinction between gifts made by a dying donor and those made by a healthy donor, a second hypothetical case was devised and followed to its logical conclusion, as though it too had been debated by R. Nahman and R. Shesheth.⁵⁰

This same approach would appear valid for the cases in B. BB. 29b ff., although it is more difficult to reconstruct the evolution there. In any case, it is probable that not all the cases are historically authentic, and that some were composed artificially in order to emphasize important legal distinctions.

All the aforementioned examples should therefore be regarded as essentially related to the phenomenon of variant traditions of cases, and perhaps can teach us something important about the nature of the transmission of cases in TB in general.

⁵⁰ The case in BB. is found within a list of cases (designated in MS Munich and HGB by a mnemonic *simān*), all of which deal with gifts (mostly deathbed bestowals) of mothers and sisters of various Rabbis.