

When an Injury is not an Injury

Bailments, Pledges and Judicial Authority in *Bavli Sanhedrin* 2a–3a

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The term *havalot* in the first mishnah of *b. Sanhedrin* is understood by the Talmud and its commentators to mean “injuries.” That understanding is consistent with the way the term is generally understood in the Mishnah and the Talmud. While the term must be read as injuries to understand the sugya that follows, it would not appear to be the original meaning of the term in the context of the first mishnah of Sanhedrin.

I will argue that this mishnah employs the term *havalot* in the biblical sense of pledges or collateral, and that this reading best conforms to the internal logic of this mishnah.¹ However, the anonymous editor – the stam – understood the term *havalot* to mean injuries, which is the more common meaning of the term in tannaitic and amoraic usage. That understanding of

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1 One might conjecture that the meaning of *havalot* might be resolved on the basis of whether the term should be read as *havalot* or *habbalot*, with the former referring to pledges and the latter to injuries. However, Michael Sokoloff, *A Dictionary of Jewish Babylonian Aramaic* (Ramat Gan: Bar Ilan University Press, 2002) defines *h-v-l* as both to take a pledge or surety and to injure; Ben Yehuda, *A Complete Dictionary of Ancient and Modern Hebrew*, v. II (New York: Yoseloff, 1960) defines *havaala* as a bodily injury (citing our mishnah as an example) and *h-v-l* as both to injure and to take a pledge, and also see Ernest Klein, *A Comprehensive Etymological Dictionary of the Hebrew Language* (Jerusalem: Carta, 1987).

the term *havalot* presented an opportunity for the stam to construct a sugya to address a deviation from principles of the system of rules that it imposed upon the Mishnah and the Talmud.² For the stam, it is axiomatic that judicial power is contingent upon ordination, which was only conferred upon the rabbis of the Land of Israel, although no such requirement is stated in the Mishnah.³ This rule would preclude Babylonian rabbis from adjudicating cases. Yet, in practice, Babylonian rabbis did adjudicate certain types of cases. In the course of the sugya, the stam grounds the rule and proceeds to address the legal theory question of the source of authority for the adjudication of monetary cases in the absence of ordination.

- 2 The approach proposed in this article views the stam as imposing a hierarchic system of authority, interpretive rules, and rules for establishing systemic validity that can be viewed as a legal system premised upon internal rules that reflect an implicit legal philosophy or theory. This perspective of viewing the stamaitic agenda through the lens of legal positivism may be particularly fruitful in analyzing sugyot like the one under discussion, often referred to as “stamaitic sugyot” or “saboraic sugyot.” These sugyot often appear at the beginning of tractates and chapters but are not limited to those locations. Moshe Benovitz explains that they “concern questions of the style of the mishnahyot and the order of the tractates, and are of no halakhic consequence” (Moshe Benovitz, *BT Berakhot, Chapter I with Comprehensive Commentary* (Jerusalem: Society for the Interpretation of the Talmud, 2006), 5 [Hebrew]). In my opinion, such sugyot should not be viewed as mere literary flourishes, demonstrations of rhetorical virtuosity, or technical discourses on style. Rather, they can often be viewed as having a legal theory agenda, although the stam, working in a “common law” environment, would not consciously be thinking in terms of the philosophy of law, much as modern common-law jurists (as opposed to their European counterparts) do not tend to think expressly in terms of theory. In view of this agenda, it should not be surprising that the stam is not focused upon achieving unambiguous answers to specific halakhic questions, but that should not be taken to mean that stamaitic sugyot are of no halakhic consequence. In viewing stamaitic redaction from the perspective of legal positivism, I am building upon the work of such scholars as Menachem Elon and Joel Roth, who have applied legal positivism to the halakhic system of law, see Menachem Elon, *Jewish Law*, vol. I (Jerusalem: Magnes Press, 1973); Joel Roth, *The Halakhic Process: A Systemic Analysis* (New York: Jewish Theological Seminary, 1986), 7–10; and see Alan J. Yuter, “Legal Positivism and Contemporary Halakhic Discourse,” *JLA* 6, 148.
- 3 See Amihai Radzyner, “‘We Act as their Agents’ and the Prohibition of Judgment by Laymen: A Discussion of Babylonian Talmud Gittin 88b,” *AJSR* 37 (2013): 257–83.

As in other stammaitic introductions, the stam does not engage here in teleological or “purposive” interpretation of the Mishnah.⁴ Rather, the stam employs perceived ambiguities and lacunae in the Mishnah in order to construct reasonable or possible readings of the Mishnah that might justify its contemporary halakhic practice or understanding and to fill in apparent legal gaps.⁵

As I will argue, the sugya and its conclusion could not have been grounded in reading *havalot* as pledges, but the unintentional misreading of the term “*havalot*” as “injuries” created a textual problem that was ripe for raising a typical saboraic (or late stammaitic)⁶ question as the basis for the ensuing introductory sugya.

This view that the stam employs ambiguities in the mishnaic text in order to justify contemporary practice and to fill in legal gaps does not accord with the approach that sees the stam as a non-creative editor who merely seeks to arrange amoraic statements – *meimrot* – in a dialectical discourse by reconstructing a presumed, unpreserved discussion. According to that view, the often “forced” arguments that are characteristic of stammaitic sugyot

- 4 On teleological and purposive interpretation, see Aharon Barak, *Purposive Interpretation in Law*, trans. Sari Bashi (Princeton: Princeton University Press, 2005); Žaklina Harašić, “More About Teleological Argumentation in Law,” *Pravni vjesnik* 31 (2015): 23 (<https://hrcak.srce.hr/file/229796>).
- 5 An example of justifying contemporary practice can be found in the introductory sugya of *b. Berakhot*. The mishnah there does not appear problematic in setting the earliest time for the recitation of the evening Shema. The mishnah sets that time as when the priests enter to eat *terumah*, a time defined by the Bible as sunset (Lev 22:6–7). However, because that time was inconsistent with the accepted practice of reciting the Shema only after the stars appeared, the stam exploited a perceived ambiguity in order to propose an interpretation of the mishnah that could justify its contemporary practice. And see Benovitz, *BT Berakhot*, 9ff. An example of filling in perceived gaps can be found in the introductory sugya of *b. Bava Kamma*, which expands upon the four heads of damage in the first mishnah that, for example, do not appear to include injuries resulting from direct causation.
- 6 Although I employ the term “saboraic,” I am not persuaded that there is any compelling reason to posit that the savoraim and the stammaim were distinct groups that performed different functions. Weiss Halivni has also revised his view on this matter, concluding that the savoraim “were Stammaim who lived at the end of the stammaitic era (600–750)” (Jeffrey Rubenstein, “Translator’s Introduction,” in David Weiss Halivni, *The Formation of the Babylonian Talmud*, trans. Jeffrey Rubenstein [New York: Oxford, 2013], xxvii).

are the result of incomplete knowledge, incorrectly transmitted sources, or a mistaken understanding of *meimrot*.⁷ The approach adopted here sees the *stam* as a creative author that seeks to address new questions by relying upon the Mishnah and *baraitot* as its source of authority. The late David Weiss Halivni expressed a similar view. Although Weiss Halivni was of the general view that the *stam* was not a creative author, he did recognize that the contribution of the *stam* was not entirely limited to reconstruction, writing: "However, there are some cases when the questions too originate in *stammaitic* times, such as when the contradiction derives not from a *mishnah* or *baraita* but from local practice; in these cases, the entire interchange necessarily derives from the *Stammaim*. The *Stammaim* got involved in the *sugya* not so as to complete a part that was missing due to its being forgotten, but rather they raised the problem because in their time there was an actual question about the issue."⁸

I would argue that in *sugyot* of this type, the "forced" nature of *stammaitic* arguments derives not from incomplete transmission of dialectical argumentation or a misunderstanding of transmitted texts, but rather from a self-imposed *stammaitic* constraint premising the validity of proposed answers to new questions upon the interpretation of fixed, canonical or authoritative texts. Because those texts did not contemplate the new question or practice addressed by the *stam*, the *stam's* need to recontextualize or interpret the authoritative source in a manner that would support the new reality resulted in reasoning that is perceived as forced or strained when viewed from the perspective of teleological interpretation or the conception of the Talmud as a commentary on the Mishnah.

Accordingly, while the first *sugya* of *b. Sanhedrin* seems quite forced, the contrived nature of the argument should not be attributed to some misunderstanding or misreading of sources or to an incomplete transmission of a debate. As is characteristic of such introductions, the *sugya* is entirely a *stammaitic* creation. Its contrived argumentation is the result of an attempt to

7 D. Weiss Halivni, "Author's Introduction," in *The Formation of the Babylonian Talmud*, xxxi: "The Talmud is full of forced explanations; I was surprised by this phenomenon but found no way to explain it other than to say that those who supplied the forced explanations lacked the complete version of all the relevant sources, or lacked the correct version of the text they were explaining." On "forced" arguments, see David Weiss Halivni, *Meqorot Umesorot, Seder Nashim* (Tel Aviv: Dvir, 1968); and see Rubenstein, "Translator's Introduction," xxff.

8 Weiss Halivni, "Author's Introduction," xxxiv.

employ a perceived lacuna created by the collocation “*gezeilot va-ḥavalot*” in order to create a distinction that might resolve an issue of judicial authority that was not contemplated by the Mishnah.

I would further note that the stamaitic desire to premise the validity of its answers to new questions upon the interpretation of texts that it deemed authoritative inherently led to a need to validate those texts as authoritative. In this regard, the stam’s agenda differs from that of the Midrash in justifying laws. The Midrash justifies individual laws by showing that they can be derived from or supported by biblical sources. Unlike their tannaitic predecessors, the purpose of the talmudic redactors is not to justify laws but rather to justify the law, i.e., the validity and authority of the legal system. The stam does not seek to ground tannaitic statements in biblical exegesis and hermeneutics merely for the purpose of justifying the validity of those statements in isolation. Rather, tannaitic sources are justified in accordance with interpretive rules adopted, devised, and retroactively imposed by the stam in order to demonstrate that tannaitic sources, in general, are systemically valid.⁹

In creating *sugyot* in which amoraic statements are placed in discourses that examine their supporting grounds in tannaitic statements or by means of stamaitic hermeneutic rules (that are themselves established, examined, and regulated by the stam),¹⁰ the stam establishes which views are systemically valid. The validated statements can, in turn, be employed as the basis for further development of a subsequent level of law.

9 This view of the need for justification of law differs from that of Weiss Halivni, who proposed that the stamaitic justification of laws demonstrates a rabbinic “predilection” for justified law. Therefore, the stam justifies laws that are presented apodictically in tannaitic sources by tying them to biblical sources. See David Weiss Halivni, *Midrash, Mishnah and Gemara: The Jewish Predilection for Justified Law* (Cambridge: Harvard University Press, 1986).

10 Thus, for example, the hermeneutic device of *gezeirah shavah* (verbal analogy) is limited to instances where there is a tradition supporting its use (see, e.g., Rashi at *b. Pesah* 66a, s.v. *ve-khi me-aḥer de-gamir*) and where at least one of the words is *mufneh* (unnecessary in context) (see, e.g., *b. Nid.* 22b); the question of *dorshin tehillot* (interpreting initial words) is examined at *b. Sukkah* 6b and *Sanh.* 3b; on *em lamasoret*, *em lamikra* (the authority of the consonantal and the vocalized text of the Bible) see, e.g., *b. Sukkah* 6b; *Sanh.* 4a; *Mak.* 7b (for an explanation of these terms, see Adin Steinsaltz, *The Talmud, The Steinsaltz Edition: A Reference Guide*, trans. and ed. Israel V. Berman [New York: Random House, 1989], 150).

The meaning of ḥavalot in its mishnaic context

דיני ממונות בשלשה, גזילות וחבלות בשלשה, נזק וחצי נזק, תשלומי כפל ותשלומי ארבעה וחמשה – בשלשה. האונס, והמפתה, והמוציא שם רע – בשלשה, דברי רבי מאיר. וחכמים אומרים: מוציא שם רע בעשרים ושלשה, מפני שיש בו דיני נפשות.

Monetary law by three, bailments¹¹ (*gezeilot*) and injuries (*ḥavalot*) by three, damage and half damage, payment of double and payment of four and five; the rapist, the seducer, and the defamer by three according to Rabbi Meir. And the sages say: The defamer by twenty three, because it includes [the possibility] of capital law.

The first mishnah begins with the statement that monetary cases are adjudicated by three judges. This general statement is immediately followed by

- 11 The meaning of *gezeilot* in this mishnah poses a problem that has been addressed by many commentators. I understand the term *gezeilot* here as misappropriated bailments, in accordance with the first definition given by Rashi, *ad loc.*, who also offers “robberies” (“snatch from the hand of another”), based upon 2 Sam 23:21, as an alternative to the primary meaning of “bailments.” This also accords with the Albeck-Margulies commentary (Hanoch Albeck, *The Mishnah, Seder Nezikin* [Jerusalem: Bialik Institute, 2008], 169), which understands *ḥavalot* only in the sense of the misappropriation of a bailment. It should also be noted that the theft of bailments is the subject of the proof-text brought by the Talmud at 2b to justify the need for three judges. As we shall see, this understanding of *gezeilot* as misappropriated bailments also explains its classification together with *ḥavalot*, which I argue should be understood as distrained pledges in the context of the mishnah. However, while I believe this to be the correct understanding of the term *gezeilot* in the context of the mishnah, it is possible that the stam understood the term as more broadly, which would appear to be the understanding of most commentators.

This broader meaning of *gezeilot*, and the stam’s assertion that *gezeilot va-ḥavalot* define monetary cases that require expert judges presented a problem for later commentators inasmuch as we find cases of Babylonian rabbis deciding such cases, see, e.g., *b. B. Kam.* 86b and *Tosafot Harosh*, *ad loc.*, s.v. *אי הכי גולות וחבלות* and *b. Sanh.* 3a, s.v. *אי הכי גולות וחבלות נמי* and *Tosafot on b. Git.* 88b, s.v. *שלא תנעול דלת בפני לווין*. Later commentators certainly understood *gezeilot* in the broader sense, see, e.g., *Novellae Rashba*, *b. B. Kam.* 84b, *Shitah Mekubetset* (Rid), *ad loc.*, s.v. *אלא כי עברינן שליחותיהו*. Thus, for example, *Tosafot*, *ibid.*, tried to resolve the apparent contradiction by defining *gezeilot* in this context as referring to *gezeilot* by means of *ḥavalot*. To avoid confusion on this issue, I will use the term *gezeilot* without an English translation in the course of this article, when the meaning is not clearly “bailments.”

four sets of cases that are adjudicated by three judges: *gezeilot* and *havalot*; damage and half damage; payment of double and payment of four and five; the rapist, the seducer, and the defamer.

Except for the first set, each set comprises related issues. Damage is the amount paid for injury caused by a person or by an animal that has a history of causing injury (*mu'ad*),¹² while half damage is the amount paid for injury caused by an animal that does not have a prior history (*tam*).¹³ Payment of double the principal is paid by a thief,¹⁴ while payment of four and five times the principal is payment for stealing and slaughtering or selling a sheep or an ox.¹⁵ Rape and seduction are grouped with defamation, which concerns a claim that a bride was not a virgin.¹⁶ As opposed to these groups of materially related issues, *gezeilot* concerns misappropriation of bailments (or robbery),¹⁷ while injuries concern causing physical harm to another person.¹⁸ The relationship between injuries and bailments (or robberies) is not immediately apparent.¹⁹

If “injuries” is the correct reading of the mishnah, then in terms of sets of related issues, consistency would dictate subsuming damages and half damages under *havalot*.²⁰ Establishing “*gezeilot va-havalot*” as an independent set indicates that the two share some clear, common denominator that distinguishes them from what would otherwise be their natural grouping.

12 Exod 21:36; *m. B. Kam.* 1:1.

13 Exod 21:35; *m. B. Kam.* 1:4.

14 Exod 22:3.

15 Exod 21:37.

16 Deut 22:13–19.

17 See n. 11, above.

18 *M. B. Kam.* 8:1.

19 Indeed, Abraham Weiss went to some length in an attempt to demonstrate a relationship that might justify *gezeilot* and *havalot* as a category; see Abraham Weiss, “Le-ḥeker ha-mishnah ve-ha-talmud,” in *Kovets Madda’i Le-Zekher Moshe Schorr*, ed. L. Ginsburg and A. Weiss (New York: Moshe Schorr Memorial Committee, 1945), 133–37.

20 The *stam* is aware of this problem and devotes an entire *sugya* (at 3a–b) to explaining why damages and half damages are presented as a separate category from *havalot*. While the *sugya* provides an argument for including damages and half damages *in addition* to *havalot*, it does not provide any reason for their constituting a separate category, or for grouping *havalot* with *gezeilot*.

Talmud there only comments *הן חבלות הן גזילות* ("are not *gezeilot* and *havalot* the same")? The Yerushalmi appears to be asking why these subjects should be differentiated. This question appears to be the same one that begins our sugya in the Bavli, where it is expanded as *אטו גזילות וחבלות לאו דיני ממונות נינהו* ("are bailments and injuries not monetary law?"). However, unlike the Bavli, the answer provided by the Yerushalmi is simply that the mishnah lists them separately because they are addressed separately in *parashat Mishpatim* (Exod 21:1–24:18). *Parashat Mishpatim* enumerates various types of injury, but it does not employ the term *h-v-l* in referring to injuries. Rather, it employs the term *h-v-l* specifically in regard to a pledge (Exod 22:25). Thus, if *parashat Mishpatim* is the Yerushalmi's point of reference, then it would appear to understand *havalot* as distrained pledges and *gezeilot* as the misappropriation of bailments in accordance with Exodus 22:6–8, which treat of the responsibility of a bailee in the case of the theft or misappropriation of a bailment.

The midrash *Mishnat Rabbi Eliezer* (ch. 5, p. 105) appears to understand *gezeilot va-havalot* in this sense in a midrash on the symbolism of the four species, stating: *ד"א כנגד ארבעה אבות נזקים. אמר הקדוש ברוך הוא, עד שלא תטילו ארבעה* ("Another alternative, representing the four heads of damages. The Holy One Blessed be He said: Until you take these four species in your hands, return *gezeilot va-havalot* to their owners, then your prayers will be heard"). Arguably, the author of this midrash did not intend the phrase "return . . . to their owners" to mean payment of tortious damages but rather makes this statement with the understanding that *gezeilot va-havalot* refer to property that must be returned to the owner.²⁵

25 This reading appears to be the most consistent with the term "return," but it is not unproblematic. The author uses *gezeilot va-havalot* to represent the four heads of damage (*avot nezikin*) addressed in *b. B. Kamma*. This is an odd choice in that the collocation "*gezeilot va-havalot*" is exclusive to our mishnah and *b. Sanh.* and to one appearance in *b. Git.*, but does not appear in *Bava Kamma*. Moreover, it is difficult to understand the use of *gezeilot va-havalot* as a synecdoche for the four heads of damage, whether we understand the collocation as "robberies and injuries" or as "bailments and pledges," inasmuch as harm directly caused by one person to another is only deemed a head of damage according to Rav's definition of *ma'v'eh* in *b. B. Kam.* 3b, whereas the four heads of damage as presented in the first mishnah of *Bava Kamma* would appear to refer only to injuries of indirect causation. One might conjecture that the author of this midrash chose *gezeilot va-havalot* as examples of harm that can be completely restored *ad integrum* rather than redressed through compensation. That conjecture would support the

The collocation “*gezeilot va-ḥavalot*” also appears in *b. Git.* 88b in a discussion of the source of the authority of the Babylonian rabbis to adjudicate monetary matters, to which I will return in addressing our *sugya*. The relevant section for the current discussion reads:

א"ל: אנן שליחותייהו קא עבדינן, מידי דהוה אהודאות והלואות. אי הכי, גזילות וחבלות נמי! כי עבדינן שליחותייהו – במילתא דשכיחא, במילתא דלא שכיחא – לא עבדינן שליחותייהו.

He replied: We are acting as their agents, just as in cases of admissions and loans. If that is the case, also *gezeilot va-ḥavalot*!

We act as their agents in matters that are common. In matters that are not common, we do not act as their agents.

In this context, the collocation “*gezeilot va-ḥavalot*” appears to mean robberies and injuries. Yet, one would think that if the reason for the limitation upon authority was based upon the frequency of the issue, then robberies and injuries would be poor examples of rare events.²⁶ However, this rather forced

reading “bailments and pledges.” Although the Mishnah (*m. B. Mets.* 3:2) states: אלא תחזור הפרה לבעלים (“Rather, the cow is returned to the owner”) in regard to the payment of compensation for a dead cow, that mishnah employs the term “return” in regard to restitution in regard to an object for which compensation can be made *ad integrum*, which is not the case in regard to an injury. It may be conjectured that the author may have chosen to employ *gezeilot va-ḥavalot* as paradigmatic following Ezek 33:15–16 (see n. 23, above), despite the tenuous connection to the four heads of damage.

26 Several commentators have noted this. Ritva on *b. Git.* 88b cites Rabbeinu Tam’s opinion that where *gezeilah* is common, non-ordained rabbis can adjudicate it, and that *gezeilah* of the sort of grabbing something directly from another person is common. Tosafot Harosh (88b, s.v. אי הכי גזילות וחבלות נמי) also cites Rabbeinu Tam in pointing out that *gezeilot* like stealing a field and its produce are not adjudicated in Babylonia because evaluating the produce requires ordained judges and is also uncommon, whereas other *gezeilot* are common. And see the distinction between *gezeilah* (“robbery”), which is uncommon, and *kofer be-pikkadon* (“denying a bailment”) which is common, in *Urim* 1:9 s.v. או גזל. Also see Radzyner, “We Act as their Agents,” 268. Alternatively, it may be that in saying that *gezeilot* and *ḥavalot* are uncommon, the intention is not that they are rare events but rather that they are not commonly adjudicated by rabbinical courts. It is not clear to what extent rabbinical courts were recognized by the government in Roman Palestine and Sassanian Persia and what jurisdiction may have been granted to rabbis and rabbinical courts other than to act as arbitrators and rule upon religious matters. In this context, it may be pertinent to note that the Palestinian and Babylonian Talmuds tend not to cite court decisions from late antiquity. When decisions are cited, they tend to be those of individual rabbis

argument, which is made entirely in the anonymous voice rather than by stating: “Abbaye asked: If that is the case, also *gezeilot va-ḥavalot!* Rav Yosef replied: We act as their agents in matters that are common...” would not appear to be original to the sugya, but rather was likely added by the stam on the basis of our sugya in *Sanhedrin*.²⁷

Although “pledges” would appear to be the meaning of *ḥavalot* that best conforms to the context of the first mishnah, it is an exceptional usage. The more common meaning of *ḥ-v-l* in the Mishnah and the Talmud is “injury,” as, for example, in ch. 8 of Mishnah and Talmud *Bava Kamma* (*Perek ha-Ḥovel*). While I have cited tannaitic examples of *ḥ-v-l* in the sense of pledge, those examples are the few exceptions. The Mishnah, Tosefta, and Talmud prefer the term *mashkon* in referring to pledges. Thus, we find that when the Mishnah and the Talmud cite Deut 24:17 as the basis for a prohibition upon pledges, they refer to a prohibition on *mashkon*. For example, *m. B. Mets.* 9:13 states in regard to a widow: “אין ממשכנין אותה שנאמר ולא תחבול בגד אלמנה” (“we do not take a *mashkon* from her as it is written, ‘lo *taḥvol* a widow’s garment”).²⁸

In light of the above, the stam appears to have understood *ḥavalot* as injuries rather than pledges because “injuries” is the usual sense of the term. If the mishnah intended to refer to bailments and pledges, then the stam would have expected the first mishnah of *Sanhedrin* to refer to *gezeilot* (or *pikdonot*) *u-mashkonot*. This reading of the term *ḥavalot* by the stam would have been further reinforced by the fact that *ḥavala* also means injury in Aramaic,²⁹ whereas *mashkon* and *mashkanta* are Aramaic terms for pledges or

deciding a matter of halakha for a particular person or acting as an arbitrator between two litigants. See H.P. Chajes, “Les Juges Juifs en Palestine De L’An 70 a L’An 500,” *REJ* 39 (1899): 52 (my thanks to Prof. Seth Schwartz for bringing this article to my attention), and see Eliezer Segal, *Case Citation in the Babylonian Talmud: The Evidence of Tractate Neziqin* (Atlanta: Scholars Press, 1990).

27 And see Radzyner, “‘We Act as their Agents,’” 270, and references there.

28 And see, e.g., *m. Ma’as. Sh.* 1:1; *m. Shek.* 1:3, 1:5, 7:5; *m. B. Mets.* 9:13; *t. Ma’as. Sh.* 1:1 (Lieberman); *t. Pe’ah* 4:12 (Lieberman); *t. B. Mets.* 1:19, 10:10 (Lieberman); *b. B. Mets.* 113a, 115a; *b. Sanh.* 21a; *y. B. Mets.* 9:13 (Vilna). Also see *Gen. Rab.*, *Vayyetsē* 70:19 (Vilna); *Exod. Rab.*, *Pekudei* 51:3 (Vilna), which explains that *ḥavol* means *mashkon*; *Lam. Rab.* 1:4 (Buber); *Sifre Deut.*, *Re’eh* 116, s.v. *לֹא תִאֲמַן*.

29 See, e.g., Dan 3:25; Ezra 4:22; and see Michael Sokoloff, *A Dictionary of Jewish Babylonian Aramaic*, 427–28, s.v. *חבל*.

collateral,³⁰ and *mashkon* is the usual Hebrew term for a pledge or collateral in the tannaitic sources.

The meaning of ḥavalot in the talmudic sugya

The problematic reading *ḥavalot* as “injuries” in the mishnah presented an opportunity for the *stam*. It was the understanding of the later amoraim and the *stam* that judicial authority required ordination, and therefore, Babylonian rabbis did not hold judicial authority because they were not ordained.³¹ This raised a need to explain how it was that Babylonian rabbis did in fact adjudicate a variety of cases. A possible explanation for their authority is found in a statement of Rav Yosef in *b. Gittin* 88b that the Babylonian rabbis acted as the agents of the Palestinian rabbis. Amihai Radzyner argues that Rav Yosef’s statement was misunderstood, and that in saying “we act as their agents,” Rav Yosef may not have been referring to the Palestinian rabbis.³² However, it would appear that the redactors of the *sugya* were not willing to premise judicial authority upon Rav Yosef’s statement of agency. This may be because they did not wish the authority to be contingent, or because they were unwilling to accept a problematic, fictive agency,³³ or because, like Radzyner, they did not understand Rav Yosef’s statement as grounding general judicial authority in monetary cases. Moreover, basing judicial authority in Babylonia upon agency would appear to conflict with

30 See, e.g., Onkelos and Pseudo-Jonathan on Gen 38:17; Exod 22:25; Deut 24:6, 17; *Exod. Rab.* 31:10 (Vilna); *b. B. Mets.* 67a; and see *Koh. Rab.* 3:2, s.v. עת לדרת ועת למות (Vilna), in which the midrash interprets *ḥavalah* as *mashkon*: “ולמה אינון” *משכנתא*, s.v. משכנך, and s.v. משכנתא.

31 As for when this understanding may have originated, see Radzyner, “‘We Act as their Agents,’” 278–82. From the statements of Rav and Rabbi Ḥiyya at *b. Sanh.* 5a, it would appear that earlier amoraim may have been of the opinion that authority to adjudicate as an “expert judge” (מומחה) in Babylonia was not contingent upon ordination but rather upon a grant of authority by the Exilarch.

32 Radzyner, “‘We Act as their Agents,’” 281–82. Radzyner’s argument (271) that Rav Yosef may have meant that he was acting as the agent of the litigants may have further support in Rav Yosef’s statement at *b. Sanh.* 5a where he expresses the view “אם קבלוך עלייהו לא תשלם ואם לאו תשלם” (“If they [the litigants] accepted you upon themselves, do not pay, and if not, pay”). The identical view is expressed there by Rabbi Ḥiyya in regard to the adjudication of a case by Rabbah bar Ḥana in Babylonia, although he was not authorized by the Exilarch.

33 Radzyner, “‘We Act as their Agents,’” 263–67.

the rule established further on (*b. Sanh.* 5a) that permission to adjudicate granted in the Land of Israel was not effective in Babylonia.

The need to ground the judicial authority of the Babylonian rabbis, and the problematic collocation “*gezeilot va-havalot*” immediately following the statement “Monetary matters by three,” presented the *stam* with an opportunity to create a typical stammitic introduction to *Sanhedrin* that could serve to resolve the legal theory problem of the source of the authority of Babylonian judges to adjudicate monetary cases. As the purpose of this paper is not to present a detailed critical analysis of the *sugya*, I will provide a simplified outline of four primary steps by which the *stam* develops the argument.

A. *The first step*

אטן גזילות וחבלות לאו דיני ממונות נינהו? אמר רבי אבהו: מה הן קתני. מה
הן דיני ממונות? גזילות וחבלות, אבל הודאות והלואות לא.

Are *gezeilot* and *havalot* not monetary law? Rabbi Abbahu said:
What are they, this teaches. What are monetary laws? *gezeilot*
and *havalot*, but not admissions and loans.

The Talmud begins by focusing on the terms *gezeilot* and *havalot* in a question typical of saboraic introductory *sugyot* that focus upon the Mishnah’s terminology, asking: “Is that to say bailments and injuries are not monetary law?”³⁴ In other words, inasmuch as bailments/robberies and injuries are examples of monetary cases, why are they mentioned separately?

The answer to that question is provided by quoting a statement by the Palestinian amora Rabbi Abbahu that is then expanded by the *stam*: “What are they, this teaches. What are monetary laws? Bailments and injuries, but not admissions and loans.” In other words, what follows the statement that monetary matters are adjudicated by three judges is not a list of subjects included in monetary law but rather a *definition* of monetary law.

It would appear that Rabbi Abbahu’s original statement was only “מה הן קתני” (“What are they, this teaches”) and the rest of the *meimra* is a stammitic creation. Weiss Halivni suggests that Rabbi Abbahu’s original statement was: “What are they, this teaches. What are monetary laws? Bailments and injuries,”

34 See Benovitz, *BT Berakhot*, 5; English abstract, p. i (English abstract available at <http://www.talmudha-igud.org.il/data/UploadedFiles/sugyot/Berachot%20I/English%20Abstracts.pdf>).

and the rest is stammitic.³⁵ However, this would appear to understate the extent of stammitic intervention for several reasons. First, the *meimra* is unattested in the Palestinian Talmud or elsewhere, and the collocation “admissions and loans” is unique to the Babylonian rabbis (and appears in the Talmud only in this sugya and as a stammitic addition in *b. Git.* 88b and *b. B. Kam.* 84b).

Second, the original meaning of the mishnah may be conjectured by comparing the structure of the first part of the first mishnah and the first part of the fourth mishnah, which are stylistic parallels. The fourth mishnah begins: “Capital law by twenty-three judges.” The mishnah then continues to list a number of examples concerning bestiality and animals that caused the death of a person. What these examples have in common is that they are, *prima facie*, monetary cases. In principle, since they concern the destruction of property – killing an animal – one might assume that such cases would be adjudicated by a court of three. They are not listed as examples of capital crimes or as defining capital crimes but rather as exceptional cases that are nevertheless adjudicated by a court of twenty-three.

Perhaps the first mishnah should be read similarly. The mishnah begins with a general statement that monetary cases are adjudicated by three judges. It then goes on to list examples that involve some additional, coercive, or punitive element besides compensation. As a result, one might think that such cases should be adjudicated by a court of twenty-three. Instead, the mishnah tells us that they are nevertheless adjudicated by three.³⁶ This proposed reading would be consistent with the way the phrase “*mah hen katanei*” is employed in the only other place it appears in the Talmud.³⁷ In *b. Pesahim* 84a, in a discussion regarding the Paschal lamb, we find the following:

רבא אמר: מה הן קתני, והכי קתני: כל הנאכל בשור הגדול בשלקא – יאכל
בגדי הרך בצלי, ומה הן – ראשי כנפים והסחוסים.

35 David Halivni, *Meqorot Umesorot: Sanhedrin* (Jerusalem: Magnes Press, 2012), 1.

36 This understanding of the ensuing examples as enumerating exceptions would also appear to be expressed in Jacob Mann, *Geniza Fragments*, vol. 9, 78: הלכה: בכמה: דינין התקינו דיני ממונות שנו: דיני ממונות בשלשה, וכן גזילות וחבלות *“ve-khen gezeilot”* (“and *gezeilot* as well”) seem to view *gezeilot va-havalot* as a class that is additional to the normal scope of monetary matters. This view is consistent with understanding *gezeilot* and *havalot* in the more limited, biblical sense of bailments and pledges rather than in the broader rabbinic sense of robberies and injuries.

37 See Halivni, *Meqorot Umesorot: Sanhedrin*, 2.

Rava said: *mah hen katanei*, and this is what it teaches: Anything that can be eaten in an adult ox by cooking can be eaten in a young kid by roasting. And what are these? The ends of the ribs and the cartilage.

Rava employs the phrase “*mah hen katanei*” in order to explain a mishnah that states: “Anything eaten in an adult ox may be eaten in a young kid. And the ends of the ribs and the cartilage.” This requires explanation because the ends of the ribs and the cartilage of an ox are too hard to be edible. Therefore, permitting them in a kid appears to deviate from the general rule. Rava employs the phrase “*mah hen katanei*” to explain that although the ends of the ribs and the cartilage of an ox are not usually eaten and cannot be made edible by roasting, they can be rendered edible by prolonged cooking in liquid. Therefore, since these parts of an ox can be rendered edible, these (softer) parts of a kid may be eaten by roasting. In other words, Rava uses the phrase “*mah hen katanei*” to explain that an apparent exception to a general rule is included in the general rule. In light of the above, it would appear more likely that the original statement was limited to: “What are they, this teaches,” as Abraham Weiss and Moshe Benovitz argue,³⁸ and because this is more consistent with the structure of the mishnah and with the only parallel use of this phrase.

It should be noted, however, that the attribution of the *meimra* to Rabbi Abbahu is itself somewhat problematic. Rabbi Abbahu is quoted as using the Aramaic word *katanei* (“this teaches”). Rabbi Abbahu is generally quoted in Hebrew, even when the tradent is Babylonian or his interlocutor speaks Aramaic. The use of the word *katanei* is particularly suspicious because it is exclusively Babylonian. The word *katanei* appears only once in the Palestinian Talmud, in a statement by the Babylonian amora Rabbi Zeira (Ze’ura).³⁹

In conclusion, it would seem that only the phrase “*mah hen katanei*” (“What are they, this teaches”) constitutes the original *meimra*, and that it may have been imported to *Sanhedrin* from *Pesaḥim* but used differently than the way it was originally employed, and that – contrary to Weiss Halivni – the ensuing words “*mah hen dinei mammonot, gezeilot va-ḥavalot, aval hoda’ot ve-halva’ot lo*” (“What are monetary laws? Bailments and injuries, but not

38 Weiss, “Le-ḥeker ha-mishnah ve-ha-talmud,” 127–32; Moshe Benovitz, “Edei Mammonot,” in *Atara L’Haim: Studies in the Talmud and Medieval Literature in Honor of Professor Haim Zalman Dimitrovsky*, ed. D. Boyarin et al. (Jerusalem: Magnes Press, 2000), 28–49 (39) (Hebrew).

39 Y. *Yoma* (Vilna) 5:27b (Venice) 5:42, 3.

admissions and loans”) are a stammaitic addition intended to introduce the new, stammaitically created category of “admissions and loans” that is distinct from monetary law. If the source of the statement was *Pesaḥim*, then the attribution of the statement to Rabbi Abbahu rather than to Rava may have resulted because Rabbi Abbahu is quoted immediately after this in the sugya, and he also appears in the sugya in *Pesaḥim*. In any case, the stam could not present the statement in the name of Rava because Rava is presented as holding the opinion that monetary law included what the stam refers to as admissions and loans.⁴⁰

In elaborating the *meimra* attributed to Rabbi Abbahu as it does, the stam employs it to provide an interpretation of the mishnah that would support the view that monetary cases concerning admissions (e.g., where a defendant admits to owing money to the plaintiff but contests the sum) and loans, which is a category not mentioned in the mishnah, do not require a court of ordained judges. However, the plain meaning of the mishnah is that admissions and loans are monetary law, and the absence of the category is, therefore, not a lacuna.⁴¹ The stam’s distinction between “monetary law” and “admissions and loans” could not be made if *gezeilot va-ḥavalot* were understood as bailments and pledges, inasmuch as these are matters that are related to admissions and loans.⁴² Although admissions and loans can formally be distinguished from bailments and pledges, they are materially the same. Admissions and loans concern a suit for the return of money entrusted to another in the form of a loan. Bailments and pledges concern a suit for the return of (or compensation for) an object entrusted to another in the form of a bailment or collateral.

40 *B. Sanh.* 3a, and see Weiss, *Le-ḥeker ha-mishnah ve-ha-talmud*, 128. Alternatively, it is possible that the Abbahu quoted in our sugya is neither Rabbi Abbahu nor Rava, but rather the 7th generation Babylonian amora Rav Abbahu.

41 See Haim Shapira, “Battei Hadin in the Mishnah: A Reexamination of Mishnah Sanhedrin Chapter 1,” *Tarbiz* 84 (2022): 139–82 (142–46) (Hebrew) and Benovitz, “Edei Mammonot,” 39–40.

42 See Shapira, “Battei Hadin,” n. 14, noting that most of the Rishonim understood “admissions and loans” to include all monetary matters deriving from obligations and consent, including loans, sales, and gifts. Similarly, later commentators were of the opinion that bailments could be adjudicated by non-ordained judges, see, e.g., the distinction noted above between *gezeilah* (“robbery”), which is uncommon, and *kofer be-pikkadon* (“denying a bailment”) which is common, in *Urim* 1:9 s.v. או גזל.

B. The Second Step

וצריכא, דאי תנא דיני ממונות הוה אמינא דאפילו הודאות והלואות, תנא גזילות וחבלות. ואי תנא גזילות וחבלות ולא קתני דיני ממונות, הוה אמינא הוא הדין דאפילו הודאות והלואות. והאי דקתני גזילות וחבלות, משום דעיקר שלשה דכתיבי בגזילות וחבלות כתיבי. גזילות דכתיב "ונקרב בעל הבית אל האלהים", חבלות? מה לי חבל בגופו מה לי חבל בממונו?

And this is required because had he [the tanna] taught monetary law, I would have said even for admissions and loans, [so] he taught *gezeilot va-ḥavalot*. And had he taught *gezeilot va-ḥavalot* and not monetary laws, I would have said that it is the case even for admissions and loans. And it teaches *gezeilot va-ḥavalot* because the primary source for three [judges] is written in regard to *gezeilot va-ḥavalot*. *Gezeilot*? Because it is written [Exod 22:7]: "the owner of the house shall be brought before God [i.e., the judges]." *Havalot*? What is it to me if he injured his body, what is it to me if he injured his property?

The next step in the sugya reinforces the statement attributed to Rabbi Abbahu and the new category of "admissions and loans" by stating that had the mishnah not expressly stated that *gezeilot va-ḥavalot* are a separate category, one would have assumed that monetary law included admissions and loans. Therefore, specifying *gezeilot va-ḥavalot* clarifies that only these are included in the term "monetary law," while admissions and loans are excluded from the category, and therefore can be adjudicated by non-ordained judges. Had monetary law not been specified as well, then the assumption would be that admissions and loans require three ordained judges, and that the reason the mishnah specified *gezeilot va-ḥavalot* rather than just monetary cases is because *gezeilot va-ḥavalot* are the Bible's paradigmatic exemplars for the requirement of three judges.

The prooftext brought in support of the last statement may reflect that the stam was aware that its reading of *gezeilot va-ḥavalot* was not unproblematic: "When someone delivers to a neighbor money or goods for safekeeping, and they are stolen from the neighbor's house, then the thief, if caught, shall pay double. If the thief is not caught, the owner of the house shall be brought before God, to determine whether or not the owner had laid hands on the neighbor's goods" (Exod 22:6–7). This prooftext for requiring three judges concerns *gezeilah* only in the sense of the theft of a bailment. No prooftext is brought for injuries. Thus, the stam does prove that *gezeilot* are a paradigmatic

biblical exemplar, but not *ḥavalot*. The stam resolves the matter by asserting that three judges are required for *ḥavalot* (which the stam understands as personal injuries) by asking: “What difference is there if he injured another’s body or injured another’s property?” This is hardly a convincing proof. First, equating bodily harm to a misappropriated or stolen bailment does not make for a persuasive logical argument. The fact that the theft of bailments is adjudicated by three judges does not require the conclusion that bodily injuries are adjudicated by three judges. Second, the chosen proof-text, which treats exclusively of bailments, should raise the question of whether *ḥavalot* can be read as injuries. If the two can be equated, then they must be materially related. The stam appears to be arguing that the relationship is that *gezeilot* and *ḥavalot* are both forms of injury. However, despite the initial question, the stam does not question its assumption in order to explore alternative possibilities, as it is not concerned with uncovering the historical meaning of *ḥavalot* in context as the stam is not seeking to explicate the mishnah, but rather the stam relies upon its reading of the mishnah in order to advance its argument in regard to admissions and loans.

C. The third step

תנא: מה הן דיני ממונות? גזילות וחבלות, אבל הודאות והלוואות לא. ולמאי? אילימא דלא בעינן שלשה, והאמר רבי אבהו, “שנים שדנו דיני ממונות לדברי הכל אין דיניהם דין?” אלא דלא בעינן מומחין. מאי קסבר? אי קסבר עירוב פרשיות כתוב כאן, ליבעי נמי מומחין, ואי קסבר אין עירוב פרשיות כתוב כאן, שלשה למה ליה? לעולם קסבר עירוב פרשיות כתוב כאן, ובדין הוא דליבעי נמי מומחין. He taught: What are they, this teaches. What are monetary laws? *Gezeilot va-ḥavalot*, but not admissions and loans. And in regard to what [are they different]? If you say that three [judges] are not required, didn’t Rabbi Abbahu say: “All agree that the judgment of two who adjudicate monetary cases is invalid?” Rather, that experts are not required. What does he think? If he thinks that what is written here is an *eruv parashiyot*, experts are also required, and if he thinks there is not an *eruv parashiyot* here, why do I need three [judges]? He always thought there is an *eruv parashiyot* here, and experts would also be required.

This step begins with the word “*tanna*,” indicating that the ensuing statement will quote the mishnah or another tannaitic statement. However, seeking to advance its argument in regard to admissions and loans, the Talmud continues by quoting the *stammaitic interpretation of the mishnah* attributed to

Rabbi Abbahu and asks what distinguishes admissions and loans from *gezeilot va-ḥavalot*. The Talmud suggests that the statement may be meant to teach us that the distinction concerns the need for three ordained judges that was addressed in the previous step. This is rejected due to another statement by Rabbi Abbahu that is unattested outside of *b. Sanhedrin*: “All agree that the judgment of two who adjudicate monetary cases is invalid.” In other words, as argued in the previous step, three judges are indeed required. The stam then conjectures that the distinction is that the judges adjudicating monetary cases need not be ordained.

The stam then asks what the basis for this distinction might be. The term used to introduce this question is *mai kasavar*, which signifies the introduction of a dilemma. That dilemma is that if the previously quoted biblical source (Exod 22:6–8) treats of several related issues (*eruv parashiyot*) such that the same rule would apply to *gezeilot va-ḥavalot* and to admissions and loans, then ordained judges would be required in all cases. On the other hand, if that was not the assumption, then what would the source be for requiring three judges, inasmuch as that requirement is hermeneutically derived from the use of the word *elohim* (understood to mean judges) three times in Exodus 22:7–9?

The response to the dilemma is that all agree that this is a case of *eruv parashiyot*, such that ordained judges are always required. At this point, one might conclude that the sugya has failed to achieve its goal, and that the entire sugya served no purpose other than to demonstrate rhetorical virtuosity. But that conclusion would be incorrect. The stam has achieved its purpose both by establishing the validity of its presumption that only ordained judges are competent to adjudicate and by asserting a lacuna by creating the category of “admissions and loans” that is distinct from monetary law.

D. The Fourth Step

והאי דלא בעינן מומחין משום דרבי חנינא, דאמר רבי חנינא: “רבר תורה, אחד דיני ממונות ואחד דיני נפשות בדרישה ובחקירה, שנאמר ‘משפט אחד יהיה לכם’. ומה טעם אמרו דיני ממונות לא בעינן דרישה וחקירה? כדי שלא תנעול דלת בפני לווין.”

And that experts are not required is due to Rabbi Ḥanina, as Rabbi Ḥanina said: “According to the Torah, monetary law and capital law are equal with regard to inquiry and interrogation of witnesses, as it is stated: ‘You shall have one manner of law’ [Lev 24:22]. And what is the reason they said monetary law

does not require inquiry and interrogation? So as not to lock the door before borrowers.”

At this point, the expected explanation for the authority of non-ordained judges to adjudicate monetary cases might be to introduce the view expressed by Rav Yosef in *Gittin* 88b that although ordained judges are required, “We act as their agents,” i.e., the Babylonian rabbis adjudicate monetary cases in their capacity as the agents of the ordained Palestinian rabbis.

That is not the response adopted by the *stam*, which is understandable in view of the questionable legal basis for such a form of agency,⁴³ and the above noted problem that judicial authority granted in the Land of Israel was not effective in Babylonia. Instead, the *stam* employs the dilemma to introduce the opinion of Rabbi Ḥanina quoted in *b. Sanh.* 32a in regard to *m. Sanh.* 4:1, which enumerates the procedural differences between capital and monetary cases: “According to the Torah, monetary law and capital law are equal with regard to inquiry and interrogation of witnesses, as it is stated: ‘You shall have one manner of law.’ And what is the reason they said monetary law does not require inquiry and interrogation? So as not to lock the door before borrowers.”

In the context of *b. Sanh.* 32a, Rabbi Ḥanina’s statement does not concern the qualifications of the judges, but rather addresses the procedure that judges must follow in examining witnesses in monetary cases. This would also accord with the view of Weiss Halivni that the statement may be by the *tanna* Rabbi Ḥanina, and that it is a *baraita* addressing the procedural distinction in examining witnesses in capital cases and monetary cases despite the fact that the *mishnah* states that capital cases and monetary cases both require inquiry and interrogation based upon the biblical statement: “You shall have one manner of law” (*Lev* 24:22).⁴⁴ However, having employed the understanding of *gezeilot va-ḥavalot* as “robberies and injuries” in order to create a *sugya* that establishes “admissions and loans” as a separate legal category, the *stam* is able to recontextualize Rabbi Ḥanina’s statement. The waiver of the need for inquiry and interrogation is not presented as a distinction between capital cases and monetary cases but rather is presented as drawing a distinction between the adjudication of admissions and loans and other monetary cases and is understood to mean that the judges need

43 See Radzyner, “‘We Act as their Agents,’” 263ff.

44 Halivni, *Meqorot Umesorot, Sanhedrin*, 61.

not be ordained to adjudicate admissions and loans, which are not mentioned in the mishnah.

This explanation differs from Rav Yosef's in a fundamental way. Rav Yosef's answer appears to make the authority of the Babylonian judges contingent upon their acting in accordance with authority bestowed upon them by the Palestinian rabbis, or upon a legal fiction created by the Babylonian rabbis to that effect. The answer provided by the stam by means of Rabbi Ḥanina is that the authority of the Babylonian rabbis derives from considerations of commerce and is not contingent upon the Palestinian rabbis or a legal fiction of agency. This reason could not have been proposed if the stam understood *gezeilot va-ḥavalot* as bailments and pledges, which are commercial matters that are related to, if not materially the same as admissions and loans.

Conclusions

The first mishnah of Sanhedrin discusses the competence of various courts composed of three judges. After the general statement that three judges are required for monetary cases, the mishnah enumerates several areas that fall within the competence of a three-judge court. One area is that of *gezeilot va-ḥavalot*. It would appear that the internal logic of the mishnah requires that the collocation be understood as “bailments and pledges.”

The ensuing stammaitic sugya on the mishnah understands *gezeilot va-ḥavalot* as robberies and injuries, in accordance with their usual meaning in rabbinic sources. That understanding of the collocation in accordance with the more common meaning of the terms presented an opportunity for the stam to create the ensuing sugya that sets out to ground the presumption that judges require ordination and to explicate a perceived lacuna in the mishnah in order to validate the authority of Babylonian rabbis to adjudicate monetary cases.

Reading *ḥavalot* as injuries is key to the attempt to justify the authority of the Babylonian rabbis. Ultimately, the talmudic discourse cannot ground that authority by demonstrating a rational connection to a reasonable understanding of the mishnah, but it does serve to ground the presumption that judges require ordination.

At this point, it would be easy to dismiss the sugya as a stammaitic introduction that merely serves to demonstrate rhetorical virtuosity but that does not resolve the halakhic issue it purports to address. Instead, the issue

is resolved by a *deus ex machina*. However, the above analysis proposes that such a description would not be an accurate portrayal. The argument that leads to that inevitable “failure” succeeds in grounding the presumption of the requirement of ordination and creates “admissions and loans” as an independent legal category that is not addressed by the mishnah. Distinguishing “admissions and loans” from “monetary law” then serves as the basis for importing a statement by Rabbi Ḥanina into a context that changes its intention from a procedural exception in regard to witnesses in monetary cases to an explanation of why such cases can be adjudicated by rabbis who lack the required ordination to serve as judges. As positioned in the sugya, Rabbi Ḥanina’s statement represents an assertion that the authority of the Babylonian rabbis did not derive from an actual or conceptual agency, but rather derived from the needs of commerce. This assertion that the authority to adjudicate cases of admissions and loans was required to facilitate commerce could not have been made if “*gezeilot va-ḥavalot*” were understood as “bailments and pledges” because bailments and pledges are materially related to admissions and loans. However, the linguistic shift caused by the adoption of the terms *mashkon* and *mashkanta* in place of *ḥavalah* in rabbinic texts provided a basis for a distinction between monetary cases and *gezeilot va-ḥavalot* that served as an appropriate premise for creating a sugya in response to the stam’s dilemma concerning the independent judicial authority of Babylonian rabbis. Viewed from this perspective, the sugya represents an attempt to resolve a fundamental legal theory question concerning the source of judicial authority of non-ordained judges in a manner consistent with the rules of the legal system created and imposed by the stammim.⁴⁵

45 As Radzyner, “‘We Act as their Agents,’” 257–60, observes, this question continues to be of concern. While *b. Git.* 88b is generally cited as the grounds for judicial authority, it is interesting to note that a number of commentators to the Tur (*Ḥoshen Mishpat* 1:1) and the *Shulḥan Arukh* (*Ḥoshen Mishpat* 1:1) appear to adopt an approach that combines both the concepts of agency and frequency of *Gittin* 88b and the concepts of admissions and loans and “so as not to lock the door before borrowers” from *Sanhedrin* 2b–3a in justifying the authority of non-ordained judges. And see in this regard *Arukh ha-Shulḥan*, *Ḥoshen Mishpat* 1, which attempts to ground broad jurisdiction by relying upon all of the above, as well as other grounds, adds that although the Torah requires ordained judges even for adjudicating monetary matters, this only applies to “coercion” but not when the litigants accept jurisdiction voluntarily, and that although coercion is not permitted, the Geonic institution of *nidduy* (ostracism) can be employed.